

(2017) 02 GUJ CK 0199
In the Gujarat High Court
Case No : 926 of 2016

JAFAR MOHAMMED HASANFATTA & 4

APPELLANT

Vs

DEPUTY DIRECTOR & 1

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

[Customs Act, 1962](#), [Section 108](#) - Power to summon persons to give evidence and produce documents
[Indian Penal Code, 1860](#), [Section 420](#), [Section 468](#), [Section 471](#), [Section 467](#), [Section 477A](#), [Section 465](#), [Section 120\(b\)](#) - Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document - Forgery of valuable security, will, etc - Falsification of accounts - Punishment for forgery - Concealing design to commit offence punishable with imprisonment
[Prevention Of Money-Laundering Act, 2002](#), [Section 3](#), [Section 4](#), [Section 23](#), [Section 24](#), [Section 50](#), [Section 2\(u\)](#), [Section 2\(1\)\(v\)](#), [Section 2\(1\)\(y\)](#) - Offence of money laundering - Punishment for money-laundering - Presumption in interconnected transactions - Burden of proof - Powers of authorities regarding summons, production of documents and to give evidence, etc - Definitions - Definitions

Citation : (2017) 02 GUJ CK 0199

Hon'ble Judges : Z K Saiyed

Bench : Single Bench

Advocate : Vikram Chaudhary, Sanjay Kantawala, Hriday Buch, Devang Vyas, N J Shah

Final Decision : Allowed

Judgement

1. The petitioners are accused in PMLA Complaint No. 3 of 2014 dated 18.7.2014 arising out of ECIR no. 01/SRT/2014. They have challenged in Revisionary Jurisdiction of this Court, the Order dated 18.7.2014 issued by the Special Court

for PMLA at Ahmedabad, issuing summons against them by taking cognizance of the offence under Section 3 alleged in the said Complaint dated 18.7.2014, which is punishable under Section 4 of PMLA. It is the case of the petitioners that the impugned Order was passed despite there being no prima facie ground and absolute lack of any material evidence qua any of the petitioners to satisfy the necessary prerequisites for invoking Section 3 of PMLA against them and essential for taking cognizance and proceeding against each of the petitioners. The PMLA Complaint, subsequently filed two Supplementary Complaints Nos. 4/2014 and 9/2015 dated 29.10.2014 and 27.08.2015 respectively, ChargeSheet filed against others in the Scheduled Offence and statements recorded under PMLA before and even after cognizance are placed by the petitioners on record amongst other documents to buttress this position.

2. It is undisputed fact that none of these petitioners are arraigned as accused in the Scheduled Offences in which after investigations Charge Sheet has been filed. Therefore, trial of each of these accused petitioners is sought only on the alleged commission of the offence of money laundering as prescribed under Section 3 of PMLA. Now, it is settled position of law that offence under PMLA is a distinct offence as compared to the Scheduled Offence as held by a Division Bench of this Court vide Judgment dated 16.1.2016 in Rakesh Manekchand Kothari vs Union of India in SCRA 4496 and 4672 of 2014. 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 petitioners, if there is any material to show the involvement of any of the accused petitioners in knowingly projecting proceeds of crime as untainted.

3. Mr.Devang Vyas, learned Assistant Solicitor for the respondent No.1 has submitted that present revision is not maintainable at law. He has contended that the amount was remitted to the Company (Page 431) Para31 whereby property belonging to his family members were attached, including those of present applicant Rs.139 crores in the name of applicant No.2 was attached. This have been confirming by the adjudicating authority. He has submitted that properties are involved in the money laundering and during the investigation in respect of having knowledge and they received the payment and made further payment were in their name and they were signatory and having power to operate account and thereby they are involved in the case of money laundering and, therefore, it is denied that ingredients of offence are lacking.

4. He has further submitted that petitioners miserably failed to prove any sufficient ground as to why the petitioners failed to take any action since July, 2014 though the petitioners were aware of the fact that learned Sessions Judge, Ahmedabad Rural had issued summons against the petitioners on 18.7.2014. The date of aforementioned order is not disputed by the petitioners. He has submitted that petitioners are neither in a position to dispute the fact of

knowledge or order of issuance of summons nor in a position to raise contents of knowledge of remedy available to the petitioners.

5. He has also submitted that petitioners were aware about the aspect that they were required to file their appearance before the returnable date. It would not be proper for the petitioners to contend that the petitioners are illiterate persons and were not aware about the remedy available to the petitioners.

6. He has submitted that information was received from the Joint Commissioner of Customs, Surat vide letter dated 27.2.2014 and 6.3.2014 which reveals that Surat based diamond companies M/s.Harmony Diamonds Pvt. Ltd., M/s.Agni Gems Pvt. Ltd., and M/s.R.A.Distributors Pvt. Ltd., have filed fake bills of entry before the ICICI Bank for making foreign remittance through bank accounts with ICICI Bank, Surat. From the information so received it has come to the notice that within a span of two months i.e. January and February, 2014 remittance worth more than Rs.1000/crores against fake import documents viz. bills of entry and invoices were made from the said accounts to Hongkong and Dubai. The customs Department, Surat have confirmed that the bills of entry in question did not originate from their offices. Thus, the said bills of entry etc., against which the said remittance were attached were apparently fake.

7. He has also submitted that initially investigation was carried out under the FEMA, 1999. Enquiries revealed that Shri Afroz Mohammed Hasanfatta alongwith Shri Madanlal Jain and Shri Bilal Haroon Gilani are involved in this racket of sending remittances outside India on the basis of forged bills of entry.

8. He has further submitted that from Shri Madanlal Jain's whatsapp message to Shri Afroz Mohammed Hasanfatta is about the companies, namely, "Aarzo Enterprises, Vandana & Co., M.D.Enterprises, Millenium & Co., Maruti Trading. The investigation has revealed that the said companies were used in this case for making RTGS credits for siphoning off the funds.

9. He has also submitted that complaint was received by the Crime Branch, Surat from ICICI Bank against M/s.R.A.Distributors Pvt. Ltd., and its Directors alleging that the Company had prepared 17 fake bills of entry and presented the same before ICICI Bank for outward remittances based on which FIR No.I16 of 2014 dated 11.4.2014 and FIR No.I17 of 2014 dated 13.4.2014 were registered by the detection of Crime Branch. He has submitted that investigation under PMLA, 2002 have been initiated as the offences under Section 420, 467, 471 and 120(B) of the Indian Penal Code are scheduled offences in terms of Section 2(1)(y) of the PMLA which have been registered against the directors of the said companies.

