

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Criminal Revision No. 728 of 2023**

-----

Sanjay Kumar Agarwal, aged about 53 years, son of Late Jagdish Prasad Agarwal, having his place of work at Martin Burn House, 2<sup>nd</sup> Floor, R N 243, 1 R N Mookherjee Road, P.O.-Kolkata G.P.O., P.S. -Hare Street, District Kolkata, West Bengal-700001.

..... **Petitioner**

**Versus**

Union of India, through the Directorate of Enforcement, (Government of India), represented by Dr. Rathin Biswas, Assistant Director (PMLA), Kolkata Zonal Office-I, CGO Complex, 3<sup>rd</sup> MSO Building, 6<sup>th</sup> Floor, DF Block, Salt Lake, Kolkata, PIN-700064

... ..... **Opposite Party**

-----

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**

-----

For the Petitioner : Mr. Sumeet Gadodia, Advocate  
Ms. Shruti Shekhar, Advocate  
Mr. Nilohit Choubey, Advocate  
Ms. Amrita Sinha, Advocate

For the Opp. Party : Mr. Amit Kumar Das, Advocate  
Mr. Saurav Kumar, Advocate

-----

**C.A.V. on 10/01/2025**

**Pronounced on 14/02/2025**

**Prayer**

1. The instant revision application is being filed against order dated 08.06.2023 passed in Misc. Criminal Application No. 1291 of 2023 by learned Additional Judicial Commissioner XVIII-cum-Special Judge, PML Act, Ranchi, wherein the application filed by the petitioner for discharge in connection with ECIR Case No. 05 of 2021 registered under Section 3 punishable under Section 4 of the Prevention of Money Laundering Act, 2002 has been dismissed.

### **Facts of the case**

2. The prosecution case, in brief, as per the complaint filed under Section 44 and 45 of the Prevention of Money Laundering Act, 2002 [in short 'PML Act, 2002'], is that a complaint case under the PML Act, 2002 was initiated against the petitioner on the basis of FIR registered by the CBI, ACB, Dhanbad being RC1(A)/2020-D dated 10.02.2020.

3. It is alleged in the aforesaid FIR, which was registered on the basis of complaint made by one Amit Sarawgi, Director of M/s Adi Ispat (P) Limited, that the petitioner had demanded a bribe of Rs.2,00,000/- per month for showing leniency in the insolvency resolution process for extending CIR process from 09 months to 02 years and also demanded Rs.20,00,000/- for obtaining favourable forensic audit/valuation report from his chosen Forensic Auditor/Valuer and for helping in re-possession of plant/company. The petitioner had offered him that SME, the complainant was entitled to participate in the auction proceeding of the Bank and if he met the demands, he would prepare his report leniently enabling him re-possess his plant/company. The complaint was discreetly verified. Trap team was constituted and raid was conducted at Giridih at the Company office, where the petitioner was

caught read handed on 11.2.2020 in the presence of independent witnesses accepting the illegal gratification from the complainant.

**4.** The CBI, ACB Dhanbad, after investigation of the matter submitted charge-sheet on 31.12.2020 under Section 7 of the PC Act and, therefore, the present complaint under Section 44 and 45 of the PML Act, 2002 was initiated against the petitioner.

**5.** After submission of charge-sheet, the petitioner filed discharge petition being Misc. Criminal Application No. 1291 of 2023 in connection with ECIR Case No. 05 of 2021 before the learned Additional Judicial Commissioner XVIII-cum-Special Judge, PML Act, Ranchi, which was dismissed vide order dated order dated 08.06.2023, hence the present application has been filed.

**Argument on behalf of the learned counsel for the petitioner:**

**6.** Mr. Sumeet Gadodia, learned counsel for the petitioner has assailed the impugned order, *inter alia*, on the following grounds.

**7.** It has been submitted that even if the allegations made in the complaint case is accepted on its face, then also no offence under Section 3 of the PML Act, 2002 is made out against the petitioner.

**8.**The petitioner is an 'Insolvency Professional' having unimpeachable experience of 25 years. It has been submitted that under the scheme of Insolvency and Bankruptcy Code, 2016,(I & B Code 2016) before filing an insolvency application the applicant has to propose the name of an 'Interim Resolution Professional ' [IRP], accordingly, herein, the financial creditor in this case i.e., State Bank of India, Antaghat, Patna being the applicant sought the consent of the petitioner to act as the IRP for the Corporate Insolvency Resolution Process [CIRP], which the petitioner consented vide letter dated 03.06.2019. Accordingly, the Financial Creditor [SBI] filed an insolvency petition against the corporate debtor before the National Company Law Tribunal, Kolkata Branch [NCLT], which was allowed and the petitioner was appointed as Interim Resolution Professional [IRP].

**9.**After being appointed as IRP, the petitioner in compliance of the Code and Regulation made thereunder, made a public announcement of the initiation of CIRP of the Corporate Debtor on 27.11.2019 and invited claims from the creditors of the Corporate Debtor. The petitioner received two claims (i). Financial Creditor – State Bank of India for Rs. 1,35,39,27,277/- and (ii). Operational Creditor – Damodar Valley Corporation for Rs. 6,28,31,085/-.

**10.** It has been submitted that first meeting of Committee of Creditors [CoC] was held on 21.12.2019 in accordance with Code and Regulations made thereunder and it was decided that petitioner was to be appointed as Resolution Professional [RP] entrusted with the functioning of the company in question. As such, in terms of Section 16(5) of the Code, with the appointment of petitioner as RP, the terms of the petitioner as Interim Resolution Professional [IRP] came to an end w.e.f. 21.12.2019.

