

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 332 of 2020

(Against the judgment of conviction dated 21.03.2020 and order of sentence dated 23.04.2020 passed by Sri Anil Kumar Mishra No.1, learned Special Judge, PML Act-cum-C.B.I., Ranchi)

Anosh Ekka			Appellant
--Versus--			
The Directorate of Enforcement			Respondent

For the Appellant	: M/s Ajit Kumar, Sr. Advocate Rajiv Awasthi, J.S. Singh, Advocates
For the E.D.	: Mr. Amit Kumar Das, Advocate
For the C.B.I.	: Mr. Prashant Pallav, DSGI

PRESENT

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

JUDGMENT

C.A.V. ON: 21.12.2022

PRONOUNCED ON: 20 /01/2023

1. This appeal is preferred against the Judgment of conviction and sentence passed by the special judge, PMLA-cum-CBI, Ranchi in ECIR 01/Pat/09/AD (S), whereby and where under, the appellant has been held guilty for the offence under Section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter called PMLA) and sentenced to undergo rigorous imprisonment for seven years and for a fine of Rs. 2 Crores and in default of payment of fine, one year R.I. in additional has been imposed. There is further direction for confiscation/forfeiture of the tainted money/properties of the convict of Rs.22,38,40, 247.92/-.

PROSECUTION CASE

2. Complaint filed by one Kumar Binod on 25.10.2008 is the basis of Vigilance P.S. Case No.26/2008 dated 26.11.2008 registered under Sections 406, 409, 420, 423, 424, 465/120B IPC and Sections 11/13(2) read with Section 13(1)(e) of the P.C. Act, 1988 for accumulation of disproportionate assets accumulated by the accused/ MLA/ Minister, Anos Ekka and Harinarayan Rai.

3. Complainant made allegation of criminal conspiracy, misappropriation, criminal breach of trust, cheating forgery fraudulent execution of deed of transfer containing false statement of consideration amount and to have acquired assets disproportionate to his known lawful

source of income and also to have acquired lands in violation of C.N.T. Act in the name of his wife Smt Menon Ujjana Ekka.

4. After investigation Vigilance Bureau submitted, interim charge-sheet no 21/2009 dated **5.10.2009** u/s 406,409,420,423,424,465/120 B of IPC and section 11/13(2) r/w 13(1)(e) of the PC Act, 1988 for possession of disproportionate assets by the accused MLA's/Ex-Minister Anosh Ekka and Hari Narayan Rai . During the pendency of the case, further investigation was taken up by the CBI under the direction of this Court passed in W.P.(PIL) No.4700 of 2008 and WP (PIL) No.2252 of 2009, CBI vide order dated 04.08.2010 wherein direction was given to the CBI to take up investigation of Vigilance P.S. Case No.26/2008. The CBI after re-registering the case as R.C. No.04(A)/2010-AHD-R(B) submitted Charge-sheet no.02/12 dated 27.01.2012 was submitted under Section 109 IPC and 13(2) read with Section 13(1)(e) of the P.C. Act, 1988 against all the accused persons.

5. As per the prosecution case, during check period from 10.3.2005 to 31.3.2009 **Anosh Ekka** had acquired assets worth **Rs 57.01 Crore**, disproportionate to his known sources of income against the pre-check assets of **Rs 10,48,827/-**. The property so acquired were invested in land as well as deposits in NSC's KVP etc and by floating a construction company in the name of M/s Ekka Construction Pvt. Ltd and got it registered in the Rural Works Department of the Govt of Jharkhand as Class I A Contractor without fulfilling the eligibility criteria to project the proceeds of crime as untainted income. After investigation the case was found true against the accused Anosh Ekka of acquiring disproportionate assets to the known source of income in his own name and in the name of his family members and relatives and associates.

6. On the basis of FIR No. 26/2008 dated 26.11.2008, the Enforcement Directorate, Patna Sub-Zonal office, Patna registered ECIR/01/PAT/09/AD for investigation of offence under Prevention of Money Laundering Act, against Anosh Ekka and Ors. on **4.9.2009**. The Enforcement Directorate filed prosecution complaint and supplementary prosecution complaints under section 4 of the PMLA against Shri Anosh Ekka and Hari Narayan Rai for committing offence as defined in Section 3 of PMLA, punishable under section 4 of the PMLA for the commission of offence of laundering of proceeds of crime . The trial of Hari Narayan Rai was separated

vide order 16.1.2012 and only present appellant/accused was put up for trial in the instant case.

7. Out of the offences in which the Vigilance Department submitted charge sheet, Section 420/423/424/120B of IPC, 1860 & Section 13 of the Prevention of Corruption Act 1988 was covered as scheduled offence.

8. The prosecution case in brief is about the acquisition of disproportionate asset to the known sources of income by the accused Anosh Ekka for the check period of **10.3.2005 to 31.3.2009** and of indulging in process of projecting the proceeds of crime as untainted property. During his tenure as Minister, Shri Anosh Ekka was involved in corruption/misappropriation of public money and thereby acquired assets in crores which included movable and immovable properties in the name of his wife and other relatives.

9. Anosh Ekka had filed his nomination for election in Jharkhand State Assembly in the year 2005 and at the time of filing nomination on 20.1.2005, a declaration of assets including the assets of his wife and dependent was made on affidavit which valued at Rs. **10,48,827/-**. At that time he was not even an income tax payee and had no PAN card in his name. He was elected in the year 2005 in Jharkhand State Assembly Election and became Minister of Rural Development, NREP, Transport, Panchayati Raj and Building Construction Department of the Government of Jharkhand from the year 2005 to 2008. It is alleged that during this period by misusing his official position as a public servant, he acquired huge movable and immovable properties either in his name or in the name of his family members, relatives and associates.

10. In nutshell, accused Anosh Ekka had acquired assets Rs.57.01 Crore disproportionate to his known sources of income against the pre-check asset of Rs.10,48,827/- during the check period **10.03.2005 to 31.03.2009**.

