

**High Court of Judicature at Allahabad**  
**Sitting at Lucknow**

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Neutral Citation No. - 2023:AHC-LKO:59826

**RESERVED**

**A.F.R.**

**Judgment Reserved on 28.08.2023**  
**Judgment Delivered on 19.09.2023**

**Court No. - 16**

**Case :-** APPLICATION U/S 482 No. - 1663 of 2023

**Applicant :-** Mohan Lal Rathi

**Opposite Party :-** Union Of India Thru. Directorate Of Enforcement  
Zonzl Office Lko. And Another

**Counsel for Applicant :-** Sunil Kumar Singh

**Counsel for Opposite Party :-** Kuldeep Srivastava, Anurag Kumar  
Singh

**Hon'ble Subhash Vidyarthi J.**

1. Heard Sri Dhruv Gupta, the learned counsel for the applicant, Sri Kuldeep Srivastava, the learned counsel for the Enforcement Directorate and Sri Dharmendra Pratap Singh, holding brief of Sri Anurag Kumar Singh, the learned counsel for the respondent-C.B.I..
2. By means of this application filed under Section 482 Cr.P.C., the applicant has sought to assail the validity of the cognizance/ summoning order dated 08.08.2019 passed in Complaint Case No.121/2019 titled "Directorate of Enforcement Vs. Yadav Singh & Others" in the Court of Session Judge / Special Judge PMLA, Lucknow, summoning the applicant for trial of offences under Sections 3/4 of Prevention of Money Laundering Act, 2002, and all proceedings of the aforesaid complaint case, including the order dated 04.02.2023, whereby a non-bailable warrant has been issued against the applicant.
3. In furtherance of the order dated 16.07.2015, passed by a Division Bench of this Court in Writ Petition No. 12396 (M/B) of 2014, the C.B.I. had registered an FIR bearing RC No. DST/2015/A/0003/CBI/STF/DLI against five persons - (1) Yadav Singh, the then Chief Engineer Noida, (2) Smt. Kusumlata, wife of Yadav Singh, (3) Ms.

Garima Bhushan, daughter of Yadav Singh, (4) Sunny Yadav, son of Yadav Singh and (5) Rajinder Manocha, as associate of Yadav Singh, for commission of offences under Section 109 read with 120- B IPC, read with Section 13(2), read with Section 13(1)(e) of Prevention of Corruption Act, 1988 on 30.07.2015.

4. The C.B.I., after investigation, submitted a charge-sheet dated 26.09.2017 against 11 persons, including the applicant. It is stated in the charge-sheet that Yadav Singh was found in possession of disproportionate assets worth ₹ 231,541,514 - 512.66% to his known sources of income, either in his own name or in the name of his family members. The applicant was the Chartered Accountant of Yadav Singh.
5. The family members of Yadav Singh had incorporated numerous companies and firms and most of the business transactions found in those entities were fake and were used to convert the ill-gotten money of Yadav Singh into white money with the help of a battery of Chartered Accountants. The Chartered Accountants helped in layering the ill-gotten money by putting the same in various other companies and by making accommodation entries in accounts.
6. On an application filed by the applicant, the Special Judge, Prevention of Corruption Act, C.B.I., Ghaziabad has passed an order in Special Case No. 08/2017 whereby the applicant has been made an approver and he has been granted pardon in the aforesaid case arising out of RC No. DST/2015/A/0003/CBI/STF/DLI regarding offences under Sections 109 read with 120- B IPC, read with Section 13(2), read with Section 13(1)(e) of Prevention of Corruption Act, 1988.
7. The order dated 25.06.2017 granting pardon to the applicant was challenged by the co-accused Yadav Singh by filing an Application under Section 482 No. 31498 of 2018, which was dismissed by a Division Bench of this Court by means of an order dated 11.09.2018. S.L.P. (Crl.) No. 9692 of 2018 filed by Yadav Singh against the aforesaid order was dismissed by the Hon'ble Supreme Court by means of an order dated 07.12.2018.
8. The recording of examination-in-chief of the applicant in C.B.I. case commenced on 18.09.2018 and it concluded on 30.10.2018 and thereafter his cross-examination was started. However, his cross-

examination could not be completed because proceedings of the C.B.I. trial have been stayed by means of an order dated 07.12.2018, passed by the Hon'ble Supreme Court in Writ Petition (Criminal) No. 322 of 2018, filed by Smt. Kusumlata and another.