**11.** It has been submitted that soon after commencement of CIRP, Amit Sarawgi, who was the director of M/s Adi Ispat Pvt. Ltd. and M/s Sri Bir Ispat Pvt. Ltd., illegally and unlawfully operated the bank account of Corporate Debtor, namely, M/s Adi Ispat Pvt. Ltd with Andhra Bnak, Giridih Branchi on 24.12.2019 and withdrew Rs. 10.00 lacs in cash. It has been stated that the said Amit Sarawgi, deliberately and intentionally neither disclosed about the bank account of Corporate Debtor to the petitioner nor handed over the cheque book and bank statement to the petitioner. Thus, the petitioner was never made aware of the existence of the Bank Account by Amit Sarawgi till he came to know of the same through his sources on 9<sup>th</sup> January, 2020.

**12.** On being questioned by the petitioner as of illegal withdrawal of Rs. 10.00 lacs, Amit Sarawgi offered to refund the part of the amount during the meeting held on 11.02.2020, however, also expressed his inability to deposit the said amount of Rs. 10.00 lacs in the bank account of Corporate Debtor as he was not authorized to operate the bank account of Corporate Debtor.

**13.** The petitioner believing and trusting upon the assurances of Amit Sarawgi, agreed to receive and deposit the said amount on behalf of the Corporate Debtor in the bank account of ICICI Bank at Kolkata opened by the petitioner for carrying out the CIRP of the Corporate Debtor.

**14.** It has been submitted that the petitioner being unaware of the ill motive of the said Amit Sarawgi, got arrested by the CBI on the false and frivolous allegation of accepting bribe on 11.02.2020.

**15.** It has further been submitted that F.I.R. has been registered against the petitioner under Section 7 of the P.C. Act (as amended in 2018), whereas the said Act is not applicable to the petitioner since he is not a public servant as defined under Section 2(c) of the P.C. Act. In the case at hand, the prosecuting agency has overlooked the fact that mere alleged commission of a scheduled offence does not

give rise to generation of proceeds of crime as defined in Section 2(u) of the Act for the reason that –(i)before the alleged amount purported to be the alleged bribe money could come in the possession of the petitioner the same was intercepted and seized by the CBI; and (ii). the ingredient of offence of money laundering under section 3 of the Act about projecting or claiming it as untainted property is completely missing.

**16.** In the present case neither the ingredients of proceeds of crime has been found nor the ingredient of Section 3 of the said Act is found as the alleged amount could not reach in the possession of the petitioner and, therefore, there was no occasion for its concealment, use or projection or claim of the proceeds of crime as untainted property in any manner.

**17.** It is further submitted that petitioner is not covered within any of the categories of public servant, hence, the entire proceeding and the schedule offence is not maintainable against the petitioner.

**18.** The petitioner who is a Resolution Professional (RP) under the Insolvency and Bankruptcy Code, 2016 and to be a “Public Servant” as per Sections 232 and 233 of the Code, which specifically show that Resolution Professional acts only as a ‘facilitator, and does not have adjudicating power

and is not paid any remuneration/fee by the Government unlike the liquidator, receiver or commissioner.

**19.** Herein, the appointment of the petitioner by the CoC cannot be termed to be an authorization by a court of justice to perform any duty, in connection with the administration of justice. It is further submitted that petitioner is neither an employee nor an officer nor authorized representative of the IBBI/NCLT rather he is a Chartered Accountant and a private practitioner and also registered as an independent Insolvency Professional with IBBI. The continuity of his registration as Insolvency Professional is subject to compliance of the Insolvency Professional Regulations. The petitioner has absolute discretion either to give his consent or reject any assignment offered to him by the Financial Creditor of the Company/Corporate Debtor.

**20.** It has further been submitted that in the present case the petitioner ceased to be an IRP with effect from 21.12.2019 and the petitioner appointed as a Resolution Professional by the CoC, comprised of the sole financial creditor of the Corporate Debtor, with effect from the same date, in terms of Section 22(3)(a) of the Code.

**21.** Learned counsel for the petitioner further submits that the Prevention of Corruption Act (P.C. Act) ought not to

have been invoked against the petitioner since the Code and the Regulations framed thereunder are sufficient to deal with insolvency professionals and their conduct.

**22.** It is further submitted that petitioner is neither a public servant nor does he perform any public duty and the very initiation of the criminal proceedings under the P.C. Act against the petitioner is not maintainable and *void ab initio* and therefore, when no schedule offence itself is made out against the petitioner, then the framing of charge against the petitioner at this stage is pre-mature and will be a fruitless exercise under the provisions of PML Act, 2002.

**23.** It is further submitted that in the present case, the very amount which is said to have been coming in the hand of the petitioner was the money for being deposited in the account of the Company or was proceeds of crime has not yet been determined to constitute it as a Schedule Offence and there is no ingredient and sufficient ground for proceeding against the accused petitioner in this case.

**24.** It is further submitted that as per prosecution no any cash movement has been made by this petitioner neither he has tried to claim the alleged tainted money of himself as untainted nor he channelized the alleged tainted cash in free flower market for its regularization in main stream, hence the basic ingredient for constituting offence

of money laundering is totally lacking. The petitioner was never put in possession of the alleged cash, which is said to have been recovered from the possession of the petitioner.

**25.** In the backdrop of aforesaid facts, learned counsel for the petitioner submits that considering Section 233 of the Code, the Delhi High Court in ***W.P (Crl.) No. 544 of 2020 [Dr. Arun Mohan Vs. CBI]*** has observed that an Insolvency Professional does not fall within the meaning of "public servant" as ascribed in any of the clauses of sub-section (c) of section 2 of the Prevention of Corruption Act, 1988.

**26.** In the present case, no complaint has been filed by the IDBI against the petitioner alleging commission of any offence, therefore, on this ground also the entire prosecution case stands vitiated.

**27.** Learned counsel for the petitioner based upon the aforesaid ground has submitted the learned trial court has failed to appreciate these facts into consideration and as such the impugned order dated 08.06.2023 is liable to be quashed and set aside.