10. He has submitted that during the course of investigation it has been revealed that one of the entities viz. Natural Trading Co., had made RTGS credits to the Companies having accounts in ICICI Bank from which remittances were sent out of India. It was also revealed that the said Company has made payments to the tune of Rs.7 crores to Shri Afroz Mohammed Hasanfatta and Rs.3 crores to his

brother Shri Jafar Mohammed Hasanfatta during January to March 2014. The investigation further revealed transactions between M/s.Natural Co., and M/s.Gangeshwar Mercantile Pvt. Ltd. It was further seen that on 17.2.2014 M/s.Gangeshwar Mercantile Pvt. Ltd. had made payments to M/s.Nile Trading Corporation, a proprietary concern of Shri Afroz Mohammed Hasanfatta.

11. He has submitted that statement of Shri Afroz Mohammed Hasanfatta was recorded where in relation to the funds received from the aforesaid entities, he has stated that in 2014 he had requested Shri Madanlal Jain for some financial help and accordingly he had arranged unsecured loan which was received by him in his personal account with Union Bank of India, Nanpura, Surat and Rs.3 crores to his brother Shri Jafar Mohammed Hasanfatta. In relation to the amount of Rs.6.31 crores received in his firm's account he has stated that this amount was received on sale of diamonds to M/s.Gangeshwar Mercantile Pvt. Ltd. He has also produced invoices to show that these diamonds were purchased by him from M/s.Vidhatri Exim Pvt. Ltd., at the office of Shri Madanlal Jain but the payments for this purchase was yet to be made. On enquiries it revealed that M/s.Natural Trading Company and M/s.Gangeshwar Mercantile Pvt. Ltd., did not exist at the given addresses.

12. He has further submitted that Shri Madanlal Jain his statement has denied having arranged any unsecured loan to Shri Afroz Mohammed Hasanfatta or Shri Shri Jafar Mohammed Hasanfatta from M/s.Natural Trading but stated that the amounts were paid to them for their role in the illegal foreign remittances sent abroad. Out of this amount of Rs.16.31 crores some amounts were transferred by Shri Afroz Mohammed Hasanfatta to his family members and others for the purpose of investment.

13. He has also submitted that Shri Jafar Mohammed Hasanfatta has given instructions to Shri Madanlal Jain for transferring funds to the ICICI Bank accounts from which funds were ultimately remitted to UAE and Hong Kong on the basis of forged bills of entry. He has received the proceeds of crime in his bank account and made investments in the stock market. He has He has also made two payments of Rs.55,68,750/each on 5.2.2014 and 6.2.2014 to M/s.Aalay Developers as advance for books of two flats in Mumbai. He has made payment of Rs.30 lacs to Shri Abdul Karim Jaka on 24.3.2014. Thus, he has knowingly involved himself in the process of money laundering.

14. He has submitted that Shri Ahmed Mohammed Hasanfatta has received the proceeds of crime from his brothers Shri Shri Afroz Mohammed Hasanfatta and Shri Jafar Mohammed Hasanfatta in his bank account and has made further payment of Rs.2 crores to M/s.Fancy Builders Pvt. Ltd., for purchase of a flat in Mumbai. He has made payments totalling Rs.47,50,000/during January, 2014 to March, 2014 towards purchase of a flat in Mumbai. He has made payment of Rs.68,53,457 to M/s.Muskan Realities on 15.1.2014 as his contribution for becoming a partner of the said firm whereby he has acquired 22.7272% share in the firm. He has also made payment of Rs.31 lacs to Shri Abdul Karim Jana on

24.3.2014. He has also made an investment of Rs.16,00,000/on 28.2.2014 in M/s.Oasis Developers for becoming a partner of the said firm. Thus he has knowingly involved himself in the process of money laundering.

15. He has further submitted that Shri Fazaleumer Aziz Pothiwala has received the proceeds of crime from Shri Afroz Mohammed Hasanfatta in his bank account and made further payment to Shri Abdul Karim Jaka. He has invested Rs.16,00,000/in M/s.Oasis Developers on 28.2.2014. Thus he has knowingly involved himself in the process of money laundering.

16. He has also submitted that Smt.Foziya Samir Godil has received the proceeds of crime amounting to Rs.1,15,00,000/in her bank account from M/s.Nile Trading Corporation, proprietary concern of Shri Afroz Mohammed Hasanfatta and she has made investment in the stock market. She has also made payments to Shri Abdul Karim Jaka as well as payments to M/s.Huda Enterprises and has thereby knowingly involved herself in the process of money laundering.

17. He has further submitted that Shri Samir Godil had full control of his wife Smt. Foziya Godil's bank accounts and was operating the same and was aware of all the transactions. The proceeds of crime amounting to Rs.1,15,00,000/ received in his wife's bank account was claimed by him as unsecured loan. He has further admitted having made payment as unsecured loan. He has further admitted having made payment to Shri Abdul Karim Jaka on instructions of Shri Afroz Mohammed Hasanfatta. Thus he is involved alongwith his wife for the purpose of receiving the proceeds of crime and its further transfer and thus knowingly involving himself in the process of money laundering.

18. He has submitted that provisional attachment Order (PAO) No.1 of 2014 dated 17.7.2014 was issued whereby properties worth Rs.8.35 crores belonging to Shri Afroz Mohammed Hasanfatta and his family members were attached including those of the present applicant Nos.1 to 4. He has submitted that another PAO No.4 of 2015 dated 31.3.2015 was issued whereby property valued at Rs.1.39 crores in the name of applicant No.2 Ahmed Mohammed Hasanfatta was attached. Both these PAOs have been confirmed by the adjudicating authority, PMLA vide orders dated 7.11.2014 and 21.7.2015 by holding that the properties are involved in money laundering.

19. He has submitted that bank accounts in which the petitioners received payments and made further payments were all in their names and they were signatories having power to operate the accounts. It is worthwhile to note that none of them had slightest hesitation in allowing their accounts to be used as a transit point for further transfer of the proceeds of crime. Thus they have helped in the process of layering and thereby they are involved in the process of money laundering.

20. He has also submitted that learned Judge has taken cognizance after perusing the complaint, documents as well as legal provisions and passed the impugned order dated 18.7.2014. It is, therefore, denied that ingredients of

Section 3 of the PMLA are lacking.

21. He has further submitted that petitioners have allowed the use of their bank accounts for layering of the proceeds of crime received by Shri Afroz Mohammed Hasanfatta by further transfer/use of the funds on his instructions and thus they are involved in the process of money laundering which is substantiated by the bank account statements as well as statements recorded under Section 50 of the PMLA, 2002.

22. He has also submitted that all the petitioners have knowingly allowed the use of their bank accounts and knowingly involved themselves in this activity having full knowledge of the purpose and intent of the transactions. Thus they have helped in the process of laying and thereby they are involved in the process of money laundering. He has submitted that though the amounts were received in the bank accounts of the petitioners on the instructions of Shri Afroz Mohammed Hasanfatta the fact remains that they were operating these accounts and they alone were capable of carrying out any transaction in these accounts.

