

**IN THE COURT OF SH. JITENDRA SINGH,
SPECIAL JUDGE (PC ACT) (CBI)-23,
(MPs/ MLAs CASES),
ROUSE AVENUE COURT COMPLEX: NEW DELHI.**

**CT Case No. 02/2024
CNR No. DLCT11-000035-2024**

**Prosecution Complaint
in
ECIR/35/DLZO-I/2022 dated 16.09.2022**

In the matter of:

Assistant Director

Directorate of Enforcement

Delhi Zonal Office-II,

'C' Block, Pravartan Bhawan,

Dr. A.P.J. Abdul Kalam Road, New Delhi

.....Complainant

VERSUS

(Accused arraigned in the main Prosecution Complaint dated 09.01.2024):-

- A-1 Zeeshan Haider S/o Sh. Mukhtar Ahmed**
- A-2 Daud Nasir S/o Sh. Qazi Mohammad Ahmed**
- A-3 Jawed Imam Siddiqui S/o Noorul Imam Siddiqui**
- A-4 Kausar Imam Siddiqui S/o Md. Nizam Siddiqui**
- A-5 M/s Sky Powers (Partnership Firm controlled and managed by Zeeshan Haider (A-1))**

(Additional accused added in Supplementary Prosecution Complaint dated 29.10.2024) :-

- A-6 Amanatullah Khan S/o Waliullah Khan**
- A-7 Maryam Siddiqui W/o Amanatullah Khan (A-5)**

..... Accused/Respondents

ORDER ON THE POINT OF COGNIZANCE AND SUMMONING OF THE ACCUSED PERSONS

1.1 The Supplementary Prosecution Complaint (hereinafter referred to as 'SPC') against A-6 Amanatullah Khan and A-7 Maryam Siddiqui was filed on 29.10.2024 and came before this court on 04.11.2024. The arguments were heard in detail on behalf of Directorate of Enforcement (hereinafter referred to as 'DOE') on 04.11.2024, 06.11.2024 and 13.11.2024. Thereafter, the matter was fixed for order on the point of cognizance and summoning of A-6 and A-7.

GENESIS

2.1 To begin with, Central Bureau of Investigation (hereinafter referred to as 'CBI') registered an First Information Report (hereinafter referred to as 'FIR') bearing no. 9 (A) on 23.11.2016 and the chargesheet was filed on 31.08.2022. In the meanwhile, Anti Corruption Bureau (hereinafter referred to as 'ACB') registers FIR bearing no. 05/2020 on the basis of similar allegation and A-6 was arrested on 16.09.2022 and was admitted on regular bail on 28.09.2022. Importantly, DOE registers Enforcement Case Information Report hereinafter referred to as 'ECIR') bearing no. DLZO-I/35/2022 on 16.09.2022 on the basis of FIR registered by the CBI. The accused A-1, A-2, and A-3 were arrested on 13.11.2023 and A-4 was arrested on 24.11.2023.

2.2 The prosecution complaint was filed by the DOE on 09.01.2024. The cognizance in the instant matter was taken against all the accused persons, namely, A-1 Zeeshan Haider, A-2 Daud Nasir, A-3 Jawed

Imam Siddiqui, A-4 Kausar Imam Siddiqui and A-5 M/s Sky Powers on 19.01.2024.

SUPPLEMENTARY PROSECUTION COMPLAINT

3.1 In the SPC, the DOE have subsumed five FIRs in the said ECIR for investigation of alleged charges of money laundering. The relevant para no. 9.2 of SPC is reproduced herein below for ready reference:-

9.2 That during the course of investigation under PMLA, 2002, 04 more FIRs registered agianst Shri Amanatullah Khan and his close associates by Delhi Poluce at different Poluce Station were subsumed in the present ECIR for money laundering investigation. Further, the allegations so levelled in the said FIRs prima facie also disclosed the generation and transferring of the proceeds of crime acquired out of corrupt and criminal activities relating to schedule offences under PMLA, 2002. That details of all such 05 FIRs are mentioned herein below:-