**Argument on behalf of the learned counsel for the opposite party-Enforcement Directorate:**

**28.** While on the other hand, Mr. Amit Kumar Das, learned counsel for the opposite party - Enforcement Directorate has seriously opposed the said

submissions/grounds, on facts and on law as referred hereinabove, on the strength of counter affidavit filed on behalf of respondent-ED.

**29.** It has been submitted that sufficient material has been collected to come to the conclusion that all the conditions as stipulated under Section 3 of the PML Act, 2002 read with Section 2(1) (u) of the PML Act, 2002 are satisfied.

**30.** It has been submitted that during investigation it has come that the petitioner-Sanjay Kumar Agarwal demanded a bribe of Rs. 2 lacs per month from Amit Sarawgi for showing leniency in the insolvency resolution process and also demanded one time bribe of Rs. 20 lacs from him for obtaining favourable forensic audit/valuation report from his chosen Forensic Auditor/Valuer and for helping him in re-possession of their plant/company.

**31.** It has been submitted that on 30.01.2020, the petitioner reiterated his demand of bribe amount of Rs. 20 lacs, upon which, said Amit Sarawgi informed the CBI about illegal demand made by the petitioner and as per trap laid by the CBI, said Amit Sarawgi gave bribe of Rs. 5 lacs to the petitioner out of which 3 lakhs were accepted by him and for remaining Rs. 2 lacs he directed the Amit

Sarawgi to deliver the same in Patna. Immediately after the incident the CBI officials caught red handed the petitioner.

**32.** Further submission has been made that ingredient of Section 3 of the PML Act, 2002 i.e., acquisition, possession and transfer are all available in this case to establish the case falling under the offence of money laundering. The aforesaid act of the petitioner clearly covers the definition of offence of money laundering under Section 3 of the PML Act, 2002.

**33.** In the instant case, the petitioner has knowingly acquired, possessed but he had projected the proceeds of crime [illegal gratification] in such a manner as it if was untainted money and therefore, guilty of offence of money-laundering as per the provision of Section 3 of PML Act, 2002 and as such is liable to be punished under Section 4 of the PML Act, 2002.

**34.** So far submission advanced on behalf of petitioner that the petitioner is not a 'public servant', it has been contended by learned counsel appearing for the respondent-ED that the petitioner filed revision petition being Cr.M.P. No. 1048 of 2021, in which the Hon'ble Court vide order dated 05.04.2023 observed that *"...it is manifest that the appointment of resolution professional is made by the National Company Law Tribunal, which is the*

*Adjudicating Authority for the insolvency resolution process of the companies under the I & B Code, 2016. Resolution Professional has a key role to play in the insolvency resolution process and to protect the assets of the corporate debtors. From his nature of assignment and duty to be performed his office entails performance of functions which are in the nature of public duty and therefore will come within the meaning of public servant both under sections 2 (c) (v) & (viii) of the PC Act..”*

**35.** Therefore, plea of the Petitioner that he is not a Public Servant within the meaning of the PC Act is not sustainable in the eyes of law.

**36.** Further submission has been made that the investigating officer has found sufficient material against the petitioner and accordingly, submitted charge sheet for commission of offence defined under Section 3 of PMLA, 2002 and punishable under Section 4 of PMLA against him. Further, paragraph 6.5, 6.6, 6.8, 6.9, and 7 etc. of the prosecution complaint clearly depicts that the ill-gotten money i.e. proceeds of crime was found in the possession of the petitioner.

**37.** Submission has been made that the learned trial court considering the aforesaid fact into consideration has found that there are sufficient materials against the

petitioner for framing charge for the offence u/s 4 of P.M.L. Act in the instant case. Hence, the petition for discharge filed on behalf of the petitioner was rejected, which requires no interference by this Court.

### **Analysis**

**38.** Heard the learned counsel for the parties, gone across the pleading available on record as also the finding recorded by learned court.

**39.** This Court, before appreciating the argument advanced on behalf of the parties, deems it fit and proper to discuss herein some of the provisions of law as contained under the Act, 2002 with its object and intent.

**40.** The Act 2002 was enacted to address the urgent need to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof including vesting of it in the Central Government, setting up of agencies and mechanisms for coordinating measures for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

**41.** The issues were debated threadbare in the United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Basle Statement of Principles

enunciated in 1989, the FATF established at the summit of seven major industrial nations held in Paris from 14th to 16th July, 1989, the Political Declaration and Noble Programme of Action adopted by United Nations General Assembly vide its Resolution No. S-17/2 of 23.2.1990, the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8<sup>th</sup> to the 10<sup>th</sup> June, 1998, urging the State parties to enact a comprehensive legislation. This is evident from the introduction and Statement of Objects and Reasons accompanying the Bill which became the 2002 Act. The same reads thus:

#### **“INTRODUCTION**

*Money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. To obviate such threats international community has taken some initiatives. It has been felt that to prevent money-laundering and connected activities a comprehensive legislation is urgently needed. To achieve this objective the Prevention of Money-laundering Bill, 1998 was introduced in the Parliament. The Bill was referred to the Standing Committee on Finance, which presented its report on 4th March, 1999 to the Lok Sabha. The Central Government broadly accepted the recommendation of the Standing Committee and incorporated them in the said Bill along with some other desired changes.*

#### **STATEMENT OF OBJECTS AND REASONS**

*It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems*

*of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:—*

*(a) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.*

*(b) the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money-laundering.*

*(c) the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of the important heads are—*

*(i) declaration of laundering of monies carried through serious crimes a criminal offence;*

*(ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;*

*(iii) confiscation of the proceeds of crime;*

*(iv) declaring money-laundering to be an extraditable offence; and*

*(v) promoting international co-operation in investigation of money-laundering.*

*(d) the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, inter alia, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and*

*enactment of legislation to prevent such laundering. (e) the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.”*

**42.** It is, thus, evident that Act 2002 was enacted in order to answer the urgent requirement to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

**43.** It needs to refer herein the definition of “proceeds of crime” as provided under Section 2(1)(u) of the Act, 2002 which reads as under:

*“2 (1) (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 3[or where such property is taken or held outside the country, then the property equivalent in value held within the country] 4[or abroad]; [Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]”*

**44.** It is evident from the aforesaid provision that “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 or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

**45.** In the explanation it has been referred that for removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. The aforesaid explanation has been inserted in the statute book by way of Act 23 of 2019.