11. Assets were acquired during the check period by Sri Anosh Ekka in his own name and in the names of his wife Smt. Menon Ekka, M/s Ekka Construction Pvt. Ltd., Sri Jaykant Bara (cousin of Smt. Menon Ekka and Director of M/s Ekka Construction Pvt. Ltd.), Deepak Lakra (Co-villager and Director of M/s Ekka Construction Pvt. Ltd.), Ibrahim Ekka (brother), Gidiyon Ekka (brother), Roshan Minz, nephew, M/s Motorist Inn Pvt. Ltd. (purchased in the names of Smt. Menon Ekka and Sri Jaykant Bara as

directors), etc. After Sri Anosh Ekka became a minister, a company was floated in the name and style of M/s Ekka Construction Pvt. Ltd. under directorship of Smt. Menon Ekka and Jaykant Bara. Later, Smt. Menon Ekka dissociated from the company on paper and made Sri Deepak Lakra the director in her place. Sri Jaykant Bara had been the other director of this company throughout. M/s Ekka Construction Pvt. Ltd. got huge work orders from the Rural Development Department (department under the control of Sri Anosh Ekka) and Rural Works Deptt. (Department under the control of Sri Hari Narayan Ray) of Govt. of Jharkhand. But the income declared by M/s Ekka Construction Pvt. Ltd. does not match the assets found in its name. The Income Tax returns and audit reports of this company mention huge amount as trade liability and efforts have been made by the accused to adjust huge assets against this liability. However, the company had not been able to furnish books of accounts. It showed that the claim of trade liability was bogus and not acceptable. Sri Arun Kumar Mishra and Sri Binod Kumar Jaiswal, the Chartered Accountants who signed audit reports for this company and also filed income tax returns for it, stated in their statements made under Sections 161 and 164 Cr.P.C. that complete books of accounts were never made available to them by this company. Sri Mishra also informed the CBI in writing that the company did not furnish him the lists of trade liabilities and loans and advances.

12. Sri Anosh Ekka acquired land in his name in Fatehpur Beri, New Delhi, for which payment was made from the account of M/s Ekka Construction Pvt. Ltd. Also, he was found to have signed on behalf of M/s Ekka Construction Pvt. Ltd. on the sale deed of a house purchased at Gurgaon. Similarly, a house was acquired in the name of Deepak Lakra for which the money was transferred from the account of M/s Ekka Construction Pvt. Ltd. to the account of Deepak Lakra and there-from it went to the seller of the house at Gurgaon. In view of these facts and circumstances, both assets and income of M/s Ekka Construction Pvt. Ltd. have been taken into account for computing the disproportionate assets of Sri Anosh Ekka.

13. Flats worth Rs.9,07,784/- and Rs. 13,56,353/- were purchased by Sri Anosh Ekka in the name of Gidiyon Ekka and Roshan Minz, respectively. Also, investment for Rs. 1 lakh was made in post-office in the name of Gidiyon Ekka. Gidiyon Ekka and Roshan Minz have not been able to reveal

from where they earned the money equivalent to the cost of the flats. Sri Roshan Minz did not claim to have filed income tax returns. Sri Gidiyon Ekka’s returns did not reflect sufficient income justifying purchase of the flat.

14. A Scorpio vehicle was purchased in the name of Sri Ibrahim Ekka and huge sum was paid for obtaining choice registration number for this vehicle. This apart, substantial land worth Rs. 13 lakh had been purchased in his name, in Simdega. The income tax returns of Sri Ibrahim Ekka did not justify these acquisitions and he could not show from which account he withdrew the amount equivalent to the cost price of the car.

15. Five NSCs, each for Rs. 1 lakh, were purchased by Sri Anosh Ekka in the name of Jaykant Bara, Subhashi Ekka, Menon Ekka, Gidiyon Ekka and Ibrahim Ekka on a single date i.e. 30.3.2007. Similarly, five KVPs, each for Rs. One lakh, were purchased by him in the name of Sandesh Ekka, Irin Ekka, Menon Ekka, Nisha Minz and Nishant Minz on a single date i.e. 19.7.2008. Smt. Menon Ekka happens to be the nominee in respect of NSCs purchased in the name of Jaykant Bara and her sister Raien Minz happens to be the nominee in respect of the KVP purchased in the names of Sandesh Ekka, Irin Ekka and Menon Ekka.

16. Huge investments were made by Sri Anosh Ekka in the Post office in the names of Smt. Menon Ekka and Jaykant Bara and these investments were found deposited as security with the Executive Engineers of Rural Works Deptt. and Rural Development Deptt., Simdega on behalf of M/s Ekka Construction Pvt. The income tax return of the relevant period could not justify these acquisitions.

17. The assets found at the end of the check period are as below:-

STATEMENT B (ASSETS AT THE END OF THE CHECK PEREIOD)
(Only those assets are mentioned which were not available at the start of the check period).

Particulars of assets	Date of acquisition	Value Rs.
<u>In the name of Anosh Ekka</u>		
Valuation report No. 224 dt. 5.8.2011 of Valuation Officer, Income Tax, Ranchi, regarding valuation of under	2007-08	17,00,300/-

construction House in front of Simdega Police Station.		
Certified copies of 6 registered sale deeds regarding purchase of land at Simdega received vide letter No. 116 dt. 14.6.2011 of Distt. Sub Registrar, Simdega.	30.7.05 to 21.9.07	10,25,590/-
13 bighas of land purchased at Fatehpur Beri, Hauz Khas, N. Delhi from Virendra Mittal, Pradeep Mittal, Puneet Gupta and Naveen Gupta.	18.5.07	60,48,000/-
.366 bore rifle No. 131809 make Husquodarn and 25 pcs cartridges purchased from M/s N.C. Daw & Co., G.T. Road Asansol.	12.1.2006	15,187/-
.32 bore pistol No. 002525 Walther made in Germany with 50 pcs. Cartridges purchased from M/s J. Biswas and Co., Kolkata.	30.11.2006	29,250/-
One NP bore pistol bearing No. 648392 purchased from Bihar Gun House, Ranchi with 50 pcs of cartridge.	24.11.05	18,560/-
One DBBL Gun 12 bore pistol bearing No. 42815/1530 purchased from Bihar Gun House, Ranchi with 50 pcs of cartridge.	2.12.05	8,700/-
Balance in A/c No. 22221 (new No. 491410100022221 in Bank of India, Simdega.		1,87,777/-
Balance in SB A/c No. 495810100102320 of Bank of India, High Court, Doranda, Ranchi.		2,01,583/-
FD Certificate No. 9445168 dt. 19.1.09 (FD A/c No.	19.1.09	10,00,000/-