Table :- 9.2.1

<i>S.No</i>	<i>Name of the LEA</i>	<i>FIR No. & Date</i>	<i>Section Invoked</i>	<i>Scheduled Offences under PMLA</i>
1.	<i>CBI, AC-III, New Delhi</i>	<i>9 (A) dated 23.11.2016</i>	<i>13 (2) r/w 13 (1) (d) of PC Act, 1988 & Section 120- B of IPC, 1860.</i>	<i>13(2) r/w 13 (1) (d) of PC Act, 1988 & Section 120 B of IPC, 1860.</i>
2.	<i>Anti Corruption Branch, Delhi Police</i>	<i>FIR No. 05/2020 dated 28.01.2020</i>	<i>07 of PC Act, 1988 r/w Section 120 B of IPC 1860</i>	<i>07 of PC Act, 1988 r/w Section 120 B of IPC 1860</i>
3.	<i>Jamia Nagar, P.S. Delhi Police</i>	<i>FIR No. 378 dated 16.09.2022</i>	<i>25, 54 & 59 of Arms Act, 1959</i>	<i>25, 54 & 59 of Arms Act, 1959</i>
4.	<i>Jamaia Nagar, PS Delhi Police</i>	<i>FIR No. 380 dated 16.09.2022</i>	<i>25, 54 & 59 of Arms Act, 1959</i>	<i>25, 54 & 59 of Arms Act, 1959</i>

5.	Anti Corruption Branch, Delhi Police	FIR No. 05/2024 dated 30.04.2024	13 (1) (e) r/w 13 (2) of PC Act, 1988 & 13 (1) (b) r/w 13 (2) of PC Act (as amended 2018) r/w 109 of IPC, 1860.	13 (1) (e) r/w 13 (2) of PC Act, 1988 & 13 (1) (b) r/w 13 (2) of PC Act (as amended 2018) r/w 109 of IPC, 1860.
----	--------------------------------------	----------------------------------	---	---

3.2 In the SPC, it is stated that FIR No. 378 and FIR No. 380 both dated 16.09.2022 u/s 25, 54 & 59 of Arms Act, 1927 were registered by Jamia Nagar Police Station on the complaint lodged by the officers of ACB, Delhi Police in the matter of illegal weapon recovered from the possession of Hamid Ali Khan and Kausar Imam Siddiqui (A-4), both close associates of Amanatullah Khan during the search conducted by the ACB of Delhi Police at their premises in connection with FIR No. 05/2020 dated 28.01.2022. These FIRs are under investigation and no final report has been filed yet by the police authorities.

3.3 By way of present SPC, DOE has prayed for taking cognizance of the offence of money laundering as defined u/s 3 and punishable u/s 4 of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') against the A-6 and A-7. The relevant extract of the prayer clause is reproduced below for ready reference:-

“(i) The Hon’ble court may be pleased to take cognizance of the offence of Money Laundering as defined under section 3 of PMLA, 2002, punishable under section 4 of PMLA, 2002 against the accused persons and proceed against the aforesaid accused persons in accordance with the law and issue process against Accused No, 6 to 7;
(ii) To convict and sentence the accused persons u/s 4 of PMLA;
(iii) To pass appropriate orders as contemplated under section 8 (5) of the PMLA, 2002 with respect to the properties attached

vide PAO No. 15/2024 dated 28.10.2024, as mentioned in para 8 as above, by the Directorate of Enforcement.

(iv) To pass any other orders, which the Hon'ble Court may deem fit and property on the facts and in the circumstances of the case."

3.4 Predominantly, the DOE has investigated the transaction relating to property bearing no. 275 and 276 located at Tikona Plot, Jamia Nagar, Okhla and Flat No. 10 (IV floor), part of Khasra No. 179 of property bearing no. 792 situated at Gali No. 7, near Jama Masjid, Zakir Nagar, Okhla, New Delhi.

3.4.1 THE SUMMARY OF ALLEGATIONS CONTAINED IN FIR NO. 9 (A) DT. 23.11.2016 AND THE INVESTIGATION CONDUCTED BY THE CBI

Numerous allegations were levelled against A-6 for misusing his position, while being the Chairman of Delhi Waqf Board. After investigation, it was concluded by the CBI that there was evidence against A-6 with respect to the allegations mentioned at point no. (ii), (iii), (viii) and (ix) of para 3.1.1 of chargesheet. The chargesheet was filed against the accused persons, namely, Mr. Amanatullah Khan, Mr. Mahboob Alam, Mr. Hamid Akhtar, Mr. Kifayatullah Khan, Mr. Raflusshan Khan, Mr. Imran Ali, Mohd. Ahrar, Mr. Aqib Jawed, Mr. Azhar Khan, Mr. Zakir Khan and Mr Abdul Mannar. The said allegations are discussed below:-

(a) Illegal appointment of Mr. Mehboob Alam as Chief Executive Officer (hereinafter referred to as 'CEO') of Delhi Waqf Board by issuing tailor made advertisement to suit Mr. Mehboob Alam, thereby making him eligible for the post of CEO.