**46.** It is, thus, evident that the reason for giving explanation under Section 2(1)(u) is by way of clarification to the effect that whether as per the substantive provision of Section 2(1)(u), the 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 or where such property is taken or held outside the country but by way of explanation the proceeds of crime has been given broader implication by including property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be

derived or obtained as a result of any criminal activity relatable to the scheduled offence.

**47.** The “property” has been defined under Section 2(1)(v) which means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

**48.** The schedule has been defined under Section 2(1)(x) which means schedule to the Prevention of Money Laundering Act, 2002. The “scheduled offence” has been defined under Section 2(1)(y) which reads as under:

*“2(y) “scheduled offence” means— (i) the offences specified under Part A of the Schedule; or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or (iii) the offences specified under Part C of the Schedule.”*

**49.** It is evident that the “scheduled offence” means the offences specified under Part A of the Schedule; or the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or the offences specified under Part C of the Schedule.

**50.** The offence of money laundering has been defined under Section 3 of the Act, 2002 which reads as under:

**“3. Offence of money-laundering.**—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with 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 money-laundering. [Explanation.— For the removal of doubts, it is hereby clarified that,— (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:— (a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever; (ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]”

**51.** It is evident from the aforesaid provision that “offence of money-laundering” means 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 money-laundering.

**52.** It is further evident that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

**53.** The punishment for money laundering has been provided under Section 4 of the Act, 2002.

**54.** The various provisions of the Act, 2002 alongwith interpretation of the definition of “***proceeds of crime***” has been dealt with by the Hon’ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors., (2022) SCC OnLine SC 929*** wherein the Bench comprising of three Hon’ble Judges of the Hon’ble Supreme Court has decided the issue by taking into consideration the object and intent of the Act, 2002.

**55.** The interpretation of the condition which is to be fulfilled while alleging the person involved in the predicate offence has been made as would appear from paragraph 265, which reads as under:

*“265. To put it differently, the section as it stood prior to 2019 had itself incorporated the expression “including”, which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation)*

predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word “and” preceding the expression “projecting or claiming” therein. This Court in *Pratap Singh v. State of Jharkhand*, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the Courts having regard to the fact that India is a party to the said treaties. This Court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by Parliament must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and convention as our constitution takes note of the institutions of the world community which had been created. In *Apparel Export Promotion Council v. A.K. Chopra*, the Court observed that domestic Courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in *Githa Hariharan*, as also in *People's Union for Civil Liberties, and National Legal Services Authority v. Union of India*.”

**56.** It is evident from the observation so made as above that the purposes and objects of the 2002 Act for which it

has been enacted, is not limited to punishment for offence of money-laundering, but also to provide measures for prevention of money-laundering. It is also to provide for attachment of proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to confiscation of such proceeds under the 2002 Act. This Act is also to compel the banking companies, financial institutions and intermediaries to maintain records of the transactions, to furnish information of such transactions within the prescribed time in terms of Chapter IV of the 2002 Act.

**57.** The predicate offence has been considered in the aforesaid judgment wherein by taking into consideration the explanation as inserted by way of Act 23 of 2019 under the definition of the “proceeds of crime” as contained under Section 2(1)(u), whereby and whereunder, it has been clarified for the purpose of removal of doubts that, the "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence, meaning thereby, the words “any property which may directly or indirectly be derived or obtained as a result

of any criminal activity relatable to the scheduled offence” will come under the fold of the proceeds of crime.

**58.** In the judgment rendered by the Hon’ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.*** (*supra*) as under paragraph 284, it has been held that the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of “proceeds of crime”. Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.

**59.** Now, after having discussed the judgments passed by the Hon’ble Apex Court on the issue of various provisions of the Act, 2002, this Court, is proceeding to discuss the principle of discharge.

**60.** It is well settled that at the time of framing of charge meticulous examination of evidence is not required, however the evidence can be sifted or weighed at least for the purpose of recording a satisfaction that a *prima facie*

case is made out for framing charge to proceed in the case. Further the trial Court is not required to discuss the evidence for the purpose of conducting a trial but the discussion of the materials on record is required to reflect the application of judicial mind for finding that a *prima-facie* case is made out against the petitioner.

**61.** It is settled connotation of law that at the stage of framing of charge, the probable defence of the accused is not to be considered and the materials, which are relevant for consideration, are the allegations made in the First Information Report/complaint, the statement of the witnesses recorded in course of investigation, the documents on which the prosecution relies and the report of investigation submitted by the prosecuting agency. The probative value of the defence is to be tested at the stage of trial and not at the stage of framing of charge and at the stage of framing of charge minute scrutiny of the evidence is not to be made and even on a very strong suspicion charges can be framed.

**62.** Further it is settled position of law that at the stage of framing the charge, the trial Court is not required to meticulously examine and marshal the material available on record as to whether there is sufficient material against the accused which would ultimately result in conviction.

The Court is *prima facie* required to consider whether there is sufficient material against the accused to presume the commission of the offence. Even strong suspicion about commission of offence is sufficient for framing the charge, the guilt or innocence of the accused has to be determined at the time of conclusion of the trial after evidence is adduced and not at the stage of framing the charge and, therefore, at the stage of framing the charge, the Court is not required to undertake an elaborate inquiry for the purpose of sifting and weighing the material.