495845110001035), Bank of India, High Court, Ranchi.		
Endeavour Ford Car No. JH01M0001 purchased from M/s Akash Travels Agency, Ranchi Club Complex, Ranchi.	20.6.06	5,00,000/-
Endeavour BS III Car Reg. No. JH 01Z 0001 purchased from M/s Jayshree Ford, Ranchi.	24.1.09	17,49,000/-
Motorcycle No. JH20A3007 purchased from M/s AUTO BIKES, 56, Main Road, Ranchi.	15.2.08	57,569/-
<u>In the name of Smt. Menon Ekka, wife</u>		
Valuation report No. 229 dt. 8.8.2011 of Valuation Officer, Income Tax, Ranchi, regarding valuation of house in Hinoo, Doranda, Ranchi.	2006-09	1,80,20,000/-
Time Deposit Passbook of A/c No. 150101502 in Doranda PO.	12.3.07	3,60,000/-
Time Deposit Passbook of A/c No. 150101504 in Doranda PO.	12.3.07	6,00,000/-
Time Deposit Passbook of A/c No. 150101505 in Doranda PO.	12.3.07	6,00,000/-
Time Deposit Passbook of A/c No. 150101506 in Doranda PO.	12.3.07	6,00,000/-
Time Deposit Passbook of A/c No. 130102484 in Doranda PO.	7.12.06	2,00,000/-
Time Deposit Passbook of A/c No. 130102403 in Doranda PO.	5.10.06	1,50,000/-
Time Deposit Passbook of A/c No. 150101507 in Doranda PO.	13.3.07	96,000/-
Time Deposit Passbook of A/c No. 150101503 in Doranda PO.	12.3.07	2,50,000/-

TD Passbook of A/c No. 130102506 in Doranda Post Office.	22.12.06	1,00,000/-
TD Passbook of A/c No. 130102507 in Doranda Post Office.	22.12.06	1,00,000/-
TD Passbook of A/c No. 130102508 in Doranda Post Office.	22.12.06	1,00,000/-
TD Passbook of A/c No. 130102509 in Doranda Post Office.	22.12.06	1,00,000/-
TD Passbook of A/c No. 130102510 in Doranda Post Office.	22.12.06	1,00,000/-
TD Passbook of A/c No. 130102511 in Doranda Post Office.	22.12.06	1,00,000/-
TD Passbook of A/c No. 130102512 in Doranda Post Office.	22.12.06	1,00,000/-
TD Passbook of A/c No. 130102513 in Doranda Post Office.	22.12.06	1,00,000/-
TD Passbook of A/c No. 130102514 in Doranda Post Office.	22.12.06	1,00,000/-
TD Passbook of A/c No. 130102515 in Doranda Post Office.	22.12.06	1,00,000/-
Bolero Camper Jeep No. JH01W6577 purchased from M/s Auto Plannate Indostry Pvt. Ltd., Dhanbad.	28.5.08	4,54,282/-
Bolero Jeep No. JH01W8077 purchased from M/s Auto Plannate Indostry Pvt. Ltd., Dhanbad.	26.5.08	4,70,000/-
4 RIP certificates (A/c No. 4632/72, 4639/72, 4633/72, 4641/72) each of Rs. 50,000/- of United Bank of India, Kolebira Branch, Simdega.	Dec'06	2,00,000/-
Balance in Account No. 9190 in Bank of India, Khuntitoli, Simdega.		62,832/-
Balance in Account No. 3089 in Jharkhand Gramin Bank, Balalong.		6,49,440/-

Balance in PPF Account No. 11443968454 in SBI, Simdega.		55,094/-
Balance in SB A/c No. 491010110000061 in Bank of India, Shyamali, Ranchi.		1,085/-
Balance in SB A/c No. 495810110000896 of Bank of India, High Court, Doranda, Ranchi.		14,791/-
Application for purchase of NSC Reg. No. 4989 from Simdega Post Office	30.3.07	1,00,000/-
Application for purchase of KVP Reg. No. 10577 from Simdega Post Office	19.7.08	1,00,000/-
Certified copy of 1 registered sale deed regarding purchase of land at Simdega received vide letter No. 116 dt. 14.6.2011 of Distt. Sub Registrar, Simdega.	21.9.07	3,69,648/-
Certified copies of sale deeds of land purchased at Hinoo, Neori, Ormanjhi, Ranchi, furnished vide letter No. 868 dt. 30.12.08 of Distt. Sub Registrar, Ranchi (includes stamp and registration charges)	Between 27.3.06 and 16.1.08	1,20,35,705/-
Letter No. 274 dt. 8.4.11 of Distt. Sub-Registrar, Ranchi enclosing certified copy of registered sale deed No. 7718 dt. 10.5.08 pertaining to purchase of land at Serumtoli, Chutia, Ranchi.	10.5.08	7,98,433/-
Letter No. 462 dt. 20.6.11 of Distt. Sub-Registrar, Ranchi enclosing certified copy of registered sale deed No. 94 dt. 6.5.08 pertaining to purchase of land at Serumtoli, Chutia, Ranchi.	6.5.08	6,42,823/-
<u>In the Joint names of Anosh Ekka and Menon Ekka</u>		

Valuation report No. 228 dt. 8.8.2011 of Valuation Officer, Income Tax, Ranchi, regarding valuation of house at Thakurtoli, Simdega.	2005-06	20,28,400/-
Balance in Joint SB A/c No. 380302010156036 in Union Bank of India, Doranda, Ranchi.		7,023/-
<u>In the name of M/s Ekka Construction Pvt. Ltd., Directors- Smt. Menon Ekka, Jayakant Bara (now Deepak Lakra in place of Smt. Menon Ekka)</u>		
Tata Safari Car No. JH06H0001 for purchased from M/s. Kraft Auto Private Limited. This acquisition was financed by M/s. Hindustan Credit Corporation, Main Road, Ranchi. Loan was repaid within a year	12.4.2008	10,45,520/-
Toyota CAMRY Car No. JH 20A 0001 purchased from M/s BEBBCO Motors Pvt. Ltd., Adityapur, Jamshedpur	11.4.07	21,25,000/-
Four Tipper vehicles purchased from M/s JMA Stores Pvt. Ltd. (Reg. No. JH 09H 6277, JH 05S 6277, JH 10N 6277, JH 11D 6277)	Feb'07	35,95,044/-
Hero Honda M. Cycle No. JH01Y3988 purchased from M/s Shyama Automobiles Pvt. Ltd., Ranchi	21.5.08	33,824/-
Tractor No. JH01R9377 purchased from M/s Fogla Auto Pvt. Ltd., Ranchi	2.3.07	3,49,911/-
Verna CRDi (Sx) Car Regd. No. JH 02L 0001 purchased from M/s Republic Hyundai, Line Tank Road, Ranchi.	10.3.08	8,07,867/-
Balance in CD account No.		2,34,94,021/-