- (b) Engagement of 33 persons as contractual staff, consolidated staff, staff with NAWADCO and daily wages by Chairman (A-6) and CEO of Delhi Waqf Board by misusing their official position in furtherance of criminal conspiracy in engagement of staff.
- (c) Illegal appointment of R.K. Yadav as Vigilance Member in the office of Delhi Waqf Board. The act of formation of Vigilance Committee, appointing an outsider as one of its members and hiring 16 daily wages staff in illegal manner had financial implications on Delhi Waqf Board.
- (d) Illegal appointment of Mr. Hamid Akhtar as Consultant in Delhi Waqf Board, without being sanctioned post for the same and has received a sum of Rs. 1,43,710/- as salary.

The relevant extract of the SPC is reproduced hererin: -

“3.7.2 That the CBI carried out investigation on the aforesaid allegations and filed chargesheet bearing no. 07/2022 dated 31.08.2022 concluding that the allegations mentioned at point no. (ii), (iii), (viii) and (ix) of para 3.1.1 above in respect of appointment of CEO and other contractual staffs in Delhi Waqf Board have been done illegally by Shri Amanatullah Khan in a criminal conspiracy with other accused persons which resulted a wrongful gain to all such illegally appointed persons as salary to the tune of Rs. 33.31 Lacks (approx.) and corresponding wrongful loss to the government exchequer. On remaining allegation, CBI concluded that those allegations are found to be administrative irregularities.

**3.4.2 THE SUMMARY OF ALLEGATIONS CONTAINED IN
FIR NO. 05/2020 DT. 28.01.2020 AND INVESTIGATION
CONDUCTED BY ACB, DELHI.**

(a) A-6, as Chairman of Delhi Waqf Board, published advertisement dated 26.02.2019 for various posts in Delhi Waqf Board without adopting proper procedure for recruitment. The then CEO, vide notification dated 27.02.2019, had pointed out the objection regarding the said recruitment. A-6, being the Chairman of Delhi Waqf Board, completed the recruitment process and issued appointment letters to the candidates.

(b) Illegal purchase of fogging machine from the funds of Delhi Waqf Board along with purchase of a tent at a higher price of Rs. 25,00,000/- whose original value was not more than Rs. 4,00,000/-.

(c) Illegal approval of 8 cases of tenancy without any advertisement of calling bids. Possession of 12 properties has been handed over to the parties without even executing the rent agreement though a detailed model of rent agreement was got prepared by CEO and was available with the Board. Thereby, properties worth more than Rs. 100 crores have been handed over to unauthorized persons. The concerned officials have committed breach of trust by alienating valuable Waqf properties without adopting due procedure.

(d) The diversion of funds which was meant for widows/other social works and same was used for salary of the persons recruited by A-6 as Chairman of Delhi Waqf Board.

(e) Withdrawal of funds of Delhi Waqf Board by A-6 as Chairman of Delhi Waqf Board for personal use.

(f) Spending of Rs. 5,00,000/- for renovation of the office of Chairman without inviting any tender and

(g) Illegal promotion of Mr. Mehfooz Mohammad as Section Officer despite the objections by CEO.

As per the SPC, the investigation is still pending with the ACB of Delhi Police.

During search conducted by the ACB, in connection with FIR No. 05/2020, illegal weapons were recovered from the possession of Hamid Ali Khan and Kausar Imam Siddiqui (A-4) who are close associates of A-6. Accordingly, separate FIRs for possession of illegal weapons were registered bearing **FIR Nos. 378 and 380 dated 16.09.2022** PS Jamia Nagar. The said FIRs are still under investigation by the police authorities.