**63.** The issue of discharge was the subject matter before the Hon'ble Supreme Court in the case of ***State of Tamilnadu, by Inspector of Police in Vigilance and Anti- Corruption v. N. Suresh Rajan and Others, (2014) 11 SCC 709***, wherein at paragraphs no.29, 32.4, 33 and 34 the Hon'ble Apex Court has been observed as under:-

*"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the*

said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

32.4. While passing the impugned orders [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 22 of 2009, order dated 10-12-2010 (Mad)] , [State v. K. Ponmudi, (2007) 1 MLJ (Cri) 100] , the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)] suffers from grave error and calls for rectification.

33. Any observation made by us in this judgment is for the purpose of disposal of these appeals and shall

*have no bearing on the trial. The surviving respondents are directed to appear before the respective courts on 3-2-2014. The Court shall proceed with the trial from the stage of charge in accordance with law and make endeavour to dispose of the same expeditiously.*

*34. In the result, we allow these appeals and set aside the order of discharge with the aforesaid observations."*

**64.** It has been further held in the case of **Asim Shariff v. National Investigation Agency, (2019) 7 SCC 148**, that mini trial is not expected by the trial court for the purpose of marshalling the evidence on record at the time of framing of charge. It has been held at paragraph no.18 of the said judgment as under:-

*"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to*

*exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record."*

**65.** It is further settled position of law that defence on merit is not to be considered at the time of stage of framing of charge and that cannot be a ground of discharge. A reference may be made to the judgment as rendered by the Hon'ble Apex Court in ***State of Rajasthan v. Ashok Kumar Kashyap, (2021) 11 SCC 191***. For ready reference Paragraph no.10 to 17 of the said judgment are quoted below:-

*"10. By the impugned judgment [Ashok Kumar Kashyap v. State of Rajasthan, 2018 SCC OnLine Raj 3468] and order, the High Court in exercise of its revisional jurisdiction has set aside the order passed by the learned Special Judge framing the charge against the accused under Section 7 of the PC Act and consequently has discharged the accused for the said offence. What has been weighed with the High Court while discharging the accused is stated in paras 10 and 11 of the impugned judgment [Ashok Kumar Kashyap v. State of Rajasthan, 2018 SCC OnLine Raj 3468] and order, which are reproduced hereinabove.*

*11. While considering the legality of the impugned judgment [Ashok Kumar Kashyap v. State of Rajasthan, 2018 SCC OnLine Raj 3468] and order passed by the High Court, the law on the subject and few decisions of this Court are required to be referred to.*

*11.1. In P. Vijayan [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] , this*

*Court had an occasion to consider Section 227 CrPC. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.*

*11.2. In the recent decision of this Court in M.R. Hiremath [State of Karnataka v. M.R. Hiremath, (2019) 7 SCC 515 : (2019) 3 SCC (Cri) 109 : (2019) 2 SCC (L&S) 380] , one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under : (SCC p. 526) "25. The High Court [M.R. Hiremath v. State, 2017 SCC OnLine Kar 4970] ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several*

decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N. v. N. Suresh Rajan* [*State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29) '29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.' "

12. We shall now apply the principles enunciated above to the present case in order to find out whether in the facts and circumstances of the case, the High Court was justified in discharging the accused for the offence under Section 7 of the PC Act.

13. Having considered the reasoning given by the High Court and the grounds which are weighed with the High Court while discharging the accused, we are of the opinion that the High Court has exceeded in its

*jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 CrPC. While discharging the accused, the High Court has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court has considered in detail the transcript of the conversation between the complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all.*

*14. As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the learned Special Judge having found that there is a prima facie case of the alleged offence under Section 7 of the PC Act, framed the charge against the accused for the said offence. The High Court materially erred in negating the exercise of considering the transcript in detail and in considering whether on the basis of the material on record the accused is likely to be convicted for the offence under Section 7 of the PC Act or not.*

*15. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application.*

16. We are not further entering into the merits of the case and/or merits of the transcript as the same is required to be considered at the time of trial. Defence on merits is not to be considered at the stage of framing of the charge and/or at the stage of discharge application.

17. In view of the above and for the reasons stated above, the impugned judgment [Ashok Kumar Kashyap v. State of Rajasthan, 2018 SCC OnLine Raj 3468] and order passed by the High Court 28 discharging the accused under Section 7 of the PC Act is unsustainable in law and the same deserves to be quashed and set aside and is accordingly hereby quashed and set aside and the order passed by the learned Special Judge framing charge against the accused under Section 7 of the PC Act is hereby restored. Now the case is to be tried against the accused by the competent court for the offence under Section 7 of the PC Act, in accordance with law and its own merits."

**66.** The Hon'ble Apex Court has further dealt with the proper basis for framing of charge in the case of **Onkar Nath Mishra & Ors Vs. State (NCT of Delhi) and Anr.** wherein at paragraphs 11, 12 and 14 it has been held as under: -

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground

*for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.*

*12. In State of Karnataka v. L.Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] , a three-Judge Bench of this Court had observed that at the stage of framing the charge, the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasised.*

*14. In a later decision in State of M.P. v. Mohanlal Soni [(2000) 6 SCC 338 : 2000 SCC (Cri) 1110] this Court, referring to several previous decisions held that: (SCC p. 342, para 7)*

*"7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."*

**67.** The Hon'ble Apex Court in the case of **Palwinder Singh Vs. Balvinder Singh & others (2009) 3 SCC(Cri) 850** has been pleased to hold that charges can also be framed on the basis of strong suspicion. Marshaling and appreciation of the evidence is not in the domain of the court at that point of time.