11443844053 at SBI, Simdega.		
Balance in current account No. 51991010000160 at Oriental Bank of Commerce, Doranda College, Ranchi.		7,51,149/-
Certified copies of sale deeds of land purchased at Ormanjhi, Chutia, And Neori Vikas, Ranchi, furnished vide letter No. 868 dt. 30.12.08 of Distt. Sub Registrar, Ranchi (includes stamp and registration charges)	Between 11.5.07 and 11.11.08	2,11,59,770/-
Certified copies of sale deeds of land purchased at Ormanjhi, Ranchi, furnished vide letter No. 516 dt. 6.4.09 of Distt. Sub Registrar, Ranchi (includes stamp and registration charges)	Between 11.5.07 and 16.5.07	7,99,254/-
Letter No. 754 dt. 24.5.11 of Sri Manoj Kumar, Sub-Registrar IX, New Delhi enclosing the true copy of registered Sale Agreement dt. 23.10.08 pertaining to purchase of entire second floor of building No. 5, CC Basant Lok, Vasant Vihar, New Delhi (signatory-Menon Ekka)	23.10.08	63,60,000/-
<u>In the joint names of Menon Ekka and M/s Ekka Construction Pvt. Ltd.</u>		
Valuation report No. 226 dt. 5.8.2011 of Valuation Officer, Income Tax, Ranchi, regarding Valuation of Dairy and Poultry Farm at Irba, Ormanjhi (near Appolo Hospital)	2006-09	1,21,88,200/-
<u>In the name of Deepak Lakra, Present Director M/s Ekka Construction Pvt. Ltd.</u>		
Certified copy of sale deed (in the	29.5.06	58,30,890/-

name of Deepak Lakra) of house No. 963/C, Sushant Lok, Phase I, Gurgaon, Furnished vide letter No. 714 dt. 19.10.10 of sub Registrar, Gurgaon (includes stamp and registration charges)		
<u>In the name of Gidyon Ekka</u>		
Application for purchase of NSC (Reg. No. 4990) from Simdega Post Office	30.3.07	1,00,000/-
Flat No. C-1/5, Hari Om Tower Residential Complex, Circular Road, Ranchi (includes stamp and registration charges)	29.7.06	9,07,784/-
<u>In the name of Roshan Minz, nephew (sister's son)</u>		
Flat No. 104, Sri Ram Regency Apartment, off. Circular Road, Ranchi (includes stamp and registration charges)	2.9.06	13,56,353/-
<u>In the name of Jaykant Bara (Director M/s Ekka Construction Pvt. Ltd.)</u>		
Application for purchase of NSC Reg. No. 4987 from Simdega Post Office.	30.3.07	1,00,000/-
TD Passbook of A/c No. 5413189 in Sub Post Office, HSG1, Simdega	8.1.07	2,79,000/-
TD Passbook of A/c No. 5413190 in Sub Post Office, HSG1, Simdega	8.1.07	2,24,000/-
TD Passbook of A/c No. 333053004 in Sub Post Office, HSG1, Simdega	29.8.08	2,00,000/-
TD Passbook of A/c No. 130102402 in Doranda Post Office.	5.10.06	1,50,000/-
TD Passbook of A/c No. 333053005 in Sub Post Office, HSG1, Simdega	29.8.08	2,26,000/-
TD Passbook of A/c No. 333053006 in	29.8.08	2,00,000/-

Sub Post Office, HSG1, Simdega		
TD Passbook of A/c No. 130102493 in Doranda Post Office.	13.12.06	7,50,000/-
TD Passbook of A/c No. 130102502 in Doranda Post Office.	22.12.06	1,00,000/-
TD Passbook of A/c No. 130102503 in Doranda Post Office.	22.12.06	1,00,000/-
TD Passbook of A/c No. 130102504 in Doranda Post Office.	5.10.06	1,00,000/-
TD Passbook of A/c No. 130102505 in Doranda Post Office.	22.12.06	1,00,000/-
<u>In the name of Subhashi Ekka</u>		
Application for purchase of NSC (Reg. No. 4988) from Simdega Post Office	30.3.07	1,00,000/-
<u>In the name of Ibrahim Ekka</u>		
Certified copy of 1 registered sale deed regarding purchase of land at Simdega received vide letter No. 116 dt. 14.6.2011 of Distt. Sub Registrar, Simdega.	16.11.06	13,65,048/-
JH 01V 0001 Scorpio Car purchased from M/s Auto Plannate Industry Pvt. Ltd., Dhanbad.	15.1.2008	9,81,836/-
Application for purchase of NSC (Reg. No. 4991) from Simdega Post Office	30.3.07	1,00,000/-
<u>In the name of Sandesh Ekka, son</u>		
Application for purchase of KVP (Reg. No. 10575) from Simdega Post Office	19.7.08	1,00,000/-
<u>In the name of Irin Ekka, daughter</u>		
Application for purchase of KVP (Reg. No. 10575)	19.7.08	1,00,000/-
<u>In the name of Nishant Minz</u>		
Application for purchase of KVP (Reg. No. 10578) from Simdega Post Office	19.7.08	1,00,000/-
<u>In the name of Nisha Minz</u>		

Application for purchase of (KVP Reg. No. 10579) from Simdega Post Office	19.7.08	1,00,000/-
<u>In the name of M/s Motorist Inn, Pangabatala, Karjipara, Jalpaigudi (Director-Smt. Menon Ekka and Jayakant Bara)</u>		
Letter No. 197 dated 31.05.2011 of Additional District Sub-Registrar, Rajganj, Jalpaiguri enclosing 23 numbers of certified copies of registered Sale Deeds	9.7.2008 to 2.12.2008	55,23,042/-
Letter No. 237 dated 30.05.2011 of District Sub-Registrar, Jalpaiguri enclosing 11 numbers of certified copies of registered Sale Deeds	11.6.2008 to 17.10.2008	65,64,593/-
17 numbers of certified copies of registered Sale Deeds executed in 2008 (collected by Vigilance Bureau vide which plots were purchased in Jalpaiguri) (Deeds No. 2946, 2947, 2586, 2550, 2400, 2399, 2398, 2397, 2374, 2092, 2228, 2091, 2145, 2146, 2148, 2051, 2090)	13.6.2008 to 6.9.2008	55,44,434/-
Balance in A/c No. 30404683609 in SBI, Town Branch, Jalpaigudi		28,20,258/-
Balance in A/c No. CA 372899 in Allahabad Bank, Silliguri		1,19,546/-
Total		15,93,59,416/-

18. The accused claimed income from many other sources apart from the income from salary. So, for calculating his income and that of his family members the income tax return and salary statement and Bank records were taken into account.