23. He has further submitted that the scheduled offence relates to the commission of crime whereas investigation under PMLA, 2002 is related to the proceeds of crime generated as a result of commission of the scheduled offence. The proceeds of crime may be found in the possession of any person who may not have committed the scheduled offence. He has submitted that except making bald allegations the applicants have failed to substantiate in what manner the said order is bad in law.

24. He has also submitted that the scheduled offence relates to the commission of crime whereas investigation under PMLA, 2002 is related to the proceeds of crime generated as a result of commission of the scheduled offence. The proceeds of crime may be found in the possession of any person who may not have committed the scheduled offence. It is difficult to believe that the applicant were not aware and had no knowledge of the purpose and intent of the transactions as they have willingly allowed the use of their accounts for the purpose of laying the proceeds of crime with an intention to conceal the source of the funds and thus the provisions of Sections 23 and 24 of the PMLA, 2002 will apply. Lastly he has prayed to dismiss the revision application.

25. Both sides have made lengthy arguments on factual and legal issues including the issue of maintainability of the instant Revision Petition. I have carefully perused the records and have considered the rival submissions.

26. Delay in invoking Revisionary Jurisdiction has already been condoned in the interest of justice after hearing both sides on that aspect.

27. Before adverting to the oral and written submissions on facts and merits, on the issue of maintainability an objection was raised by the Respondent by placing reliance on the following decisions (i) Subramaniam Sethuraman vs State of Maharashtra, (2004) 13 SCC 324,

- (ii) Bholu Ram vs State of Punjab, (2008) 9 SCC 140 // 2009 (1) GLH 39, and
(iii) Adalat Prasad vs Rooplal Jindal, (2004) 7 SCC 338.

It was contended that in view of these judgments the impugned Order shall be considered as an interlocutory order and hence the Revision Petition is not maintainable and shall not be entertained.

28. Mr. Vikram Chaudhary, learned Senior Counsel appearing on behalf of the petitioners relied upon the judgment of the Hon'ble Supreme Court in Urmila Devi v. Yudhvir Singh, (2013) 15 SCC 624, in which all these judgments relied upon by the Respondents amongst various other judgments were considered in detail, while declaring the legal position that the Revision shall be maintainable.

29. I have seen that the Hon'ble Supreme Court in Urmila Devi (supra) has clearly declared the legal position in regard to maintainability of a Revision Petition against an order taking cognizance and issuance of summons under Sections 200 to 204 CrPC as follows" 21. Having regard to the said categorical position stated by this Court in innumerable decisions resting with the decision in Rajendra Kumar Sitaram Pande, as well as the decision in K.K. Patel, it will be in order to state and declare the legal position as under:

21.1. The order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 200 to 204 CrPC would be an order of intermediatory or quasifinal in nature and not interlocutory in nature.

21.2. Since the said position viz. such an order is intermediatory order or quasifinal order, the revisionary jurisdiction provided under Section 397, either with the District Court or with the High Court can be worked out by the aggrieved party.

21.3. Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power under Sections 200 to 204 CrPC, can always be subjectmatter of challenge under the inherent jurisdiction of the High Court under Section 482 CrPC.

22. When we declare the above legal position without any ambiguity, we also wish to draw support to our above conclusion by referring to some of the subsequent decisions. In a recent decision of this Court in Om Kumar Dhankar v. State of Haryana, the decisions in Madhu Limaye, V.C. Shukla, K.M. Mathew, Rakesh Kumar Mishra v. State of Bihar ending with Rajendra Kumar Sitaram Pande, was considered and by making specific reference to para 6 of the judgment in Rajendra Kumar Sitaram Pande, this Court has held as under in para 10: (Om Kumar Dhankar case, SCC p. 255)

"10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 CrPC was available to Respondent 2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the appellant accordingly." 23. Therefore, the position has now

come to rest to the effect that the revisional jurisdiction under Section 397 CrPC is available to the aggrieved party in challenging the order of the Magistrate, directing issuance of summons."

30. I have also considered the following judgments of the Hon'ble Supreme Court in the matters concerning challenge in a Revision Petition to the order taking cognizance and issuing process. When the concerned High Court had declined to interfere in Revision Petition, the Hon'ble Supreme Court had observed as follows (i) Suresh v. Mahadevappa Shivappa Danannava, (2005) 3 SCC 670

"2. The present appeal was filed against the final judgment and order dated 1722004 passed by the High Court of Karnataka at Bangalore in Criminal Revision Petition No. 932 of 2000 dismissing the said petition filed by the appellant herein (Accused 1)."

"6.....On 482000 the IVth Additional Chief Metropolitan Magistrate passed the following order:

"Perused the record. Cognizance of the offence alleged against the accused is taken under Section 190(1)(b) CrPC. Office to register the case in CC register and issue SS to accused by 3092000. sd/

482000" "7. Aggrieved by the order dated 482000 passed by the IVth Additional CMM, the appellantaccused preferred a criminal revision under Section 401 CrPC praying the High Court to set aside the said order. The said revision was dismissed by the High Court by the impugned order dated 1722004."

"11.....In our view, the complaint does not disclose the ingredients of Section 415 CrPC and, therefore, we have no hesitation to set aside the order passed by the Magistrate taking cognizance of the offence alleged. It is also not clearly proved that to hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. The order of the Magistrate and of the High Court requiring Accused 1appellant herein to face trial would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for setting aside the order of the Magistrate as confirmed by the High Court for issuance of process and the proceedings itself."

(ii) Indseam Services Ltd. v. Bimal Kumar Kejriwal (HUF), (2001) 8 SCC 15 :

"2. M/s Indseam Services Limited, an accused in Complaint Case No. C1628 of 1996 pending before the Metropolitan Magistrate, XIIth Court, Calcutta, has filed this appeal assailing the order dated 1072000 of the Calcutta High Court dismissing the revision petition filed by it for quashing the order of the Magistrate taking cognizance of the offence under Section 420 of the Indian Penal Code, and issuing process to the accused."

"4.....The order passed by the Magistrate is quoted hereunder:

"I have also gone through the order of the Hon'ble High Court. On careful scrutiny of the materials on record, I find that there is sufficient ground to proceed against the accused persons under Sections 120B/ 420 IPC.

Issue summons against all the accused persons under Sections 120B/ 420 IPC; requisites are to be put in at once."

"5. The appellant filed a revision petition in the High Court assailing the said order....."