9. The Enforcement Directorate registered ECIR/05/PMLA/LKZO/2015 on 23.10.2015 and it filed a complaint against Yadav Singh, his wife Kusumlata and M/s PGP charitable trust on 23.12.2017.
10. On 28.12.2018 the E.D. filed a supplementary complaint against five persons, including the applicant. It is stated in the complaint that the applicant was the Chartered Accountant of Yadav Singh and he had arranged various persons, through whom the illegal money was routed to the companies owned by Yadav Singh and Kusumlata, by making accommodation entries in the form of business income, referral commission and unsecured loans, which was subsequently used for construction and purchase of properties.
11. On 29.04.2019, the E.D. issued summon under Sub-sections (2) and (3) of Section 50 of Prevention of Money Laundering Act to the applicant, directing him to appear on 13.05.2019 and another summon was issued on 27.05.2019 directing him to appear on 11.06.2019. Thereafter a non-bailable warrant was issued against the applicant.
12. On 04.02.2023, the applicant filed an application for recall of the non-bailable warrant, without appearing before the trial Court and the application was rejected on the same date.
13. The applicant has sought quashing of the proceedings under the Prevention of Money Laundering Act on the ground that he has been made an approver and has been granted pardon in the scheduled offence. Now, he is no more an accused in the scheduled offence. The proceedings under the Prevention of Money Laundering Act cannot continue only against a person who is an accused in a scheduled offence and having been granted pardon in the scheduled offence, he cannot be tried for the offence under PMLA also.
14. The affidavit filed in support of the application contains references to the judgments in the cases of *Vijay Madanlal Chaudhary versus Union of India, 2022 SCC OnLine SC 929*, *J. Sekar versus Directorate of Enforcement, (2022) 2 SCC 370*, *Parvathi Kollur versus Directorate of Enforcement, Criminal Appeal No. 1254 of*

2022 decided on 16.08.2022, *Adjudicating Authority versus Shri Ajay Kumar Gupta and others, Criminal Appeal No. 1269 of 2017* decided on 02.12.2022, judgment of the Delhi High Court in the case of *Prakash Industries Ltd. versus Union of India, Writ Petition (C) No. 13361 of 2018*, decided on 24.01.2023, *Jasbir Singh versus Vipin Kumar Jaggi and others, (2001) 8 SCC 289, A. Devendran versus State of Tamil Nadu, AIR 1988 SC 2821, Pepsi Foods Ltd. and others versus Special Judicial Magistrate and others, AIR 1998 SC 128, Chandmal @ Chandanmal versus The State of Madhya Pradesh and another, Criminal Appeal No. 359 of 2023* decided on 07.02.2023, *Bhaskar Industries Ltd. Versus M/s Bhiwani Denim & Apparels Ltd. Ltd. (2001) 7 SCC 401, Satender Kumar Antil versus CBI, 2022 SCC OnLine 825 and State of Haryana versus Bhajan Lal and others, 1992 Supp. (1) SCC 335.*

15. The E.D. has filed a counter affidavit stating that the offence under PMLA is a stand-alone offence and the applicant has not been granted pardon in respect of the aforesaid offence. The counter affidavit refers to the judgments in the cases of *Vijay Madanlal Chaudhary versus Union of India, 2022 SCC OnLine SC 929, Shyam Sunder Singhvi versus Union of India, Criminal Writ Petition No. 273 of 2019* decided by Rajasthan High Court on an undisclosed date, *Neeraj Upadhyay versus Union of India, W.P. No. 5916 of 2019* decided by this Court on an undisclosed date, *VGN Developers versus Deputy Director, Crl.O.P. No. 9796 of 2019* by an undisclosed Court on an undisclosed date, *Union of India versus Sushil Kumar Katiyar*, by an undisclosed Court on an undisclosed date, in all of which it has been held that the offence under PMLA is a stand-alone offence.
16. In reply to the reference to **Satender kumar Antil** (Supra) made in the affidavit filed in support of the application, it has been stated in the counter affidavit that a bail application has to be considered on case-to-case basis and in this regard, the counter affidavit also refers to *P. Chidambaram versus Directorate of Enforcement, (2020) 13 SCC 791.*
17. The counter affidavit refers to the judgments in the cases of *State of Bihar versus K. J. D. Singh and R, P. Kapoor versus State of Punjab*, regarding the scope of power under Section 482 Cr.P.C., but

neither their citations have been mentioned nor has any other particulars of the judgments been disclosed and copies to these judgments have also not supplied to the Court. This casual manner of giving references of precedents cannot be appreciated by the Court.