19. M/s Ekka Construction Pvt. Ltd. mentioned, in its income tax returns, to have received huge amounts as share holders' money, However,

such claim has not been found acceptable in absence of documentation and maintenance of books of accounts by this company.

20. Smt. Menon Ujjana Ekka W/o of the appellant, was found to have declared an income of Rs. 1,31,90,261/- in her Income Tax return for financial year 2007-08 which was an abnormal and abrupt hike compared to the previous years. Rs. 1,05,83,761/- out of the above amount had been declared as income from other sources. But there was no documentation or maintenance of books of accounts by her which could support her claim. Smt. Ekka tried to explain that she celebrated the birthday of her wards, in which huge gifts from innumerable persons were received. However, there was no list of such donors to support her claim of having received such a huge amount. Obviously, a receipt of this nature cannot be accepted.

21. Huge expenditure had been incurred by Sri Anosh Ekka on education of his wards and payment of LIC premium. Also, investigation revealed that Sri Anosh Ekka entered into an agreement to purchase plots of land in Namkum, paid part amount to the sellers and spent huge amount in erecting a boundary wall around the land.

22. Smt Menon Ekka w/o Anosh Ekka and Shri Jaykant Bara, cousin brother of Smt Menon Ekka had no income of their own. M/s Sandesh Constructions, proprietorship firm in the name of Shri Jaykand Bara was the benami firm of Anosh Ekka. Property acquired in the name of Smt Menon Ekka and Jaykant Bara, were attached u/s 5(1) of the PMLA vide Provisional Attachment Order dated 28.7.2014 were nothing but the illegal income of Anosh Ekka.

23. The accommodation entry was made in the books of accounts of M/s Ekka Construction Pvt. Ltd. and M/s Motorisit Inn Pvt. Ltd. The property acquired in the name of private limited company was acquired from the proceeds of crime earned by Anosh Ekka.

24. Shri Sandesh Ekka and M/s Irin Ekka, being the minor son and daughter of Sri Anosh Ekka, had no income of their own. Property acquired in their name and attached u/s 5 (1) of the PMLA vide Provisional Attachment Order dated 28.7.2014 were nothing but the illegal income of Anosh Ekka.

25. Ibrahim Ekka and Giddiyon Ekka, brothers of Anosh Ekka had no taxable income before financial year 2005-06. However, income tax return filed for the financial year 2005-2006 of Ibrahim Ekka revealed total income

to the extent of Rs 3,27,500/- and for 2006-2007 filed on 31.3.2009 showed gross total income of Rs 3,36,000/- were not sufficient to make investments as claimed by him, which were proceeds of crime earned by Anosh Ekka. Similarly, income of Ibrahim Ekka as revealed by the income tax return filed by him were not sufficient for the claimed investment made by him, which were in reality crime proceeds.

26. Roshan Minz, (sister's son of Anosh Ekka), Mrs Menon Ekka w/o of Anosh Ekka, Nishant Minz and Ms. Nisha Minz, (son and daughter of Smt Menon Ekka) had no valid income of their own. Property acquired in their name and attached u/s 5 (1) of the PMLA were nothing but the illegal income of Anosh Ekka. Thereby he had committed offence under Section 3 and 4 of the PMLA 2002.

27. Money earned by Anosh Ekka was derived from his activity committing offence under the provisions of Sections 406,409,420,423,424, 465, 120 B of IPC and the provisions of Section 11 and 13 of the PC Act which was invested by him in immovable/movable properties which were purchased by him in his wife's and relatives name and in company's business concerns. The payments made by Sri Anosh Ekka either directly or through his relatives/their business concerns to the concerned persons/sellers in respect of purchase of properties are part of proceeds of crime.

28. Provisional attachment orders were passed by the Enforcement Directorate under Section 5(1) of the PMLA and the same were confirmed by the adjudicating authority under u/s 8 (3) of the PMLA.

29. The learned Court below examined altogether 57 prosecution witnesses and Exhibits 1-86 have adduced into evidence on behalf of the prosecution.

30. After examination, statement of the accused has been recorded under Section 313 of the Cr.P.C. Altogether 57 questions were put to the accused setting out the evidence appearing against him. The answers are evasive denial and no explanation has been put forward in plea of defence except that he had been falsely implicated in the case due to political rivalry.

The defence witnesses have stated different amount given to his sons and daughters in their birthday party and gifts given on other occasions.

31. The defence has examined 71 witnesses and has adduced the following documents into evidence:-

1. Valuation report of constructed house of Menon Ekka at Airport Road, Hinoo, Ranchi- Exhibit-A
2. Certified copy of judgment and decree of Money Suit No.36/12- Exhibit-B
3. Certified copy of valuation of house of accused Anosh Ekka in front of Simdega Police Station-Exhibit-C
4. Certified copy of deposition of witnesses Sanjay Kumar (P.W.-54) in R.C.04(A)/2010-AHD-R(B)-Exhibit-D

32. The learned Trial Court while considering the assets as declared by Anosh Ekka and his wife Smt. Menon Ekka in their income tax return filed in the nomination for Assembly Election in the year 2005 (Exhibit 72, 72/1, 78 and X/25) computed the total asset

I. Cash- Rs.50,000/- + Rs.22,000/- =**Rs 72,000**

II. Bank financial institution, non-company deposits, NSS & Postal Savings - Rs.827 + Rs.7,00,000 + Rs.20,000/-=**Rs7,20,827**

Gold--- **Rs.56,000/-**

III. Financial resources eg NSS postal savings etc. of dependents-- **Rs.2,00,000/-**

Total- Rs.10,48,827/-

33. The Court held that the accused had projected his ill gotten money i.e. the proceeds of crime as untainted properties to the tune of **Rs.22,38,40,247.92** and held the accused guilty for offence of money laundering for the charge under Section 4 of PMLA, 2002 which was also confiscated.