3.4.3 THE SUMMARY OF ALLEGATIONS CONTAINED IN FIR NO. 05/2024 DATED 30.04.2024 AND INVESTIGATION CONDUCTED BY ACB, DELHI POLICE

It is alleged that investigation conducted in the ECIR establishes that A-6 had acquired huge assets disproportionate to his known and disclosed source of income by misusing and abusing his position as Chariman of Delhi Waqf Board and Member of Legislative Assembly of National Capital Territory of Delhi. The relevant para no. 3.10 of SPC is reproduced below for ready reference:-

“3.10 FIR No. 05/2024 dated 30.04.2024 under section 13(1) (e) r/w 13(2) of PC Act, 1988 & 13 (1) (b) r/w 13(2) of PC Act (as amended 2018) r/w 109 of IPC, 1860 registered by ACB, Delhi Police: - The investigation conducted into the instant ECIR it was established that Shri Amanatullah Khan had acquired huge assets disproportionate to his known and disclosed source of income by misusing and abusing his official position as Chairman of Delhi Waqf Board and MLA from Okhla Legislative Assembly of NCT, Delhi during the period from March 2016 onwards. The said information was shared with

Anti-Corruption Branch of Delhi Police under Section 66(2) of PMLA, 2002 by this Directorate, on the basis of which an FIR No. 05/2024 dated 30.04.2024 also stands registered by the Anti-Corruption branch in the name of Mr. Amanatullah Khan and his close associates namely Daud Nasir, Zeeshan Haider, Jawed mam Siddiqui, Kausar Imam Siddiqui and others. The investigation in the said matter is still going on and no final report has been filed by ACB of Delhi Police.”

3.5 It is alleged that the scrutiny of the seized materials revealed that A-6 had acquired huge cash amounts being the proceeds of crime out of his corrupt and illegal activities relating to illegal recruitment, leasing out the properties in unfair and illegal manner, misappropriation of Delhi Waqf Board funds, while being the public servant that is Chairman of Delhi Waqf Board and Member of Legislative Assembly of Delhi during the period starting from 2016 onwards. Thereafter, A-6 invested his ill gotten money in the immovable properties through his associates Zeeshan Haider (A-1), Daud Nasir (A-2) and others.

3.6 During investigation, it has been found out that the proceeds of crime were invested by A-6 in two properties with the help of his associates and his wife. Firstly, property bearing no. 275 and 276 located at Tikona Plot, Jamia Nagar, Okhla (hereinafter referred to as ‘**Property at Okhla**’) purchased in the name of benaamidar Zeeshan Haider (A-1) and Daud Nasir (A-2) and secondly, Flat No. 10 (IV floor), part of Khasra No. 179 of property bearing no. 792 situated at Gali No. 7, near Jama Masjid, Zakir Nagar, Okhla, New Delhi, (hereinafter referred to as ‘**Flat at Zakir Nagar**’).

PROPERTY AT OKHLA

4.1 It is alleged that A-1, A-2 and A-3 in conspiracy with A-6 created a false and fabricated sale agreement analogous to original sale agreement wherein sale consideration has been shown as Rs. 13.40 crores in place of Rs. 36 crores which was the consideration amount in the original sale agreement. The scrutiny of the white diary which was seized by the ACB and shared with the DOE reveals that huge cash transactions running into crores of rupees were exchanged between A-3 and A-6 as well as A-1 and A-2. The said diary was recovered from A-4 who had acted as a middleman in purchase of the property at Okhla. The original sale agreement was recovered from the mobile phone of A-1, during the course of search conducted u/s 17 (1) of PMLA on 10.10.2023. The total amount involved in the purchase of the said property was Rs. 36 crore (approx.) out of which Rs. 9 crores (approx.) was transacted through banking and rest of the amount about Rs. 27 crores in cash. It is further revealed that Rs. 8 crores was being transacted directly by A-6 in cash and the remaining amount was transacted by his associates.

FLAT AT ZAKIR NAGAR

5.1 It is alleged that Flat at Zakir Nagar had been purchased from one Mohammad Abbas for the consideration of amount of Rs. 19,00,000/- in the name of A-7, which is revealed from the Agreement to Sell and Purchase, dated 19.09.2020. The entire sale consideration was paid by A-6. However, A-6 had failed to declare A-7 as her dependent (wife) in the affidavit filed before the Election Commission.