"8. On a perusal of the order under challenge it is clear that the learned Single Judge disposed of the revision petition filed by the appellant for setting aside the cognizance order and for quashing the criminal proceedings without entering into the merits of the case. The learned Single Judge did not consider the nature of the contract between the parties, the arrangement for payment of dues by the accused persons to the complainant, nor did he record a finding that the ingredients of the offence of cheating defined under Section 415 IPC were prima facie made out from the averments in the complaint petition and the statement on oath by the complainant before the learned Magistrate.....While judging the question whether the cognizance order passed by the learned Magistrate was sustainable in law it was incumbent for the learned Single Judge to go into the question whether the complainant has been able to make out a prima facie case for the offence of cheating on the averments in the complaint petition and his statement on oath. The matter should have been examined in the light of the contentions raised by the accused applicant in the revision petition and finding recorded....."

"9. We are constrained to observe that there has been an avoidance of the function of judicial determination of the question of acceptability or otherwise of the plea raised by the accused persons for setting aside the cognizance order and for quashing the criminal proceedings....."

31. I therefore have no hesitation in holding that it is not only within the jurisdiction but is an obligation of this Court to look into as to whether the taking of cognizance and issuance of process was mechanical without there being any prima facie case for bringing home the charge of the offence punishable under Section 3 of PMLA from the averments in the Complaint, and whether the Complaint discloses or not, the necessary ingredients of Section 3 of PMLA qua each of the petitioners.

32. The Ld. Senior Counsel appearing for the petitioners had rightly relied upon the judgment in Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749, wherein the Hon'ble Supreme Court delineated the duties and obligations cast while summoning of an accused in a criminal case as follows- 28. 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. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

33. In view of this clear pronouncement by the Hon"ble Supreme Court, I shall now ascertain whether such duties and obligation cast on the Special Court were duly discharged while issuing summons against all or any of the accused petitioners or whether the criminal law was set into motion as a matter of course without applying mind to the facts, nature of allegations, sufficiency of evidence both oral and documentary in bringing charge home to these accused petitioners and the law applicable in context of the facts.

34. The brief facts of the case which led to the issuance of the impugned Order are as follows (i) Crime Branch, Surat registered two FIRs NO. I/16/2014 dtd. 11.04.2014 and I/17/2014 dtd. 13.04.2014 under Sections 120(B), 420, 465, 467, 468, 471, 477 A of IPC on receipt of Complaint from ICICI bank against certain Companies (Indian Entities) and their directors alleging preparation of fake bills of entry and making outward remittances from ICICI Bank to Hong Kong and Dubai on the basis of the such fake Bills of Entry. After investigations Charge Sheet has been filed against several persons. The main accusations in the Scheduled Offence are inter alia against Shri Madanlal Jain, Shri. Afroz Mohammed Hasanfatta and Shri Bilal Haroon Gilani and others. However, none of the petitioners are arraigned as accused in the said Scheduled Offence.

(ii) Since the Offences under Section 420, 467, 471 and 120(B) of IPC are scheduled offences in terms of Section 2(1)(v) of the PMLA, upon scrutiny of the said two FIRs, investigation under PMLA,2002 was initiated by the office of the Respondent vide ECIR 1/SRT/201415 dated 17.04.2014.

(iii) The investigations under PMLA revealed that Indian Entities had received amounts through RTGS Credits in their respective bank accounts with ICICI Bank primarily from certain other Indian firms from their accounts with Axis Bank held at Mumbai and Surat which included amongst others one M/s. Natural Trading Co., which had transferred some of the above said amounts. These firms in turn had received RTGS Credits into their bank accounts form various other firms based in New Delhi, Mumbai and Surat. There is absolutely no evidence whatsoever to show role of any of the petitioners in arranging or sending these RTGS credits or in making fraudulent remittances on the strength of fake bills of entry.

(iv) It was also revealed that from the bank account of the said Natural Trading Co., payments to the tune of Rs. 7 crore to Shri. Afroz Mohammed Hasanfatta and Rs. 3 crore to his brother Shri. Jafar Mohammed Hasanfatta were made during January to March 2014 as under:

Sr. No.	Date	Amount (Rs.)	Name of the beneficiary
1	6/1/2014	1 Crore	Shri Jafar Mohammed Hasanfatta
2	6/1/2014	1 Crore	Shri Afroz Mohammed Hasanfatta
3	31/01/2014	2 Crore	Shri Jafar Mohammed Hasanfatta
4	6/3/2014	1.25 Crore	Shri Afroz Mohammed Hasanfatta
5	6/3/2014	1.75 Crore	Shri Afroz Mohammed Hasanfatta
6	7/3/2014	1.55 Crore	Shri Afroz Mohammed Hasanfatta
7	7/3/2014	1.45 Crore	Shri Afroz Mohammed Hasanfatta
Total 10 crores			

(v) It is a matter of record that the receipts of amounts in the account of accused petitioner no. 1 Shri Jafar Mohammed Hasanfatta to the tune of Rs. 3 Crores at the instance of his real brother Shri Afroz Hasanfatta is also noticed in the Charge Sheet for the Scheduled Offence in Para (7) at Page 355356, however, merely on that basis he has not been arraigned as a coaccused in the Scheduled Offence.

(vi) The investigation further revealed transactions between M/s Natural Trading Co and one M/s. Gangeshwar Mercantile Pvt. Ltd., both managed by Shri Madanlal Jain. It was further seen that on 17.02.2014 M/s. Gangeshwar Mercantile had made payments to M/s Nile Trading Corporation proprietary concern of Shri Afroz Mohammed Hasanfatta as under:

SR NO.	DATE	AMOUNT IN RS.
1	17/02/2014	1,71,90,517
2	17/02/2014	1,44,36,831
3	17/02/2014	1,44,98,627
4	17/02/2014	1,69,93,966
		TOTAL 6,31,19,941

(vii) The said amount is also reflected in the Charge Sheet for the Scheduled Offence in Para (8) at Page 356, however, merely on that basis none of the accused petitioners have been arraigned as a coaccused in the Scheduled Offence.

(viii) In PMLA proceedings this total amount of Rs. 16,31,19,941/is alleged as

proceeds of crime relatable to Shri Afroz Hasanfatta and the petitioners, and laundering thereof is alleged by the petitioners.

(ix) One Shri Trivedi, an accountant of Shri. Madanlal Jain, has on 28/03/2014, during the search operations, stated that he had frequently seen Shri Afroz Mohammed Hasanfatta visiting the office of Shri Madanlal Jain at 416A & 417A, Panchratna Tower, Opera House, Mumbai in the last couple of months. He however has not implicated any of the accused petitioners including Shri Jafar Mohammad Hasanfatta. Some further evidence was gathered against Shri Afroz Mohd Hasanfatta.