APPELLANT'S ARGUMENT

34. The judgment of conviction and sentence has been assailed mainly on the ground that the alleged incident relates to the check period from **March, 2005 to March 2009**, hence the proceeding shall be governed by the provisions of 2002 Act of the Prevention of Money Laundering Act, 2002 (PMLA) which came into force w.e.f. 01.07.2005. The subsequent amendments brought in the PMLA in the year 2009, 2013 will have no applicability for the adjudication of the present appeal.

35. Since the provisions of PMLA 2002 have punitive implications, therefore, it will have no retrospective application in view of the subsequent

amendments made in the Act, and schedule, in the year 2009 which came into effect from **15.02.2013**.

36. The main thrust of the appellant's case is that Section 13(2) read with Sections 13(1)(e) of the Prevention of Corruption Act, 1988 (PC Act) were made scheduled offence **w.e.f. 01.06.2009** which has no retrospective effect. Therefore, it is argued that the very initiation of proceeding (registration of ECIR) under the PMLA, 2002 was illegal and contrary to the scheme of the Act. The offence for which the F.I.R. was registered by the Vigilance Bureau were not the scheduled offence under the PMLA Act 2002.

37. The fine of two crores imposed by the Trial Court apart from the sentence of seven years was contrary to the mandate of Section 4 of the PMLA Act, 2002 as the Act provided a fine of Rs. Five Lakhs only.

38. The confiscation/forfeiture of properties under Section 8(5) and order under Section 9 that all property shall vest absolutely in the Central Government was contrary to the provisions of the PMLA, 2002 and rule framed thereunder i.e. the Prevention of Money Laundering (Taking possession of attached or frozen properties confirmed by the adjudicating authority) Rules, 2013 and Prevention of Money Laundering (Restoration of Property) Rules, 2016.

39. No case under PMLA, 2002 can be registered unless there is a case registered by the police, CBI or other investigating agency and the said case must be showing the commission of scheduled offence and the prosecution complaint is filed before the competent court for cognizance.

40. In absence of submission of any charge-sheet with respect to the scheduled offences, the investigation and subsequent complaint could not have been filed.

41. As the investigation by way of ECIR was instituted by the Directorate of Enforcement without making any attachment, such prosecution was not maintainable in absence of any order of attachment.

42. On the point of sentence, it is argued that in imposition of 16 years imprisonment for both scheduled offence as well as offence for money-laundering was beyond the mandate of the provision under Section 427 Cr.P.C.

43. Reliance has been placed on the following authorities on behalf of the appellant:

- a. ***M/s Satyam Computers Services Ltd Vs. Deputy Director, Directorate of Enforcement***, passed by High Court of Hyderabad and approved by Hon'ble Supreme Court in ***Directorate of Enforcement Vs Satyam Computer Services***
- b. ***Obulapuram Mining Company Pvt. Ltd Vs Joint Director, Directorate of Enforcement, Govt of India*** the judgment of the High Court of Karnataka approved in ***Special Leave to Appeal (Crl) No(s) 4466/2017***
- c. ***2014 SCC Online Hyd 1575*** the judgment has attained finality after the dismissal of the special leave petition by the Supreme Court in SLP (criminal)
- d. ***M/s Ajanta Merchants Private Limited Versus Directorate Of Enforcement High Court of Delhi; CRL MC No. 5581/2014*** the judgement has attained finality after dismissal of a special leave petition by the Supreme Court in CRL MP numbers 18478/2015.
- e. ***Ajay Kumar Gupta Vs. E.D.*** Madras High Court, in this case the check period was shown 01.05.1997 to 30.06.2005 and the offences involved were Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 against first petitioner and Section 109 of IPC read with Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988. In this case, the Madras High Court referred to the judgment of the Division Bench of Karnataka High Court in the case of ***M/s Obulapuram Mining Company Pvt. Ltd. Versus Directorate of Enforcement*** wherein it was held that the accused persons could not be prosecuted for the offences alleged, as they were not scheduled offences under PMLA Act. The offence under Prevention of Corruption Act with other offences were included in the PMLA only w.e.f. June 1, 2009. Hence, the Enforcement Directorate could not have invoked the provisions of PMLA Act with retrospective effect. Even after 01.07.2005, the offences were not included in scheduled offences till 01.06.2009.

ARGUMENT ON BEHALF OF ED

44. With regard to the argument that subsequent amendments in PMLA 2002, brought in the year 2009 and 2013 to the list of scheduled offences will have no application in the present case and consequently the offences under PMLA, shall not be made out. In ***Directorate of Enforcement Versus M/s Obulapuram Mining Company Pvt. Ltd. SC*** in Special Leave to Appeal (Cr.) No.4466/2017 arising out of impugned judgment and order dated 22.03.2017, the Supreme Court vide order dated 24.07.2017 allowed the leave to appeal

and held that in the meantime, the impugned judgment and order will not operate as precedent.

45. It is argued that Hon'ble the Supreme Court in ***Vijay Madan Lal Choudhary Vs Union of India 2022 SCC OnLine SC 929*** has made decisive pronouncement on the issue of retrospectivity at para 270, 279 and 280. It has been held in para 270 *“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 has 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.”*

46. The Hon'ble Supreme Court in this case upheld the view taken by this Court in the case of ***Hari Naryan Rai Vs State of Jharkhand 2010 SCC On Line Jhar 515*** and ***Narendra Mohan Singh Vs Directorate of Enforcement 2014 SCC On Line Jhar 2861*** as well as the view of Andhra Pradesh High Court in ***B. Ramaraju Vs UOI 2011 SCC On Line AP 152***. Therefore, the fact as to whether at the time of commission of predicate

offence, the same was included in the schedule or not, is immaterial and the material date is the date when the accused is found in possession or is found in any manner dealing with the proceeds of crime.

47. With respect to the second point raised on behalf of the appellant that in absence of submission of any charge sheet with respect to the scheduled offences, the instant investigation and subsequent complaint, could not have been filed. The answer is para 269 of *Vijay Madan Lal Choudhary* (supra). Even the provision of PMLA Section 16 gives power to survey and Section 17 gives power to search and seizure, does not require submission of charge sheet in the scheduled offence as contended on behalf of the appellant.