MISAPPROPRIATION OF PUBLIC FUNDS

6.1 It is alleged that A-6 had raised funds by using the goodwill of Delhi Waqf Board from public in the name of providing relief to the victims of Delhi Riots, 2020. The scrutiny of bank account reveals that the amount of Rs. 76.97 lacs were received in the account from public and in order to give legal colour to the said transactions, A-6 had floated an unregistered society in the name similar to Delhi Waqf Board as 'Delhi Waqf Board Relief Committee'. During investigation, DOE had examined Chaudhary Shareef Ahmed, Mr. Maqsood Ahmed, Mr. Feroz Khan, Mr. Qutubuddin, Mr. Rehan Ahmad, Mr. Tarannum Said, Mohd. Yusuf Mustafa and Mr. Pradeep Gidwani to support their case.

6.2 It is thus alleged that there is material evidences to show that A-6 directly, knowingly and actively involved in the process/activity connected with proceeds of crime by acquisition and possession of Rs. 27 crores in property at Okhla which was purchased in the name of his close associates and Rs. 19 lacs in the flat at Zakir Nagar, purchased in the name of his wife A-7. It is prayed that the cognizance of the offence of money laundering, as defined u/s 3 and punishable u/s 4 of PMLA, be taken against A-6 and A-7.

SUBMISSIONS MADE BY LD. SPP/COUNSEL FOR THE DIRECTORATE OF ENFORCEMENT

7.1 It is submitted by Ld. SPP that A-6 had abused his official position as being a Chairman of Delhi Waqf Board and Member of Legislative Assembly and he had acquired huge cash amounts by doing illegal recruitments, lending out properties and missappropriated funds of Delhi Waqf Board, while, being public servant and acting in discharge of

his official duty. It is further submitted that as the cognizance in the main prosecution complaint has already been taken, therefore, the court cannot go back again into the stage of cognizance and is bound to summon the accused persons.

7.2 It is further submitted that there is evidence to show that A-6 has invested his proceeds of crime in property at Okhla and flat at Zakir Nagar with the help of his close associates who are A-1, A-2, A-3, A-4.

7.3 The flat at Zakir Nagar was purchased in the name of A-7 whereby all the accused persons have been charged with Sections 3 punishable u/s 4 of the PMLA.

7.4 It is further submitted that DOE had recorded statements of numerous witnesses under section 50 of the PMLA which is sufficient to show that the accused had misused his official position and has acquired the proceeds of crime.

FINDINGS

8.1 After going through the SPC, annexed documents and the statement of the witnesses, there are sufficient grounds to proceed against A-6. However before summoning A-6, it is pre-requisite to find out whether the court can take cognizance of the offence in absence of sanction against A-6?

SANCTION

9.1 By way of present SPC, the complainant has prayed the court regarding the taking of cognizance qua the offence of money laundering defined u/s 3 and punishable u/s 4 of PMLA against A-6.

9.2 As far as prayer of cognizance is concerned, it needs to be mentioned here that as per second proviso to Section 45 of the PMLA Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by – (i) Director; or (ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

9.3 Thus in terms of the aforesaid provision governing the cognizance of offence punishable under Section 4 of the PMLA, only condition required to be fulfilled is that there must be complaint in writing by the Director or any authorised person, which condition, in the instant case is apparently fulfilled. However, here it is important to mention that Section 46 of the PMLA mandates that the provisions of Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Cr.P.C’) shall be applicable for the proceedings before the Special Court, save as otherwise provided in the PMLA. Thus in terms of the Section 46 r/w Section 65 and 71 of the PMLA, cognizance for the offence punishable u/s 4 of the PMLA is not only subject to the second proviso to Section 45 of the said Act, but is also subject to the provisions of the Cr.P.C.

9.4 Section 197 of the Cr.P.C. provides that when any public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no

Court shall take cognizance of such offence, except with previous sanction of the competent Government.

9.5 It is not in dispute that A-6 is a public servant removable from his office by or with the Government's sanction. It is also not in dispute that offences alleged to have been committed by A-6 while he was acting or purporting to act in discharge of his duty. The relevant para 5.2 of SPC is reproduced below for ready reference:-

“5.2 That the scrutiny of the seized materials revealed that Shri Amanatullah Khan has acquired huge cash amounts being the proceeds of crime out of his corrupt and illegal activities relating to illegal recruitment of the persons in Delhi Waqf Board, leasing out the properties of Delhi Waqf Board in unfair & illegal manner and misappropriation of Delhi Waqf Board funds etc. while being the public servant i.e. Chairman of Delhi Waqf Board and MLA from Okhla Legislative Assembly of Delhi during the period from 2016 onwards and thereafter invested he invested his ill gotten money in the immovable properties through his associates Shri Zeeshan Haider, Daud Nasir and others.....”