18. Chapter IV of the Allahabad High Court Rules, 1952 deals with “Affidavits and Oath Commissioners” and Rule 8 of Chapter IV provides that “*The affidavit shall contain no statement which is in the nature of an expression of opinion or argument.*” The affidavit and the counter affidavit filed in the present case are full of arguments and case laws in support of the arguments, which certainly is in violation of Rule 8 aforesaid.
19. Further, Rule 12 of Chapter IV of the Allahabad High Court Rules provides that “*Except on interlocutory applications, an affidavit shall be confined to such fact as the deponent is able of his own knowledge to prove.*”
20. Application under Section 482 Cr.P.C. is certainly not an interlocutory application and the affidavit and the counter affidavit filed in the present case should have been confined to facts within the personal knowledge of the deponents of the respective affidavits.
21. Although the above referred Rules are being followed generally, in some cases a new emerging practice has been observed where Advocates refer to numerous case-laws in the affidavits and counter affidavits, although the same is prohibited in the High Court Rules. The case-laws should not be incorporated in the affidavits, but those should be placed by the learned Counsel while advancing submissions, with reference to the specific passage containing the *ratio decidendi* of the judgment. The practice of mentioning case-laws in the affidavits filed before the Courts, and that too in a casual manner without even mentioning the citation or other complete particulars such as the name of the Court, case number and date of decision, and the relevant paragraph containing the *ratio decidendi* of the judgment results in wastage of the Court’s time. Such a practice is deprecated and it should stop.
22. The learned counsel for the applicant has submitted that the consequence of granting pardon to the applicant is that he stands

discharged in the scheduled offence and, therefore, he cannot be tried for the offence under the PMLA.

23. Per contra, Sri Kuldeep Srivastava, learned counsel for the E.D. has submitted that since the applicant has not been discharged by the learned trial court, rather he has become an approver and he has been granted pardon on this ground, which is subject to certain conditions mentioned in Section 306 Cr.P.C., the grant of pardon in the scheduled offence will not have any effect on the proceedings under PMLA.
24. In *Vijay Madanlal Chaudhary versus Union of India, 2022 SCC OnLine SC 929*, the Hon'ble Supreme Court held that: -

*“253.... in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence.*

\* \* \*

*269. From the bare language of Section 3 of the 2002 Act, it is amply clear 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 a scheduled offence....”*

(Emphasis supplied)

25. In the Conclusions recorded in *Vijay Madanlal Chaudhary* (Supra), the Hon'ble Supreme Court reiterated that: -

*“467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:—*

\* \* \*

*(v)...*

*(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 any one claiming such property being the property linked to stated scheduled offence through him.”*

(Emphasis supplied)

26. After closure of submissions, the learned Counsel for the applicant has submitted a compilation of photocopies of 15 judgments, and he has submitted copies to two judgments with his written submissions and I proceed to deal with those judgments in the following paragraphs: -

27. In *Dipesh Chandak v. Union of India, (2004) 8 SCC 511*, the appellant was an accused in a number of cases pertaining to the Fodder Scam in the Animal Husbandry Department of Bihar but the trial judge had passed an order dated 28.08.1998 granting him pardon, on the condition that he makes a full and complete disclosure. On the basis of the statement made by the accused, the Income Tax Department issued a show-cause notice to him as to why prosecution should not be initiated against him, under Sections 277 and 278 of the Income Tax Act, for having filed false returns of income tax. The appellant stated that he has been granted a pardon under Section 306 of the Cr.P.C. and thus the show-cause notice was not maintainable. The Commissioner of Income Tax rejected the contention and opined that the pardon was restricted only to offences under IPC only. Accordingly, Complaint Case was registered under Sections 277 and 278 of the Income Tax Act and the Court of Economic Offences, Patna, took cognizance and issued summons. The appellant filed a petition under Section 482 Cr.P.C. for quashing this complaint. The High Court dismissed the petition, *inter alia*, on the ground that the terms of the pardon had not been fulfilled till then and till full evidence was given by the appellant and the trial of all cases stood concluded, he continued to be an accused and, therefore, cannot claim immunity from prosecution. The Hon'ble Supreme Court held that: -