**68.** Further it is pertinent to mention here that power to discharge an accused was designed to prevent harassment to an innocent person by the arduous trial or the ordeal of prosecution. How that intention is to be achieved is reasonably clear in the section itself. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. Besides, he has the assistance of counsel for the accused and Public Prosecutor. He is required to hear both sides before framing any charge against the accused or for discharging him. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice which stares the court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed. Reference in this regard may be taken from the judgment as rendered by the Hon'ble Apex Court in ***Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715.***

**69.** In the backdrop of aforesaid case laws and judicial deduction, this Court is now proceeding to examine the fact so as to come to the conclusion as to whether the evidence which has been collected in course of investigation and has been brought on record, as would be available in the impugned order *prima facie* case against the petitioner is made out or not?

**70.** This Court deems it fit and proper to scrutinize the evidence collected in course of investigation by the investigating agency as has been recorded in the charge-sheet which is appended to the instant petitions.

**71.** It is evident from the factual aspects that the NCLT vide its order dated 22.11.2019 and 06.01.2020 appointed the petitioner, as interim Resolution Professional (IRP) for Corporate Debtors, M/s Adi Ispat Private limited and M/s Bir Ispat Pvt. Ltd., Giridih in terms of Section 7(3)(b) r/w Section 16 of IBC, 2016 and later his appointment was confirmed by the committee of creditors under Section 22.

**72.** The complainant is Amit Sarawgi, Director of M/s Adi Ispat (P) Limited and it is alleged that Resolution Professional/Petitioner had demanded a bribe of Rs.2,00,000/- per month for showing leniency in the insolvency resolution process for extending CIRP process from 09 months to 02 years and also demanded

Rs.20,00,000/- for obtaining favourable forensic audit/valuation report from his chosen Forensic Auditor/Valuer and for helping in repossession of plant/company.

**73.** The Resolution Professional/Petitioner had offered him that SME, the complainant was entitled to participate in the auction proceeding of the Bank and if he met the demands, he would prepare his report leniently enabling him re-possess his plant/company. The complaint was discreetly verified. Trap team was constituted and raid was conducted at Giridih at the Company office, where the Resolution Professional/Petitioner was caught read handed on 11.2.2020 in the presence of independent witnesses accepting the illegal gratification from the complainant.

**74.** The foremost argument as made by the learned counsel for the petitioner that Section 7 of Prevention of Corruption Act, 1988 Act will not apply to this Resolution Professional (RP)/Petitioner as a Resolution Professional is not a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 or under Section 21 of the IPC.

**75.** It needs to refer herein that sub-section (v) of Section 2(c) of the Prevention of Corruption Act defines public servant. Further it is the nature of a duty, not an

individual's position, that discloses whether or not the person carrying it out is a public servant. Under the Prevention of Corruption Act the concept was to replace the notion of conventionally recognized public officials with those who carry out public duties.

**76.** Further it is evident from the record that earlier the petitioner had preferred the Criminal Miscellaneous Petition being Cr.M.P. No. 1048 of 2021 for quashing of entire criminal proceeding arising out of the instant case, instituted against the petitioner including the F.I.R. being R.C.1(A)/2020-D, CBI, ACB, Dhanbad for the offence under Section 7 of Prevention of Corruption Act, 1988 by raising the similar ground which has been raised herein that petitioner is not a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 or under Section 21 of the IPC therefore charges under Prevention of Corruption Act cannot be alleged against him.

**77.** The learned Single Judge of this Court vide order dated 05.04.2023 passed in the aforesaid Petition being Cr.M.P. No. 1048 of 2021 while taking in to consideration the aforesaid ground of the petitioner has observed that from nature of assignment and duty to be performed by the RP and his office entails performance of functions which are in the nature of public duty and therefore will come

within the meaning of public servant both under sections 2 (c) (v) & (viii) of the PC Act. For ready reference the relevant paragraph of the aforesaid Judgment is being quoted as under:

*“18. This court is of the view that resolution professional will come within the meaning of a public servant under Section 2(c) of the PC Act for the reason that definition of public servant as given under the PC Act is very wide and expansive. It is not limited to those serving under the Government or its instrumentalities and drawing salary from the public exchequer. Apart from the list of the functionaries given in Section 2 (c), the definition also lays down the functional criteria to include within its fold those discharging public duty or any duty authorized by a court of justice, in connection with administration of justice. In **State v. C.N. Manjunath, (2017) 11 SCC 361** the question involved was whether the licensed surveyors in Taluks came within the meaning of ‘public servant’ under the PC Act. It was held :*

*8. Once the nature of performance of duties gets crystallised, no doubt remains that these licensed surveyors would come within the ambit of Section 2(c) of the Prevention of Corruption Act and particularly clauses (i) and (viii) thereof, which defines “public servant” to mean: “2. (c)(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty; (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;”*

*9. We would also like to refer to the definition of “public duty” as contained in Section 2(b) of the Prevention of Corruption Act, which reads as under: “2. (b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest.”*

*The Hon'ble Supreme Court held that they were public servant as they were discharging public duty.*

19. *The petitioner was appointed as an interim resolution professional under Section 16 of the I & B Code, 2016 and later his appointment was confirmed by the committee of creditors under Section 22. 20. Under Section 16 (1) an interim resolution professional is appointed by the adjudicating authority on the insolvency commencement date. Under section 22 (3)(a), the committee of creditors after taking a decision to continue the interim resolution professional as the resolution professional, is required to communicate its decision to Adjudicating Authority and others. Even in cases where resolution professional appointed under section 22 is replaced by the committee of creditors under section 27, the name of the insolvency professional proposed to be appointed is to be forwarded to the Adjudicating Authority under Section 22(3), and thereafter the Adjudicating Authority is to forward the name of the proposed resolution professional to the Board for its confirmation in the same manner as laid down in Section 16. Against this scheme of the I&B Code the plea advanced on behalf of the petitioner that Adjudicating Authority had no role in the appointment of Resolution Professional is not sustainable.*