9.6 Apparently, as per allegations, made in the complaint, A-6 who is, indisputably, a public servant by virtue of him being Chairman of Delhi Waqf Board is alleged to have committed the offences while, he was discharging his official duties. In the overall circumstances, it is not wrong to say that A-6 has attracted the bar contained in Section 197 of the Cr.P.C. {which corresponds to Section 218 of Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS, 2023)} i.e. sanction by the competent Government is must in this case in order to take cognizance for the offence punishable u/s 4 of the PMLA against A-6.

9.7 Apparently, the pre-requisite conditions for applicability of Section 197 of Cr.P.C. are satisfied in the instant case. The applicability of Section 197 of Cr.P.C. with respect to PMLA is explained by the Hon'ble Supreme Court in its recent judgment titled '*Directorate of Enforcement vs. Bibhu Prasad Acharya and Others, MANU/SC/1176/2024*', whereby it has been held that the special court cannot take cognizance of the offence under PMLA in absence of previous sanction u/s 197 (1) of Cr.P.C. against the public servant. The relevant extract of the above judgment is reproduced below for ready reference:

"16. As far as the applicability of Section 197 of Code of Criminal Procedure to the PMLA is concerned, there are two relevant provisions in the form of Section 65 and 71 of the PMLA which read thus:

65. Code of Criminal Procedure, 1973 to apply.-- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act."

"71. Act to have overriding effect.-- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

17. Section 65 makes the provisions of the Code of Criminal Procedure applicable to all proceedings under the PMLA, provided the same are not inconsistent with the provisions contained in the PMLA. The words 'All other proceedings' include a complaint Under Section 44 (1)(b) of the PMLA. We have carefully perused the provisions of the PMLA. We do not find that there is any provision therein which is inconsistent with the provisions of Section 197(1) of Code of Criminal Procedure. Considering the object of Section 197(1) of the Code of Criminal Procedure, its applicability cannot be excluded unless there is any provision

in the PMLA which is inconsistent with Section 197(1). No such provision has been pointed out to us. Therefore, we hold that the provisions of Section 197(1) of Code of Criminal Procedure are applicable to a complaint Under Section 44(1)(b) of the PMLA.

18. Section 71 gives an overriding effect to the provisions of the PMLA notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 65 is a prior section which specifically makes the provisions of the Code of Criminal Procedure applicable to PMLA, subject to the condition that only those provisions of the Code of Criminal Procedure will apply which are not inconsistent with the provisions of the PMLA. Therefore, when a particular provision of Code of Criminal Procedure applies to proceedings under the PMLA by virtue of Section 65 of the PMLA, Section 71(1) cannot override the provision of Code of Criminal Procedure which applies to the PMLA. Once we hold that in view of Section 65 of the PMLA, Section 197(1) will apply to the provisions of the PMLA, Section 71 cannot be invoked to say that the provision of Section 197(1) of Code of Criminal Procedure will not apply to the PMLA. A provision of Cr. P.C., made applicable to the PMLA by Section 65, will not be overridden by Section 71. Those provisions of Code of Criminal Procedure which apply to the PMLA by virtue of Section 65 will continue to apply to the PMLA, notwithstanding Section 71. If Section 71 is held applicable to such provisions of the Code of Criminal Procedure, which apply to the PMLA by virtue of Section 65, such interpretation will render Section 65 otiose. No law can be interpreted in a manner which will render any of its provisions redundant.

19. In this case, the cognizance of the offence Under Section 3, punishable Under Section 4 of the PMLA, has been taken against the Respondents Accused without obtaining previous sanction Under Section 197(1) of Code of Criminal Procedure. Therefore, the view taken by the High Court is correct. We must clarify that the effect of the impugned judgment is that the orders of the Special Court taking

cognizance only as against the Accused B.P. Acharya and Adityanath Das stand set aside. The order of cognizance against the other Accused will remain unaffected. However, it will be open for the Appellant to move the Special Court to take cognizance of the offence against the two Respondents if a sanction Under Section 197(1) of Code of Criminal Procedure is granted in future. This liberty will be subject to legal and factual objections available to the Respondents. Hence, the appeals must fail and are dismissed subject to what is observed above.”