48. The third line of argument of the appellant was that investigation by way of ECIR was instituted by the Directorate of Enforcement without making any attachment, such prosecution could not have been maintained in absence of an order of attachment. It is argued that this argument is contrary to scheme of the Act. The power of survey search, seizure and arrest in Chapter V of the Act, is not dependent on the pre-condition of attachment. The provision of preliminary attachment, is contained under Section 5 of the Act which can subsequently be confirmed by the adjudicating authority within a period of 180 days as provided under Section 8 of the PMLA. The Trial Court has power at the conclusion of the trial to either confiscate the property or release it under Section 8(5&6) of the Act.

49. With respect to the argument that ECIR was instituted in the year 2009 and at that time the maximum fine provided under Section 4 of the Act, 2002 was only Rs.5,00,000/-, whereas in the present case a fine of Rupees Two Crore has been imposed, it is argued that the accused/appellant continued to hold the proceeds of crime till December, 2014 although it was investigated in the year 2009. The offence by its very nature is continuing. The prosecution complaint dated 11.12.2009 has been marked as Exhibit 33, the supplementary prosecution complaint was filed on 09.03.2012 (Exhibit 33/1) and thirdly, on completion of investigation, the second supplementary complaint was filed on 31.03.2015 (Exhibit 76). In the meantime, the accused was enjoying the properties until a part of property was attached and the order of attachment was confirmed vide order dated 11.05.2010 with respect to properties valuing Rs.976500/- (Exhibit 73/1). Subsequently, further attachments were made with respect to the properties valuing

Rs.33,88,22,167/-. However, even thereafter, the accused was in possession and dealing with the further proceeds of crime in his possession which necessitated attachment of further properties worth Rs.3,97,71,361 and 3rd confirmation order of attachment by the adjudicating authority was passed on 03.12.2014 (Exhibit 75/2). Thus, when the accused continued possessing proceeds of crime at least till 03.12.2014, he was liable to the punishment prescribed for the said offence as prevailing on 03.12.2014. As has been stated hereinabove, by way of amendment in the year 2013 to the Prevention of Money Laundering Act, 2002, the ceiling limit of Rs.5.00 Lakh on the fine was omitted and thereafter there remains no such ceiling limit. This apart, the final complaint i.e. the 3rd supplementary complaint was filed only on 31.03.2015 as has been stated hereinabove i.e. Exhibit 76 and therefore, the prosecution on the basis of the said complaint entitles the learned Court below to impose a fine as was imposable as on date of filing of such complaint and, therefore, the 4th argument of the appellant is also not having any leg to stand.

ANALYSIS

50. Here documentary evidence in the nature of unimpeachable character has been led on behalf of the prosecution regarding acquisition of assets disproportionate to the known source of income. The appellant has not assailed the Judgment on appreciation of evidence or on factual matrix. The challenge basically proceeds on technical grounds, whether the provisions of the PC Act was a scheduled offence at the relevant time or not, whether FIR and chargesheet under the predicate offence is essential for institution of ECIR, can a case be registered under PMLA without any attachment of the proceeds of crime and so on.

51. After having considered the rival submissions, the main plea of appellant that emerges is that offence under the Prevention of Corruption Act was included as the scheduled offence under PMLA in the year 2009 which came into force wef 1.6.2009, whereas the alleged offence for the predicate offence under PC Act was committed during the check period March 2005 to March 2009. PMLA being a penal statute cannot be given a retrospective operation.

52. The above plea is not sustainable for the reason that for the offence under PMLA, the principle of retrospectivity is to be understood in its proper perspective. Hon'ble Supreme Court approved in **AIR 1953 SC 394** the

exposition of law on retrospectivity in *The Queen Vs St Mary Whitechapel*, in the words of Lord Denman CJ, “*A statute which in its direct operation is prospective cannot properly be called retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing.*” The offence of money – laundering involves attempting or indulging in or knowingly being a party or involving in any process or activity connected with the proceeds of crime including its conversion, concealment, possession, possession or use and projecting or claiming it as untainted property. It cannot be said that to launch prosecution of an offence under section 4 of PMLA, the predicate offence from which the proceeds of the crime originated should also have been committed after PMLA came into force. It is the laundering aspect of proceeds of crime which is the mischief, which the PMLA targets. Section 3 criminalizes the activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming of tainted proceeds of crime and not the generation of proceeds of crime from the predicate crime. Therefore, if the predicate offence is committed before it was included in the scheduled offence and steps were taken subsequently to project it as untainted, it cannot be said that it’s retrospective in operation. What is being targeted by in Section 3 and other provisions of the Act, is the laundering of money acquired by committing of the scheduled crimes. It involves any process or activity by which the illicit money is being projected as untainted.

53. There are three general accepted stages of money-laundering, they are-

- a. Placement: which is to move the funds from direct association of the crimes.
- b. Layering: which is disguising the trail to foil pursuit.
- c. Integration: which is making the money available to the criminal for what seem to be legitimate sources.

These processes are by their very nature continuing and after the predicate offence is committed, steps are taken to disguise the trail and legitimise the source. Legal dilemma, if any, has been cleared by Hon’ble Supreme Court in *Vijay Madan Lal Choudhary* (supra) wherein it has been held that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity. It would be an offence of money

laundering to indulge in or to assist to be party in process or activity connected with the proceeds of crime, and as such process or activity in a given facts or situation may be a continuing offence irrespective of the date and time of the commission of the scheduled offences. In other words, the criminal activity may have been committed before the same has been notified as scheduled offence for the purpose of 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived of obtained from such criminal activity even after it has been notified as scheduled offences he 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 or retaining its possession thereof. The Hon'ble Supreme Court upheld the view taken by this Court in *Hari Narayan Rai* (supra) *Narendra Mohan Singh* (supra) as well as the view of Hon'ble Andhra Pradesh High Court in *B. Ramaraju* (supra) and the issue regarding it, has now been set at rest therefore, irrespective of the fact whether at the time of commission of predicate offence (scheduled offence), the same was included in the schedule or not, the date when the accused is found in possession or in any manner dealing with the proceeds of the crime is material for criminality under PMLA. It is therefore, the date of laundering which would be relevant and not the date when the scheduled offence was committed.

54. The first FIR was registered on 25.10.2008, being FIR No.26/2008. On the basis of FIR No.26/2008, the Directorate of Enforcement, Patna registered an ECIR vide Case No. ECIR/01/PAT/09/AD dated 04.09.2009. The prosecution complaint and supplementary prosecution complaints and attachment orders of proceeds of crime, have been filed by the Enforcement Directorate after 1.6.2009 when the amendment in the PMLA came into force making Section 13(1)(e) r/w section 13(2) of the PC Act as scheduled offence.