(x) All the petitioners are admittedly close relatives of said Shri Afroz Mohd. Hasanfatta. Shri Afroz Hasanfatta is real brother of Petitioner No. 1 and 2. Other petitioners are also amongst his close relatives. It is alleged that from his Bank Accounts, Shri Afroz Hasanfatta transferred money to the Bank Accounts of Petitioner No. 2 to 4 for further investments or payments to others. However, there is no allegations of any transfer of money out of the said amount of Rs 16,31,19,941/to the petitioner no. 5.

(xi) Statements of each of the accused petitioners were recorded under PMLA. None of the petitioners gave any inculpatory statement. Their statements recorded under PMLA, do not even reflect any knowledge of commission of any Scheduled Offence, much less about any proceeds of crime.

(xii) Statement of Shri. Afroz Mohammed Hasanfatta was recorded where in relation to the funds received from the aforesaid firms he has stated that in 2014 he had requested Shri Madanlal Jain for some financial help and accordingly he had arranged unsecured loan which was received by him Rs. 7 crores) in his personal account with Union Bank of India, Nanpura, Surat and Rs. 3 crores in the account of his brother Shri. Jafar Mohammed Hasanfatta. In relation to the amount of Rs. 6.31 crores received in his firm's account, Shri Afroz has stated that this amount was received on sale of diamonds to M/s. Gangeshwar Mercantile Pvt.Ltd. He has also produced invoices to show that these diamonds were purchased by him from M/s Vidhatri Exim Pvt. Ltd at the office of Shri Madanlal Jain but the payment for this purchase was yet to be made. Enquiries however revealed that M/s. Natural Trading Co and M/s. Gangeshwar Mercantile Pvt. Ltd., did not exist at the given addresses.

(xiii) The petitioner No. 1 in his statement recorded under Section 50 of PMLA had stated that he had not heard of M/s. Natural Trading Co and his brother Shri Afroz had arranged Rs. 3 Crore in his account. He further stated that he has no business dealings with M/s Natural Trading Co. and Rs. 3 Crore have been invested in share trading. He also stated that he neither knew M/s. Natural Trading Co nor Shri Madanlal Jain.

(xiv) Statement dated 05.05.2014 of Shri Madanlal Jain (at Page 281282) contain the following relevant questions and answers

(i) Q.2 Do you know Shri Hasan Fatta Afroj Mohammed, If so How?

(i) A.2 In this regard, I Know Shri Hasan Fatta Afroj Mohammed since last 04 years, I was introduced to him by Shri Amratmadav Angadiya located at 4th Floor, Pnchratna, Opera House, Mumbai. I further state that I do not have any official dealing with him.

(ii) Q.5 Whether you had arranged loan from M/s Natural Trading Co. And M/s Gangeshwar Mercantile Pvt. Ltd. For Shri Hasan Fatta Afroj Mohammed, Shri Jafar Mohammed Hasanfatta, Nile Trading Co. or family members of Shri Hasan Fatta Afroj Mohammed?

(iii) A.5 In the regard, I state that neither I had arrange any fund as lone from M/s. Gan Gangeshwar Mercantile Pvt. Ltd and M/s Natural Trading Co. nor from Shri Pukhraj Anandmal Mutha. I further state that I am not aware whether Shri Hasan Fatta Afroj Mohammed has taken any loan from M/s. Natural Trading Co. and M/s. Gangeshwar Mercantile Pvt. Ltd and Shri Pukhraj Anandmal Mutha.

Thus, although in the question no. 5 reference was made to accused petitioner no. 1 or family members of Shri Afroz Hasanfatta, in his answer Shri Madanlal Jain had neither shown any acquaintance nor alleged any dealings with any of the accused petitioners.

(xv) That the petitioner no. 2 in his statement had stated that he had an account with Union Bank of India, Nanpura, Surat and the transactions were made on the directions of his brother Shri Afroz Mohamed Hasanfatta. He further stated that payments made to Shri Abdul Karim Jaka and M/s. Fancy Builders Pvt. Ltd. were made as per the directions of Shri Afroz Mohamed Hasanfatta.

(xvi) The petitioner No. 3 who is the brotherinlaw of Shri Afroz in his statement had stated that Shri Afroz had made a payment of Rs. 3,00,00,000/in his savings account with the Union Bank of India, Nanpura, Surat and Shri Afroz had directed him to make a RTGS credit amounting of Rs.2,50,00,000/to Shri Abdul Karim Jaka. It is a matter of record that even the balance Rs 50,00,000/were immediately paid back to Sh. Afroz Hasanfatta.

(xvii) That the petitioner No. 4 in her statement inter alia stated that she had bank accounts with Union Bank of India and TexCo bank, Surat and had no business relationship with M/s. Nile Industries Pvt. Ltd. and M/s. Nile Trading Corporation. She further stated that her husband Shri. Samir Godil (Petitioner No. 5) would answer the transactions made from her bank account with Union Bank of India, the details of transactions made with M/s. Angel Broking Pvt. Ltd. and with Shri Abdul Karim Jaka.

(xviii) The petitioner No. 5 in his statement stated that he operates all the accounts of his wife (petitioner No. 4) and she had no knowledge of the transactions in her accounts at all. He further stated that Shri Afroz gave an unsecured loan amounting to Rs.1,15,00,000/to Petitioner No. 4 from M/s. Nile Trading Corporation and on the directions of Shri Afroz, he had made an RTGS

transfer to Shri Abdul Karim Jaka from the Account of Petitioner No. 4.

(xix) Thus, the evidence available shows that all the petitioners had received amounts in their accounts through banking channels from or through their close relative Shri Afroz Mohammed Hasanfatta. It is also seen that amounts so received in bank account was further invested or utilized under instructions of Shri Afroz Mohammed Hasanfatta. However, neither statements of Shri Afroz Mohammed Hasanfatta, nor those of the petitioners impute against any of the accused petitioners, any culpable knowledge of Scheduled Offence or proceeds of crime or motive to project proceeds of crime as untainted.

(xx) On the basis of the above investigations, a Criminal Complaint no. 03/2014 dated 18.7.2014 was filed under PMLA inter alia against the petitioners herein. In the said criminal complaint the following is alleged against each of the petitioners:

(a) Sh. Jafar Mohammed Hasanfatta (Petitioner No 1):

"62.....Shri Jafar Mohamed Hasanfatta has knowingly involved himself in the process and the activity connected with the proceeds of crime including its concealment and possession and has therefore projected the same as untainted. It is apparent from the fact that he had received Rs. 3 Crore from M/s. Natural Trading Co and has invested the same on the directions of his brother Shri. Afroz in the Stock Market and Real estate....."