*“13. In our view, the High Court was not correct in concluding that until evidence has been given by the appellant the pardon could not operate. However, the fact remains that under Section*

*306 CrPC the pardon is granted in respect of the offence for which he had been charged as an accused. Of course, a pardon need not be only in respect of an offence under the Penal Code, 1860. A person may be charged, in respect of the same transaction or act, under the Penal Code, 1860 and under some other Act e.g. the Prevention of Corruption Act. The pardon would operate in respect of all offences pertaining to that transaction. However, the pardon does not operate in respect of a transaction or act entirely unconnected with the offence in respect of which pardon has been granted. In this case, the pardon has been granted for the offence of misappropriation of funds. This offence has nothing to do with filing of false returns by the appellant. The prosecution under Sections 277 and 278 is in respect of filing false return and making of false declaration. The pardon which has been granted would not cover those offences.”*

(Emphasis supplied)

The Hon’ble Supreme Court did not interfere in the order of the High Court.

28. In *A.J. Peiris v. State of Madras, AIR 1954 SC 616*, it was held that the moment the pardon is tendered to the accused, he must be presumed to have been discharged, whereupon he ceases to be an accused and becomes a witness.
29. In *Prakash Industries Ltd. versus Union of India, 2023/DHC/000481 = 298 (2023) DLT 444*, the questions involved were stated in the first paragraph of the judgment thus: -

*“1. These two writ petitions raise an important question relating to the powers of the Enforcement Directorate 1 to provisionally attach properties under Section 5 of the Prevention of Money Laundering Act, 2002 2 even though no proceedings relating to the predicate offense may have been initiated by the competent agency functioning under an independent statute and in terms of which the scheduled offense stands created. The ancillary and yet equally fundamental issue which the Court is called upon to answer is whether the ED could be recognised to have the jurisdiction to enforce the measures contemplated in Section 5 of the Act solely upon it being of the opinion that the material gathered in the course of an investigation or enquiry evidences the commission of a predicate offense. The questions posited would also raise the ancillary issue of the powers that the ED could be recognised to derive from the Act while investigating an offense of money laundering.”*

30. It is not the fact in the present case that the proceedings under PMLA have been initiated against the applicant without any proceedings for a



scheduled offence having been initiated against him. Therefore, **Prakash Industries Ltd.** (Supra) is of no avail to the applicant.

31. In **J. Sekar v. Enforcement Directorate, (2022) 7 SCC 370**, the Income Tax Department had seized currency amounting to Rs 106,98,89,800 and 128.495 kg of gold. CBI registered an FIR for offences under Section 120-B read with Sections 409, 420 IPC and Section 13(2), read with Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988. The E.D. registered an ECIR. The CBI had registered 3 cases in respect of the scheduled offences on the same set of facts, but after investigation, the CBI submitted a closure report in the main case and the said report was accepted by the trial Court. The other two F.I.Rs. were quashed by the High Court. The Income Tax Department had also closed the investigation initiated on the basis of the search. In the aforesaid background, the Hon'ble Supreme Court concluded that when the CBI had filed a closure report, the appellant could not be prosecuted under PMLA.
32. In para 20 of the judgment in **J. Sekar** (Supra), the Hon'ble Supreme Court relied upon the earlier judgment of **Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581**, in which it was held that: -

*“(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Criminal Procedure Code;*

*(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. **If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue;** and*

*(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.’*

\* \* \*

*39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication*

*proceedings, the trial of the person concerned shall be an abuse of the process of the court.'*

(Emphasis supplied)