21. *Considering the fact that the appointment of Resolution Professional is made during the resolution process before the Company Law Tribunal with its approval, he will be a public servant under Section 2(c)(v) of the P.C. Act.*

26. *From the aforesaid discussion it is manifest that the appointment of resolution professional is made by the National Company Law Tribunal, which is the Adjudicating Authority for the insolvency resolution process of the companies under the I & B Code, 2016. Resolution Professional has a key role to play in the insolvency resolution process and to protect the assets of the corporate debtors. From his nature of assignment and duty to be performed his office entails performance of functions which are in the nature of public duty and therefore will come within the meaning of public servant both under sections 2 (c) (v) & (viii) of the PC Act."*

**78.** Thus, from the aforesaid order it is evident that the learned Single Judge of this Court has categorically held that Resolution Professional is made during the resolution process before the Company Law Tribunal with its approval, he will be a public servant under Section 2(c)(v) of the P.C. Act.

**79.** Further, it needs to refer herein that this Court is bound with the aforesaid view of the learned Single Judge in the light of judicial discipline and theory of judicial precedence; so long it is not being reversed by the Higher Forum.

**80.** However, the learned counsel for the appellant has put his reliance upon the judgment rendered by the Delhi High Court in the case of **W.P (Cr1.) No. 544 of 2020 [Dr. Arun Mohan Vs. CBI]**.

**81.** The learned single Judge of Delhi High Court in the case of **Dr. Arun Mohan Vs. CBI (supra)** while taking into consideration of the order dated 05.04.2023 passed in the Cr.M.P. No. 1048 of 2021 by the learned Single Judge of this Court has taken the contrary view and observed that an Insolvency Professional does not fall within the meaning of "public servant" as ascribed in any of the clauses of sub-section (c) of section 2 of the Prevention of Corruption Act, 1988.

**82.** Consequent to the aforesaid order the CBI had preferred an appeal being Special Leave Petition (Criminal) Diary no(s). 23266/2024 before the Hon'ble Apex court which is still pending for final adjudication.

**83.** Thus, from the aforesaid discussion it is evident that the issue whether an Insolvency Professional fall within the meaning of "public servant" or not is still awaiting final adjudication before the Hon'ble Supreme Court but as per the judicial discipline and theory of judicial precedence this Court is bound with the order passed by the learned single Judge of this Court wherein it has been observed that Resolution Professional has a key role to play in the insolvency resolution process and to protect the assets of the corporate debtors and from his nature of assignment and duty to be performed his office entails performance of functions which are in the nature of public duty and therefore will come within the meaning of public servant both under sections 2 (c) (v) & (viii) of the PC Act.

**84.** Further, it needs to refer herein that a bare reading of Section 232 of the I&B Code 2016 reveals that RP is not listed amongst persons who are public servant within the meaning of Section 21 of the then IPC and Section 233 I&B Code 2016 protects to RP for any acts done in good faith. At

the same time, the duties and functions of RP u/s 208 I&B Code 2016 are public in nature. These responsibilities of RP are closely linked to bank loans that accept public deposits; as a result, it can be said that RP is carrying out public functions.

**85.** Further, Sec 7(1) of the Code states that “*A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor,...*”. This signifies that the legislature by including “any person” under the said Section has intended that, even though such debt is not due and payable to that person, such person can initiate CIRP u/s 7(1). It is thus inferred that FC’s, majority of them being banks are dealing with public money which is in turn dealt by RP. This makes him accountable for his actions towards public.

**86.** This Court is of the view that since the duties performed by RP are public in nature, they are public servants and Sec 2(c) of Prevention of Corruption Act is pretty clear that an individual who performs public duties are public servants for the purpose of the Act and hence, the legislature would have felt that there are no explicit provisions are required. Although the RP might not possess adjudicatory powers but he undeniably possesses administrative powers, therefore, RP will come under the

ambit of Public Servant to the extent of his powers as an administrator or the Corporate Insolvency Resolution Process. The learned Single Judge of this Court had made it clear that the meaning of ‘public servant’ under Section 2(c) of the PC Act is not limited to those serving under the Government or its instrumentalities and drawing salary from the public exchequer. He emphasised that the nature of assignment and duty to be performed would determine if one is to be considered as a ‘public servant’ or not. In case of Resolution Professional, the Single Judge opined that, they perform functions akin to ‘public duty’. He also noted that though the Insolvency and Bankruptcy Code, 2016 (IBC) is a self-contained code, if a Resolution Professional takes bribes in order to favour a party the Prevention of Corruption Act would be applicable.

**87.** Therefore, in the backdrop of the aforesaid discussion the contention of the learned counsel for the petitioner that **‘Resolution Professional’** will not come within the meaning of **‘Public Servant’** under Section 2 (c) of the PC Act is not tenable in the eyes of law.

**88.** Now in the light of aforesaid discussion at this juncture this Court deems it fit and proper to revisit the facts of the case in order to ascertain the issue of discharge.

**89.** Before advertent to the facts of the instant case this Court would like to reiterate the settled proposition of law regarding discharge.

**90.** It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction.

**91.** At this stage what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

**92.** The position of law that emerges is that at the stage of discharge/framing of charge, the Judge is merely required to take note of the material on record in order to find out whether or not there is sufficient ground for proceeding against the accused.