55. The learned Court below has discussed at length the manner in which construction company in the name of M/s Ekka Construction Pvt. Ltd. was floated in the name of his wife Smt. Menon Ekka and brother-in-law Jaikant Bara, both were Directors of the Company and got it registered with R.E.O Department, Government of Jharkhand on 06.01.2006 (Exhibit 38) and floated another Company M/s Motorist Inn through Smt. Menon Ekka and Jai

Kant Bara which was used to place the proceeds of crime in these companies. The appellant also purchased huge landed property, flats, vehicles, NSC, Fixed Deposits in his name and in the name of his relatives and associates to project the ill-gotten money as untainted property which were acquired and were found in possession of the appellant after 01.06.2009. Therefore, the argument on behalf of the appellant that the offence under PMLA was not made out is rejected.

56. The second limb of argument pressed into service on behalf of appellant, is the absence of any charge sheet with respect to the scheduled offences, the instant investigation and subsequent complaint, could not have been filed. This issue has been answered by Hon'ble Supreme Court in ***Vijay Madan Lal Choudhary*** (supra) at para 269 wherein it has been held that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to the scheduled offence. The triggering factor to prosecute any person for offence of money laundering, is existence of 'proceeds of crime' within the meaning of Section 2(1)(u) of the 2002 Act and involvement in any process or activity. Even if in a given case, there is discovery of huge volume of undisclosed property, the authorized officer may send information to the jurisdictional police under Section 66(2) of 2002 Act for registration of a case under scheduled offence contemporaneously including for a further investigation in a particular case, a case under PMLA will not be registered unless the offence so reported, is a scheduled offence. Even the provisions of Money Laundering Act, 2002 more particularly, Section 16 which gives power to survey, Sections 17 and 18 to gives power to search and seizure and Section 19 which gives power to arrest, do not prescribe any pre-requisite condition regarding submission of charge sheet.

The Act, 2002 does not lay down such prerequisites for initiating prosecution under PMLA. This argument is, therefore, misconceived and fit to be rejected.

57. The third argument on behalf of the appellant can be summarized as under:-

“Whether an attachment order is a *sine qua non* for warranting initiation of investigation under PML Act?”

PMLA does not mandate that requirement of attachment for the purpose of such investigation, rather to the contrary the provision of provisional attachment, Section 5 of the Act, specifically provides that if he has reason to believe that the person in possession of proceeds of crime, is likely to conceal transfer or deal in any manner which may frustrate any proceeding relating confirmation of proceeds of crime, he may provisionally attach the property which subsequently is required to be confirmed by the Adjudicating Authority within a period of 180 days as provided under Section 8 of the Act. The Trial Court has power to either release the property or direct for confiscation of the property.

58. Lastly, On the point of sentence and on the question of fine imposed by the Trial Court of Rupees Two Crore, in the instant case, the accused/appellant was continuing to hold the proceeds of crime upto December, 2014 which shall be apparent from the fact that though the investigation commenced in the year 2009 but the proceeds of crime was invested in different properties. The initial complaint was filed on 11.12.2009 which has been marked as Exhibit 33. The first supplementary complaint was filed on 09.03.2011 (Exhibit 33/1) and on completion of investigation, the second supplementary complaint was filed on 31.03.2015 (Exhibit 76). During this period, the accused remained in possession and enjoyed the property till its attachment. Thus, the integration of proceed of crime which is one of the ingredients of the offence, continued and therefore, this Court is of the view that the sentence of fine of Trial Court was not hit by the principles of retrospectivity.

59. The three ingredients of the offence under Section 3 read with Section 4 of PMLA are:

- I. A criminal activity which is a scheduled offence, should have been committed.
- II. Some money should have been generated by the criminal activity;
- III. The money so generated (proceed of the crime) should have been projected as untainted one.

In the present case the prosecution has proved all the three basic ingredients of the offence. I do not find any infirmity in the impugned Judgment of conviction by the trial Court. Judgment of conviction under predicate offence

is also affirmed in Criminal Appeal no.326/,327/ and 328/ pending before this Court and pronounced by a separate Judgment today.

The Judgment of conviction under Section 4 of the PMLA is affirmed.

SENTENCE

60. The learned Trial Court has imposed a sentence of R.I for 7 years and a fine of Rs 2 crore for the offence under Section 4 of the Money Laundering Act, 2002.

61. It is argued on behalf of the appellant that since both the cases i.e. the present case under PMLA and that under PC Act arise out of the same transaction, therefore, the benefit of Section 427 of the Cr.P.C should have been extended to the appellant. The plea to invoke Section 427 of Cr.P.C. in the present case is misconceived, for the reason that offence under PC Act and that under PMLA are distinct offences and so the provision of this section will not apply. It has been held in **Satnam Singh Puransing Gill Vs The State of Maharastra 2009 SCC On Line Bom 52** that the discretion to award concurrent sentence is when the cases which fall in the category at one trial of two or more offences. On a bare reading of this Section, it has no application to the cases where a person is tried and convicted under two or more different trials for different offences.

It has been held in **Benson v. State of Kerala, (2016) 10 SCC 307**

5. In terms of sub-section (1) of Section 427, if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced.

62. It is a settled principle that criminal law generally adheres to the principles of proportionality in sentencing. Imposition of sentence without considering its effect on the social order in many cases can render the criminal adjudication as an exercise in futility. Appellant in the present case was none other than an elected representative of the people, who was reposed with faith to discharge his constitutional obligations with the highest degree of probity. Unfortunately, power blinded his wisdom and he indulged in rampant corruption by acquiring movable and immovable property much beyond his known sources of income. The proceeds of crime under a grand design and various contrivances, were projected as untainted by the process of money

laundering. The nature of crime, post held by the appellant, does not justify any leniency in sentencing.

63. On the point of sentence, considering the gravity of offence and the position of responsibility as held by the appellant/accused, the sentence of imprisonment and fine needs no interference by this Court. The learned Court below has recorded adequate and sufficient reasons for awarding sentence which will meet the ends of justice. These are species of crime that strike at the financial foundation of the State and the convict does not deserve any clemency so that the deterrent effect of punishment is not completely diluted. Accordingly, the order of confiscation of crime proceeds is also affirmed.

The Judgment of conviction and sentence passed by the learned Court below is upheld.

Appeal is dismissed.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated 20th January, 2023
A.F.R./ AKT/Anit