33. In *Parvathi Kollur versus Directorate of Enforcement, 2022 SCC OnLine SC 1975*, the appellant had been acquitted in trial of the scheduled offence. The Hon'ble Supreme Court held that that having been acquitted for the scheduled offence, the appellant no more remained an accused in any scheduled offence.
34. In *Adjudicating Authority versus Shri Ajay Kumar Gupta and others*, Criminal Appeal No. 1269 of 2017 decided on 02.12.2022, *Directorate of Enforcement versus M/s Obulapuram Mining Company Pvt. Ltd*, Criminal Appeal No. 1269 of 2017 decided on 02.12.2022, *EMTA Coal Ltd. versus The Deputy Director, Directorate of Enforcement*, W.P. (C) No. 3821/2022 decided on 10.01.2023, *Harish Fabiani and others versus Enforcement Directorate and others*, W.P. (Cri.) 408 of 2022 and other connected matters decided on 26.09.2022, *Prakash Industries Ltd. versus Union of India*, 2023/DHC/000481 = 298 (2023) DLT 444, *Naresh Goyal versus The Directorate of Enforcement* 2023 ALLMR (Cri.) 1840 and *Debendra Kumar Panda versus Union of India*, 2023 (243) AIC 451, the accused persons had been acquitted of the scheduled offence and, therefore, they were discharged of the charge of offence under PMLA.
35. The order dated 25.07.2022 passed by the Delhi High Court in *Mainak Mehta versus CBI*, Criminal Writ Petition No. 2444 of 2022, is merely an interim order and nothing has been decided by means of the aforesaid interim order and, therefore, there is absolutely no relevance of the aforesaid interim order for deciding the present case.
36. *State (Delhi Administration) versus Jagjit Singh* AIR 1989 SC 598 and *Jasbir Singh versus Vipin Kumar Jaggi and others* (2011) 8 SCC 279 do not deal with the point in issue.
37. In *A. Devendran v. State of T.N.*, (1997) 11 SCC 720, the questions under consideration were (1) whether the approver's evidence can at all be relied upon to bring home the charge against the accused persons?, (2) whether non-examination of the approver as a witness

after grant of pardon and thereby non-compliance of sub-section 4(a) of Section 306 vitiates the entire proceeding and (3) whether the prosecution case can be held to be proved beyond reasonable doubt excluding the evidence of the approver from consideration. There was no point in issue in **A. Devendran** (Supra) as would be relevant for decision of the present case.

38. In ***Chandmal Versus State of Madhya Pradesh and Another***, 2023 SCC OnLine SC 127, the issue before the Hon'ble Supreme Court was "*whether on the charge sheet having been filed and during that period the appellants having cooperated but not having appeared before the Court personally but through a counsel, the action of the trial Court to issue non-bailable warrants is something which can be sustained.*" There was no issue regarding the effect of grant of pardon in the scheduled offence, consequent to the accused having turned an approver. Therefore, the aforesaid case is of no relevance for decision of the present case.
39. In ***Sanjay Kumar Agarwal Versus Directorate of Enforcement***, 2022 SCC OnLine Jhar 1248, the High Court of Jharkhand at Ranchi was dealing with a petition filed for quashing of an order passed by the trial Court rejecting an application under Section 205 Cr.P.C. for dispensing with the personal appearance of the petitioner, and the issue regarding the effect of grant of pardon in the scheduled offence was not involved there. Therefore, the aforesaid case also is of no relevance for decision of the present case.
40. In ***Pepsi Foods Ltd. and others versus Special Judicial Magistrate and others***, (1998) 5 SCC 749, the Hon'ble Supreme Court held that "*Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto.*"
41. ***Bhaskar Industries Ltd. Versus M/s Bhiwani Denim & Apparels Ltd. Ltd.***, (2001) 7 SCC 401, was a case arising out of a complaint under Section 138 of the Negotiable Instruments Act and the question

considered by the Hon'ble Supreme Court was whether personal appearance of an accused person can be exempted by the Magistrate.

42. As noted above, several of the judgments referred in the affidavit filed in support of the application or supplied as a part of the compilation, are absolutely irrelevant and by supplying those judgments, the learned Counsel for the applicant has wasted the precious time of the Court.
43. In *State of Haryana versus Bhajan Lal and others*, 1992 Supp. (1) SCC 335 the Hon'ble Supreme Court has explained the scope of interference under Section 482 Cr.P.C. and there is no dispute regarding this point in the present case.
44. In the numerous cases relied upon by the learned Counsel for the applicant, including **Vijay Madanlal Chaudhary** (supra) on the issue of effect of acquittal in scheduled offence, it has been held that in the event the person named in the criminal activity relating to a scheduled offence is *finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her*, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. The applicant in the present case has not been *finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the scheduled offence against him*.
45. In **Vijay Madanlal Chaudhary** (Supra), the Hon'ble Supreme Court did not deal with the question of effect of grant of pardon under Section 306 Cr.P.C. in respect of the scheduled offence upon the proceedings under PMLA. It is a well established principle of the law of precedents that a decision is an authority for which it decides and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.
46. In light of the aforesaid principle, this Court has to consider whether grant of pardon under Section 306 Cr.P.C. would also fall within the purview of *finally absolved by a Court of competent jurisdiction*