9.8 The court is conscious of the fact that the cognizance is taken only once for the offences. However, since SPC has been filed against A-6, who is admittedly a public servant, therefore, additional safeguard in form of sanction u/s 197 (1) of Cr.P.C. has to be considered without which even the cognizance *per se* is barred. If the argument of the Ld. SPP is accepted, then it will turn the provision of sanction nugatory and otiose and which will even be against the mandate of the Hon’ble Supreme Court in *Directorate of Enforcement vs. Bibhu Prasad Acharya and Others, (Supra)*.

9.9 Perusal of record reveals that as such no sanction from the competent authority/Government has been placed on record against A-6. Thus, cognizance against A-6 is declined for the offence defined u/s 3 and punishable u/s 4 of the PMLA for the lack of requisite sanction in terms of Section 197 (1) of Cr.P.C.

9.10 Now the question arises as to whether the accused can be kept in judicial custody in this case? It may be noted that A-6 is in judicial custody and his detention in the custody cannot be authorized either u/s 309 (2) nor u/s 167 (2) of Cr.P.C. (analogous Sections are 346 (2) and 187

(2), (3) of BNSS, 2023) In ***State of Uttar Pradesh vs. Laxmi Brahman and Anr., MANU/SC/0169/1983***, the Hon'ble Supreme Court of India has held that,

“13. Thus, from the time the accused appears or is produced before the Magistrate with the police report under Section 170 and the Magistrate proceeds to enquire whether Section 207 has been complied with and then proceeds to commit the accused to the Court of Sessions, the proceeding before the Magistrate would be an inquiry as contemplated by Section 2 (g) of the Code. We find it difficult to agree with the High Court that the function discharged by the Magistrate under Section 207 is something other than a judicial function and while discharging the function the Magistrate is not holding an inquiry as contemplated by the Code. If the Magistrate is holding the inquiry obviously Section 309 would enable the Magistrate to remand the accused to the custody till the inquiry to be made is complete. Sub-sec. 2 of Section 309 provides that if the Court, after taking cognizance of an offence or commencement of trial, finds it necessary or advisable to postpone the commencement or adjourn any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody. There are three provisos to Sub-section 2 which are not material. If, therefore, the proceedings before the Magistrate since the submission of the police report under Section 170 and till the order of commitment is made under Section 209 would be an inquiry and if it is an inquiry, during the period, the inquiry is completed, Section 309 (2) would enable the Magistrate to remand the accused to the custody.....”

9.11 After filing of the prosecution complaint, the accused is remanded to judicial custody u/s 309 (2) and for that purpose reasons are to be recorded in writing. In the case in hand, there is no legal ground to justify further detention of the accused in custody. Keeping the accused in custody in these circumstances when the cognizance has been declined for the absence of sanction u/s 197 (1) Cr.P.C., shall tantamount to illegal custody. Under these circumstances, the accused has to be immediately

released. Therefore, while exercising powers u/s 59 of Cr.P.C. (analogous Section 60 of BNSS, 2023), it is directed that the accused be released from custody, on furnishing of personal bond in the tune of Rs. 1,00,000/- (Rupees one lac only) with one surety of the like amount, for securing his presence in case the sanction is obtained and filed by the complainant in future.

ACCUSED NO. 7 - MRS. MARYAM SIDDIQUI

10.1 The allegation against A-7 is that she directly, knowingly and actively assisted A-6 in the possession, concealment, use of proceeds of crime that were generated in the form of income disproportionate to the known source of income of A-7 by directly assisting in projecting and claiming the proceeds of crime utilized in purchase of Flat No. 10, Zakir Nagar, in her name as untainted property.