(b) Ahmed Hasanfatta (Petitioner No. 2):

"62.....Shri Ahmed Hasanfatta, brother of Shri Afroz Mohamed Hasanfatta has knowingly involved himself in the process and activity connected with the proceeds of crime including its concealment and possession and has therefore projected the same as untainted. He received the funds from Shri Afroz Mohamed Hasanfatta and Shri Jafar Mohamed Hasanfatta and has invested Rs. 2,00,00,000/with Fancy Builders Pvt. Ltd., Mumbai. The flat at 1101 on the 11th floor at Hicon Grande, Bandra (W) was purchased on 6/3/2014 with the amount so received from his two elder brothers. In this case, the POC has been invested in an immovable property thereby projecting the same as untainted. Shri Ahmed fatta, therefore, is also guilty of money laundering under the PMLA....."

(c) Fazaleumer Pothiawala (Petitioner No. 3):

"62.....Shri Fazaleumer Pothiawala, brotherinlaw of Shri Afroz Mohamed Hasanfatta, has knowingly involved himself in the process and activity connected with the proceeds of crime including its concealment and possession and has therefore projected the same as untainted. He too had parked the part of the proceeds of crime amounting to Rs.3,00,00,000/received from Shri Afroz Mohamed Hasanfatta with Shri Abdul Karim Jaka who one of the directors of M/s. I.B. Commercial Pvt. Ltd., Mumbai. It is humbly submitted that the exact purpose for the said investment with Shri Jaka is under investigation....."

(d) Foziya Samir Godil (Petitioner No. 4):

"62.....Smt Foziya Samir Godil has knowingly involved herself in the process and activity connected with the proceeds of crime including its concealment and possession and has therefore projected the same as untainted. She had involved herself in investing in stock market and parking the part of the proceeds of crime amounting to Rs.1,15,00,000/received from Shri Afroz Mohamed Hasanfatta which was invested with Shri Abdul Karim Jaka who one of the directors of M/s. I.B. Commercial Pvt. Ltd., Mumbai. It is humbly submitted that the exact purpose for the said investment with Shri Jaka is under investigation....."

(e) Samir Godil (Petitioner No. 5):

"62.....Shri Samir Godil Jikar has admitted in his statement dtd 13.05.2014 that he had full control over the bank account in the name of his wife Smt. Foziya Samir Godil and has knowingly involved himself in the process and activity connected with the proceeds of crime including its concealment and possession and therefore projected the same as untainted. It is humbly submitted that Shri Samir Godil admittedly had received the amount of Rs.1,15,00,000/which was claimed to be unsecured loan. However no supporting document could be produced by the said Shri Godil leaving no room for the doubt of the said amount forming part of the proceeds of crime....."

(xxi) On the same date i.e. on 18.7.2014, the impugned Order was passed. Cognizance was taken and process by way of summons was issued against inter alia each of the accused petitioners.

35. The allegation against each of the petitioner is of commission of offence under Section 3 of PMLA, which is punishable under Section 4 of PMLA. Section 3 of PMLA reads as under: "3. Offence of moneylaundering.-

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of moneylaundering."

36. The "proceeds of crime" is defined in Section 2(u) of PMLA as under"(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;"

37. A holistic reading of this definition of "proceeds of crime" and the penal provision under Section 3 of PMLA, which uses conjunctive "and", makes it luminous that any persons concerned in any process or activity connected with such "proceeds of crime" relating to a "scheduled offence" including its concealment, possession, acquisition or use can be guilty of money laundering, only if both of the two prerequisites are satisfied i.e.- (i) Firstly, if he

- (a) directly or indirectly "attempts" to indulge,
- (b) "knowingly" either assists or is a party, or
- (c) is "actually involved" in such activity; and

(ii) Secondly, if he also projects or claims it as untainted property;

38. The first of the two prerequisite to attract Section 3 of PMLA shall thus satisfy any of the following necessary ingredients A. RE: DIRECT OR INDIRECT ATTEMPT :

In State of Maharashtra v. Mohd. Yakub, (1980) 3 SCC 57, the Hon"ble Supreme Court observed that"

13. Well then, what is an "attempt"? In sum, a person commits the offence of "attempt to commit a particular offence" when (i) he intends to commit that particular offence and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence." Thus, an "attempt to indulge" would necessarily require not only a positive "intention" to commit the offence, but also preparation for the same coupled with doing of an act towards commission of such offence with such intention to commit the offence. Respondent failed to produce any material or circumstantial evidence whatsoever, oral or documentary, to show any such "intention" and "attempt" on the part of any of the petitioners.

B. RE: KNOWINGLY ASSISTS OR KNOWINGLY IS A PARTY :

In Joti Parshad v. State of Haryana, 1993 Supp (2) SCC 497 the Hon"ble Supreme Court has held as follows"

5. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same." The same test therefore applies in the instant case where there is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to show that any of the petitioners, "Knowingly", assisted or was a party to, any offence.

C. Actually involved :

Actually involved would mean actually involved into any process or activity connected with the proceeds of crime and thus scheduled offence, including its concealment, possession, acquisition or use. There is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to substantiate any such allegation qua the petitioners.

D. Neither any of the petitioners is arraigned as accused in the "Scheduled Offences" punishable under Indian Penal Code for direct or indirect involvement, abetment, conspiracy or common intention, nor is any such case made out even on prima facie basis against any of them.

39. The second of the two prerequisite to attract Section 3 of PMLA would be satisfied only if the person also projects or claims proceeds of crime as untainted property. For making such claim or to project "proceeds of crime" as untainted, the knowledge of tainted nature i.e. the property being "proceeds of crime" derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence, would be utmost necessary, which however is lacking in the instant case.

40. Great emphasis was laid on behalf of the Respondent on Section 24 of PMLA which reads after amendment vide Act 2 of 2013 as under" 24. Burden of Proof.- In any proceeding relating to proceeds of crime under this Act,- (a) in the case of a person charged with the offence of moneylaundering under Section 3, the Authority or court shall, unless the contrary is proved, presume that such proceeds of crime are involved in moneylaundering; and

(b) in the case of any other person the Authority or court, may presume that such proceeds of crime are involved in moneylaundering."

41. On the basis of the said Section 24 read with Section 3 of PMLA, it was contended on behalf of the Respondent that "knowledge" of the Scheduled Offence or proceeds of crime is not essential under Section 3, and mere assistance in handling proceeds of crime even without knowledge would attract offence of money laundering, and burden would shift on the accused to prove that he is not involved in money laundering. It was submitted that the petitioners are all adults having knowledge of right and wrong. The bank accounts in which they received payments and made further payments were all in their names and they were the signatories having power to operate the accounts. None of them had the slightest hesitation in allowing their account to be used as a transit point for further transfer of the proceeds of crime. It shall thus be presumed that they have thus knowingly allowed the use of their bank accounts and knowingly involved themselves in this activity having full knowledge of the purpose and intent of the transactions and helped in the process of layering. Thereby they are involved in the process of money laundering.