*owing to an order of discharge, acquittal or because of quashing of the scheduled offence against him’.*

47. Sections 306 Cr.P.C., which deals with the issue of grant of pardon, provides as follows: -

**306. Tender of pardon to accomplice.—***(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.*

\* \* \*

**(4) Every person accepting a tender of pardon made under subsection (1)—**

*a. shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;*

***(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.***

(Emphasis supplied)

48. An order for discharge of the accused is passed or the criminal proceedings against him are quashed when on the face of the allegations, no triable offence is made out against the accused person and an order of acquittal is passed when the accused could not be proved guilty even after facing the trial. On the other hand, pardon is granted to a person who is *‘supposed to have been directly or indirectly concerned in or privy to an offence’*. Pardon is granted only to persons who were involved in commission of the offence and not to a person against whom no case is made out or no case could be established. Therefore, a person who is granted pardon under Section 306 Cr.P.C. in a scheduled offence, would not be a person who has been *‘finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the scheduled offence against him’* mentioned in **Vijay Madanlal Chaudhary** (Supra), against whom no proceedings under PMLA can continue.

49. In *State of Maharashtra v. Abu Salem Abdul Kayyum Ansari*, (2010) 10 SCC 179, the Hon'ble Supreme Court held that: -

*“15. The salutary principle of tendering a pardon to an accomplice is to unravel the truth in a grave offence so that guilt of the other accused persons concerned in commission of crime could be brought home. It has been repeatedly said by this Court that the object of Section 306 is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon, the offence may be brought home to the rest. Section 306 CrPC empowers the Chief Judicial Magistrate or a Metropolitan Magistrate to tender a pardon to a person supposed to have been directly or indirectly concerned in or privy to an offence to which the section applies, at any stage of the investigation or inquiry or trial of the offence on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence.*

\* \* \*

*17. An accomplice who has been granted pardon under Section 306 or 307 CrPC gets protection from prosecution. When he is called as a witness for the prosecution, he must comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge concerning the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and if he suppresses anything material and essential within his knowledge concerning the commission of crime or fails or refuses to comply with the condition on which the tender was made and the Public Prosecutor gives his certificate under Section 308 CrPC to that effect, the protection given to him is lifted.”*

(Emphasis supplied)

50. In *Yakub Abdul Razak Memon v. State of Maharashtra*, (2013) 13 SCC 1, the Hon'ble Supreme Court highlighted the legislative intent behind enactment of Section 306 Cr.P.C. as follows: -

*“312. The object of Section 306 is to tender pardon in cases where a grave offence is alleged to have been committed by several persons so that the offence could be brought home with the aid of evidence of the person pardoned. The legislative intent of this provision is, therefore, to secure the evidence of an accomplice in relation to the whole of circumstances, within his knowledge, related to the offence and every other person concerned.”*

(Emphasis supplied)

51. The legislative intent behind laying down the policy of granting pardon to an approver was explained by the Hon'ble Supreme Court

in **CBI v. Ashok Kumar Aggarwal**, (2013) 15 SCC 222, which was an appeal preferred against an order passed by the High Court of Delhi, by which it had set aside the order of the Special Judge granting pardon to Respondent 2 under Section 306 of Cr.P.C. and making him an approver in the case wherein Respondent 1 was also an accused. The Hon'ble Supreme Court refused to interfere in the order by stating that: -

*“33. In view of the above and considering the judgment of the Privy Council in Bawa Faqir Singh AIR 1938 PC 266, we are of the view that the grant of pardon by a court under Section 306 CrPC on being asked by the accused and duly supported by the State is a judicial act and while performing the said act, the Magistrate is bound to consider the consequences of grant of pardon taking into consideration the policy of the State and to certain extent compare the culpability of the person seeking pardon qua the other co-accused.*