10.2 It is alleged that flat at Zakir Nagar has been purchased from one Mohammad Abbas for consideration of an amount of Rs. 19,00,000/- which is revealed from the Agreement to Sell and Purchase, dated 19.09.2020. A-7 in her statement, dated 02.01.2024, recorded u/s 17 of PMLA, admitted that she is second wife of A-6 and was receiving maintenance of Rs. 50,000/- per month from him. Further, she along with her son, is presently residing at above mentioned flat which was provided to her. There is nothing on record to remotely suggest that A-7 was aware that the flat at Zakir Nagar was being purchased from proceeds of crime. As per Indian Contract Act, 1872 the consideration can move from other than the purchaser and it will not affect the legality of the contract. Moreover, the Benaami Transactions (Prohibition) Act, 1988 carves out an

exception to the '*benaami* transaction' u/s 2 (9) A (iii), whereby any person can purchase the property in the name of his wife or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual. DOE has examined seller Mohammad Abbas who, in his statement dated 09.10.2024 (recorded u/s 50 of PMLA), has categorically stated that he was dealing with A-6 with respect to the flat at Zakir Nagar. It is not the case of DOE that A-6 has handed over the cash amount to A-7 for depositing in her account and subsequently making the payment to the seller. There is nothing on record to suggest that A-7 has paid any amount through her account or in the form of cash. There is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to show that A-7 'knowingly' assisted or was a party to the transaction except that the flat was purchased in the name of A-7.

10.3 It is undisputed fact that A-7 is not arrayed as accused in the scheduled offences in which after investigation chargesheet has been filed. Therefore, trial of A-7 is sought only on the alleged commission of the offence of money laundering as prescribed u/s 3 of PMLA. Whereas the generating or deriving "proceeds of crime" from the Scheduled offence is not offence punishable under PMLA, but knowingly projecting such proceeds of crime as untainted would amount to an offence of money laundering. Therefore, merely not being an accused of scheduled offence would not absolve the accused, if there is any material to show the involvement of A-7 in knowingly projecting proceeds of crime as untainted.

10.4 Neither there is any tangible evidence nor even any circumstantial material to impute culpable knowledge and to even *prima facie* conclude that A-7 was aware of the commission of the schedule offence. There is nothing on record to suggest that A-7 was aware about the generation of proceeds of crime by or out of such schedule offence. From the material which has come on record after investigation, it cannot be even *prima facie* held that A-7 has any reason to have any reasonable doubt regarding commission of alleged schedule offence and generation of proceeds of crime in relation thereto. The same is also fortified by the fact that A-7 was not implicated as an accused in the schedule offence. Even though the property has been purchased in the name of A-7, this fact alone does not satisfy even on *prima facie* basis the pre-requisite for trying any person on allegation of money laundering. Apparently, SPC has failed to show that A-7 had *mens rea* or ‘culpable knowledge’ of the ‘schedule offence’ and proceeds of crime derived and projection of such ‘proceeds of crime’ as untainted.

10.5 There is neither any allegation nor any material against A-7 except that flat at Zakir Nagar has been transferred in her favour by A-6. Here it needs to be noted that the Hon’ble Supreme Court in *Rukmini Narvekar vs. Vijay Satardekar, (2008) 14 SCC 1*, has categorically held that the wife cannot be made accused only on the ground that the property has been purchased by her husband in her name. The relevant extract of the said judgment is reproduced below for ready reference:-

“22. As regards the other criminal appeal in which Smt. Vijaya Satardekar, wife of Ranjit Satardekar, is the respondent, we are of the opinion that there is no material whatsoever either mentioned in the FIR or produced by the prosecution to show that Vijaya Satardekar was in any way involved in the alleged

criminal offence committed by her husband Ranjit Satardekar. The only allegation against her is that the sale deed was in her favour. In our opinion this does not prima facie make out any offence. In our opinion, therefore, the criminal proceeding against Vijaya Satardekar was rightly quashed by the High Court and the criminal appeal in which Vijaya Satardekar is respondent is dismissed.”

The judgment of *Rukmini Narvekar vs. Vijay Satardekar, (Supra)*, has been relied by the Hon’ble High Court of Gujarat in matter pertaining to PMLA in case titled as, *Jafar Mohammed Hasanfatta and Others vs. Deputy Director and Others, MANU/GJ/0219/2017* . The SPC lacks material or circumstantial evidence which could show that A-7 was involved into any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use.

10.6 The case against A-7 is apparently based upon surmises and conjectures as there exists no evidence whether direct or circumstantial against her. The SPC lacks grounds for proceeding against A-7. Accordingly, she is not summoned in the present case.

**Announced in the open court
on 14.11.2024**

(Jitendra Singh)
Special Judge (PC Act) CBI-23
(MPs/MLAs Cases)
Rouse Avenue Court Complex,
New Delhi; 14.11.2024