42. I find no merit in this stand of the Respondent. I am of the view that this amended Section 24 shows legislative intent of attachment and confiscation of proceeds of crime by presuming involvement of proceeds of crime in money

laundering irrespective of whether the person concerned is or not charged with the offence of money laundering. Thus, there shall be a legal presumption in any proceeding relating to proceeds of crime under PMLA that such proceeds of crime are involved in moneylaundering. Burden would be on the person concerned to show to the contrary. However, as rightly pointed out by the Learned Senior Counsel for the petitioners, there is no legal presumption in this Section 24 that -

- (a) The concerned property is "proceeds of crime",
- (b) The person accused has knowledge that the property is "proceeds of crime", and
- (c) The person is involved in or is guilty of "moneylaundering" merely for possessing or having any concern with the proceeds of crime.

In fact this Section 24 clearly indicates that even a person in possession or connected with any proceeds of crime may or may not be charged with the offence of money laundering. Whether a person shall be charged with money laundering or not shall thus depend only upon satisfying the requirements of Section 3 of PMLA as already explained above.

43. In the instant case, neither there is anything to raise a presumption of fact or law that any of the petitioners was aware that the monies received in their bank accounts through banking channels were "proceeds of crime" derived from any "scheduled offence", nor is there anything to further presume that the petitioners were intentionally projecting or claiming any proceeds of crime as untainted one. In absence of the same, merely because the petitioners are close relatives of Shri Afroz and had banking transaction with him or at his instance would not attract offence of money laundering under Section 3 of PMLA even on prima facie basis.

44. Section 50 of PMLA is pari materia to Section 108 of the Customs Act, 1962. However, in the instant case even the statements recorded under Section 50 are not sufficient for taking cognizance against each of the petitioner. Even the oral evidence of the petitioners or of coaccused or any witness, which were available before the Special Court, do not make out even a prima facie case of money laundering against the petitioners. Perusal of complaint do not reveal that there was any evidence regarding requisite knowledge on the part of any of the Petitioners.

45. The impugned Order dated 18.7.2014 is thus mechanically passed against the petitioners without due application of mind on the material available before the Court and is thus wholly illegal. There is manifest error in mechanically taking cognizance and issuing process without there being any prima facie case against the petitioners for the offence punishable under Section 3 of PMLA from the averments made in the Complaint, and the material placed on record.

46. The Respondents submitted that the Provisional Attachment Order (PAO) Nos. 01/2014 dated 17.07.2014 and 04/2015 dated 31.03.2015 have been

confirmed by the Adjudicating Authority, PMLA vide orders date 07.11.2014 and 21.7.2015 respectively by holding that the, properties are involved in money laundering. Reliance was also placed on para 30 and 36 of Gautam Kundu vs Directorate of Enforcement, (2015) 16 SCC 1.

47. I am of the view that prima facie findings of adjudicating authority are not substitute for the requisite satisfaction required by the Special Court for taking cognizance. Final confiscation of proceeds of crime or value thereof under PMLA would always be subject to final outcome of trial and is not final merely by Adjudication. Moreover, the Respondent failed to point out any prima facie material against each of the petitioner even at this stage to show requisite knowledge with each of them, of commission of Scheduled offence to derive or generate any proceeds of crime and of knowingly attempting or indulging in projecting the same as untainted.

48. So far as the judgment in Gautam Kundu (supra) is concerned, the observations regarding Section 45 and limitations in grant of bail do not help the Respondent in the instant petition where challenge is against the Order taking cognizance and issuing process by way of summons.

49. On behalf of the Respondent great emphasis was laid on the statements of main accused Shri Madanlal Jain recorded under Section 50 of PMLA on 22.7.2014 (Page 287 to 297), 23.07.2014 (Page 283 to 286) and 24.7.2014 (Pages 298 to 300) i.e. after taking cognizance of the offence vide the impugned Order. It was submitted that in view of these statements of the coaccused, though recorded subsequent to taking cognizance, there is sufficient evidence against the petitioner no. 1 Shri Jafar Hasanfatta to bring home the charge against him. The Learned Senior Counsel appearing for the petitioners have fairly shown the said statements annexed with the petition even before the said contention was advanced on behalf of the Respondent.

50. I am not impressed with this stand taken by the Respondents. In these statements the officer of the Respondent has again asked response of main accused Shri Madanlal Jain inter alia regarding payment from the account of Natural trading Co. to the account of petitioner no. 1 Shri Jafar Hasanfatta, which was already asked in statement dated 5.5.2014 in question nos 3 to 5 (at Page 281). The extract from these statements referred by the Respondents is as follows-(i) Q.38. Why was Rs.3 Crore paid to Shri. Jafar Mohamed Hasanfatta and Rs. 7 Crore paid to Shri. Afroz Mohamed Hasanfatta from M/s. Natural Trading Co.?

(ii) Ans. I have not given any unsecured loan amounting to Rs. 3 Crore to Shri. Jafar Mohamed Hasanfatta and Rs. 7 Crore paid to Shri. Afroz Mohamed Hasanfatta from M/s. Natural Trading Co. The amount was paid to them as a part of illegal proceeds in the enduing fraudulent foreign remittances abroad.

It is thus seen that the main accused Shri. Madanlal Jain in his subsequent statements has not only denied having arranged any unsecured loan to

coaccused Shri Afroz Mohammed Hasanfatta or Shri Jafar Mohammed Hasanfatta from M/s.Natural Trading but has also stated that the amounts were paid to "them" as a part of illegal proceeds in the ensuing foreign remittances abroad. He has also stated that commission was also paid to Afroz Mohammed Hasanfatta through cheque discounters.

51. Firstly, such an exercise after cognizance on the Complaint is prima facie alien to any criminal jurisprudence. Moreover, it remains uncorroborated statement of a coaccused in respect of which a Constitution Bench of the Hon"ble Supreme Court in Haricharan Kurmi v. State of Bihar, (1964) 6 SCR 623 // AIR 1964 SC 1184 has clearly laid down the law in this regard with the following observations-" 13. As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a coaccused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a coaccused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.".

"15. The statements contained in the confessions of the coaccused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against an accused person, the court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the court has to adopt in dealing with these two types of evidence is thus clear, well understood and well established...." "17. It is true that the confession made by Ram Surat is a detailed statement and it attributes to the two appellants a major part in the commission of the offence. It is also true that the said confession has been found to be voluntary, and true so far as the part played by Ram Surat himself is concerned, and so, it is not unlikely that the confessional statement in regard to the part played by the two appellants may also be true; and in that sense, the reading of the said confession may raise a serious suspicion against the accused. But it is precisely in such cases that the true legal approach must be adopted and suspicion, however grave, must not be allowed to take the place of proof. As we have already indicated, it has been a recognised principle of the administration of

criminal law in this country for over half a century that the confession of a coaccused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion."