*34. For illustration, we take a case where a person hires a professional criminal to kill his entire family i.e. father and brothers and succeeds in the said mission. Later on, if he turns approver, the mercenary who got paid to execute the conspiracy gets hanged while the principal accused who hired the mercenary has not only escaped the liability in criminal trial but would also succeed in inheriting the entire property of his family which otherwise is not permissible in view of the law of succession, etc. Under Section 25 of the Hindu Succession Act, 1956, the murderer stands disqualified for inheritance. The provision reads as under:*

*“25. Murderer disqualified.—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.”*

*The section deals with the disqualification from inheritance of a person who commits murder or abets commission of murder. The provision of the section provides for a statutory recognition to the Hindu Law whereunder the rule is applied not on the basis of text but upon the principle of justice, equity and good conscience. (Vide Kenchava Kom v. Girmallappa Channappa AIR 1924 PC 209) The rule had been made applicable by all courts consistently including this Court as is evident from the judgment in Vellikannu v. R. Singaperuma (2005) 6 SCC 222.*

*35. Once the immunity extends to the accused and the accused is made an approver, he stands discharged whereupon he ceases to be an accused and would be examined only as a witness unless the said privilege is revoked on violation of the condition of disclosing complete truth. [See State (Delhi Admn.) v. Jagjit Singh and Jasbir Singh (Supra).]*

*36. Thus, the illustration cited hereinabove quoting Section 25 of the 1956 Act reflects the policy of law and the court must be alive to such situations while passing an order otherwise the consequences may be too abhorrent.*”

(Emphasis supplied)

52. The words “*may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence*” used in Section 306 Cr.P.C. would also include within their ambit a full and true disclosure of the whole of the circumstances regarding the processes or activities connected with proceeds of the offence, namely - (a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, as the same are also facts relative to the scheduled offence. The aforesaid interpretation of Section 306, Cr.P.C. is supported by the illustration given by the Hon’ble Supreme Court in **CBI v. Ashok Kumar Aggarwal** (Supra).

53. Moreover, Section 308, Cr.P.C. provides that: -

*“308. Trial of person not complying with conditions of pardon. —(1) Where, in regard to a person who has accepted a tender of pardon made under Section 306 or Section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:*

...

(Emphasis supplied)

54. Section 46 of the Prevention of Money Laundering Act, 2002 provides that the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor. However, the public prosecutor conducting the trial of the offence under PMLA before the Special Court cannot file objections regarding concealment of facts relating the processes or activities connected with proceeds of the offence, namely - (a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property before the Court trying the scheduled offence.



55. An order for discharge of the accused is passed or the criminal proceedings against him are quashed when on the face of the allegations, no triable offence is made out against the accused person and an order of acquittal is passed when the accused could not be proved guilty even after facing the trial. On the other hand, pardon is granted to a person who is *'supposed to have been directly or indirectly concerned in or privy to an offence'*. Pardon is granted only to a person who was involved in commission of the offence and not to a person against whom no case is made out or no case could be established.
56. Grant of pardon under Section 306 Cr.P.C. would not fall within the purview of the words *'finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the scheduled offence against him'* used by the Hon'ble Supreme Court in **Vijay Madanlal Chaudhary** (Supra). The pardon granted under Section 306 Cr.P.C. to a person in a scheduled offence would not *ipso facto* result in his acquittal in the offence under the PMLA, unless, of course, the accused person seeks pardon in the case under PMLA also by making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence under PMLA also.
57. The power under Section 482 Cr.P.C. can be exercised to secure the ends of justice, as held in **State of Haryana v. Bhajan Lal**, 1992 Supp (1) SCC 335, wherein the Hon'ble Supreme Court gave a word of caution by stating that *"the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases"*. In case the contention put forth by the learned Counsel for the applicant is accepted, it would result in a person accused of committing an offence under PMLA going scot free without facing trial and without seeking pardon in PMLA case by making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and it would defeat the ends of justice.
58. In view of the foregoing discussion, I am of the considered view that there is no illegality in the cognizance/ summoning order dated

08.08.2019 passed in Complaint Case No.121/2019 in the Court of Session Judge / Special Judge PMLA, Lucknow, and there is no ground to quash the proceedings of the complaint filed against the applicant under the PMLA. The application under Section 482 Cr.P.C. lacks merit and the same is, accordingly, *dismissed*.

**(Subhash Vidyarthi J.)**

**Order Date - 19.09.2023**  
Ram.