52. In the instant case, there is absolutely no evidence against any of the petitioners to have any occasion to turn to the confession of coaccused in order to receive assurance to the conclusion of guilt. Therefore, trial on such statement of coaccused collected subsequent to cognizance would be futile and abuse of process of law. In the material before the Special Court for PMLA, none of the statements of any witness even remotely referred to the petitioners. None of the statements either of the petitioners, or of any witness or even of any coaccused imputed on any of the petitioners even remote knowledge of commission of Schedule Offence and knowingly laundering of any "Proceeds of Crime". Moreover, there is not even any circumstantial evidence garnered in the entire investigation to remotely impute such prerequisite knowledge or mens rea, existence of which is essential at least on prima facie basis for taking "cognizance" of offence against the petitioners.

53. The Learned Senior Counsel for the petitioner has rightly pointed out that the judgment in Pepsi Foods Ltd (supra), was applied in Rukmini Narvekar v. Vijaya Satardekar, (2008) 14 SCC 1, and the Hon'ble Supreme Court while upholding the Order passed by the High Court which allowed a petition against dismissal of Criminal Revision Petition filed against order taking cognizance and issuing process, observed in favour of Respondent accused Smt. Vijaya Satardekar as follows- " 7. The allegation in the FIR was that Ranjit Satardekar had falsely misrepresented to the complainant and her husband that the document which was being executed by them was for enabling Ranjit to represent them in the inventory proceedings in progress on the death of Andre Andrade, although what was actually executed by them was a power of attorney. This power of attorney was used by the accused for executing a sale deed in favour of his wife Vijaya Satardekar and Sadiq Sheikh in the year 1991, but the said sale deed was presented for registration only in the year 2001. It is alleged that the complainant came to know only in August 2001 for the first time about the execution of the sale deed in 1991. Thus it is alleged that the property of the complainant was purported to have been sold away by Ranjit Satardekar, Advocate, by deceit and misrepresentation for which he deserved to be punished under Sections 409, 420 and other provisions of IPC.

8. On the basis of the aforesaid FIR, the police investigated the case and filed a chargesheet against both Ranjit Satardekar and Smt Vijaya Satardekar as well as two others. Thereafter, cognizance was taken of the offence alleged in the chargesheet and process was issued by the Judicial Magistrate, First Class, Panaji under Sections 468/471/420/120B read with Section 34 of the Penal Code, 1860.

9. Against the order taking cognizance and issuing process against the accused, they filed a criminal revision before the Sessions Judge, Panaji, which was dismissed by his judgment dated 1962007. Against that order a writ petition was filed which was allowed by the impugned judgment of the learned Single Judge of the High Court dated 382007.

Hence this appeal."

"26. 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 the respondent is dismissed."

"39. However, as indicated by my learned Brother, the complaint made does make out a prima facie case against accused Ranjit Satardekar and the cognizance taken by the learned Magistrate cannot be faulted and the appeal as far as he is concerned, must be allowed. However, even prima facie, none of the offences referred to in the chargesheet can be made out against accused Vijaya Satardekar and she has been roped in only with the aid of Section 120B which is also not substantiated. The appeal as far as she is concerned, must be dismissed."

Thus, in a case of executing sale deed in favour of wife by deceit and misrepresentation, the Hon"ble Supreme Court upheld the interference with the cognizance order in Revision Jurisdiction as there was no material whatsoever either mentioned in the FIR or produced by the prosecution to show that the wife Vijaya Satardekar was in any way involved in the alleged criminal offence committed by her husband Ranjit Satardekar. The only allegation against her was that the sale deed was in her favour, which in the opinion of the Hon"ble Supreme Court did not prima facie make out any offence.

54. The same test is applicable in the facts of the instant case. By the impugned order dated 18.7.2014, the Special Court for PMLA mechanically took "cognizance" of the alleged offence punishable under Section 4 of PMLA qua each of the accused petitioner, without even prima facie material showing existence of any "mens rea" or culpable "knowledge" with all or any of them, of the subject Scheduled Offence investigated separately by Crime Branch, Surat in FIR Nos. I16/ 2014 dated 11.04.2014 and I17/ 2014 dated 13.4.2014, or of any "proceeds of crime" emanating from the said scheduled offences. Neither there is any tangible evidence, nor even any circumstantial material to impute culpable knowledge on the petitioners and to even prima facie conclude that they were either aware of the commission of the Schedule Offence or the generation of the

alleged proceeds of crime by or out of such Schedule Offence. As per the material adduced, it cannot be even prima facie held that the petitioners had any reason to even have any reasonable doubt regarding commission of alleged schedule offence and generation of any proceeds of crime in relation thereto. The same is also fortified by the fact that none of the petitioners were made an accused in the scheduled offence. Even though the accused petitioners received in their bank accounts certain amounts at the instance of or from their close relative Shri Afroz Hasanfatta, the statements if taken on their face value, do not satisfy even on prima facie basis the prerequisite for trying any person on allegation of money laundering i.e. "mens rea" or culpable "knowledge" of the "Scheduled Offence" and "Proceeds of Crime" derived therefrom, and projection of such proceeds of crime as untainted. Even on prima facie basis no offence is made out against any of the accused petitioners. Therefore, I find merit in the submissions made on behalf of the accused Petitioners and I have no hesitation in holding that the impugned Order was passed mechanically and deserves to be set aside.

55. I deem it proper to clarify that I have neither decided the correctness or otherwise of any provisional attachment or adjudication order in that regard by any authority under PMLA, nor have I decided the issue as to whether alleged proceeds of crime amounting to Rs. 16,31,19,941/received by Shri Afroz Hasanfatta directly or indirectly is involved in money laundering. These issues are subject matter of different proceedings and trial. The issues decided in the instant petition is limited to the legality or otherwise of the impugned Order dated 18.7.2014 taking cognizance and issuing process by way of summons qua each of the petitioners herein.

56. The instant Revision Petition is accordingly allowed and the impugned Order dated 18.7.2014 is set aside qua each of the petitioners with consequential reliefs. Rule is made absolute to the aforesaid extent. Bail bond, if any, shall stand cancelled. After pronouncement of the judgment Mr.Amin, learned advocate appearing for Mv.Vyas, learned Assistant Solicitor General for the respondent No.1 has requested to stay this judgment and order for a period of six weeks. Mr.Buch, learned advocate for the applicants has objected to such request. Looking to the facts and circumstances of the case, operation and implementation of present judgment and order shall stand stayed for a period of four weeks from today.