**93.** In the purview of aforesaid settled legal position this Court is now adverting to the facts of the case.

**94.** It needs to refer herein that from the impugned order it appears that earlier the present petitioner had filed an application for discharge before special Judge vide M.C.A. No. 2275/2022 which was premature, hence the same was withdrawn vide order dated 04.02.2023 with a cost of Rs. 1,000/-

**95.** From the factual aspect it is evident that the CBI, ACB, Dhanbad investigated the matter and filed the charge-sheet u/s 7 of PC Act (Amended in 2018) which revealed that the said Amit Sarawgi availed credit facilities to the tune of Rs. 74 Crores and Rs. 3.6 Crores in the names of his companies namely M/s Adi Ispat Pvt. Ltd. and M/s Sri Bir Ispat Pvt. Ltd. respectively from State Bank of India, SME branch, Giridih. The complainant could not pay the outstanding loan amounts and both the loan accounts were declared Non-Performing Assets (NPA). It has also revealed that State Bank of India filed applications before the NCLT,

Kolkata Bench for initiation of Corporate Insolvency Resolution Process under section 7 of the Insolvency and Bankruptcy Code, 2016 in the matter of M/s Adi Ispat Pvt. Ltd. and M/s Sri Bir Ispat Pvt. Ltd.

**96.** The NCLT, Kolkata Bench passed orders dated 22-11-2019 and 06-01-2020 with respect to M/S Adi Ispat Pvt. Ltd, Giridih and M/S Sri Bir Ispat Pvt. Ltd., Giridih respectively and thereby appointed the present petitioner who is a CA as Interim Resolution Professional ('IRP') towards Corporate Insolvency Resolution Process (CIRP) of both the companies.

**97.** The recorded conversation between Amit Sarawgi and the accused petitioner confirmed the allegations made in the complaint before CBI. It is also transpired during verification that the accused agreed to accept Rs. 5 lakhs as first installment out of demanded bribe amount of Rs. 20 lakhs from Amit Sarawgi, he informed the accused that the bribe money was well be arranged and accused acknowledged that. However, after some time, the accused expressed his fear in carrying such huge cash (Rs. 5 Lakhs). Finally, the accused petitioner decided to take 3 Lakhs as a bribe that time. The complaint also reveals that the tainted bribe amount of Rs. 3 lakhs were recovered from the accused during raid and remaining bribe money of

Rs 2 Lakhs regarding which the accused directed the Amit Sarawgi, during the meeting, to bring to Patna was recovered from the drawer of the office table, which was also taken in possession by CBI.

**98.** Thus, in investigation it has come that the petitioner being an Insolvency Professional accepted Rs. 5 lakhs of illegal gratification from Amit Sarawgi, Director of Adi Ispat Pvt. Ltd. and Sri Bir Ispat Pvt. Ltd., promising to show leniency in insolvency proceedings and help him to take control of the company.

**99.** Further, it has been mentioned in the prosecution complaint that the petitioner is knowingly a party and actually involved in the activities connected to the proceeds of crime viz. its acquisition, concealment and claiming the proceeds of crime as untainted property. Paras- 6.5, 6.6, 6.8, 6.9, and 7 etc. of the prosecution complaint depict that the ill-gotten money i.e. “proceeds of crime” was found in the possession of the petitioner.

**100.** It needs to refer herein that based upon the definition Clause (u) of sub-section (1) of Section 2 of the Act 2002 which defines “proceeds of crime”, it is evident that clause (v) of sub-section (1) of Section 2 of PMLA defines “property” to mean any property or assets of every

description, whether corporeal or incorporeal, movable or immovable, tangible or intangible.

**101.** To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The explanation clarifies that the proceeds of crime include property, not only derived or obtained from scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime.

**102.** Carving out a line between the material evidences available in the complaint and the grounds taken by the accused persons, seeking discharge, are to be considered with reference to the objectives of the PMLA.

**103.** Section 3 of PMLA unambiguously stipulates that whosoever indirectly attempts to indulge or knowingly assist or knowingly is a party, are also guilty of offence of money laundering.

**104.** Mere concealment or possession or use, would be sufficient to prosecute a person under Section 3 of PMLA. The connecting material evidences would be sufficient for the purpose of allowing the trial to go on. It is not necessary

that there must be a direct link between the accused and the offence of money laundering. Indirect involvement and the connecting link, if established, would be sufficient for the purpose of prosecuting the person and therefore, discharge under Section 227 of Criminal Procedure Code in respect of PMLA cases cannot be granted.

**105.** The scope of PMLA is distinct and different and the objectives are louder in order to protect the economy of the State. The ill-effects of money laundering had been debated in Parliament and such special enactments are made to curb money laundering.

**106.** The expression “money-laundering”, ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, Section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money-laundering. This is amply clear from the original provision, which has been further clarified by insertion of Explanation vide Finance (No. 2) Act, 2019, Section 3, as amended. The act of projecting or claiming

proceeds of crime to be untainted property presupposes that the person is in possession of or is using the same (proceeds of crime), also an independent activity constituting offence of money-laundering. In other words, it is not open to read the different activities conjunctively because of the word “and”. If that interpretation is accepted, the effectiveness of Section 3 of the 2002 Act can be easily frustrated by the simple device of one person possessing proceeds of crime and his accomplice would indulge in projecting or claiming it to be untainted property so that neither is covered under Section 3 of the 2002 Act. Thus, a person who is as long as in possession and enjoyment of Proceeds of Crime, PMLA can certainly be invoked.

**107.** The question that whether mere receipt of bribe money is an act of money laundering or not is elaborately considered by the Apex Court of India in the case of **Y. Balaji v. Karthik Dasari** as reported in **2023 OnLine SC 645** follows:—

*“100. It is this bribe money that constitutes the ‘proceeds of crime’ within the meaning of section 2(1)(u) of PMLA. It is no rocket science to know that a public servant receiving illegal gratification is in possession of proceeds of crime. The argument that the mere generation of proceeds of crime is not sufficient to constitute the offence of money-laundering, is actually preposterous. As we could see from Section 3, there are six processes or activities identified*

*therein. They are, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; and (vi) claiming as untainted property. If a person takes a bribe, he acquires proceeds of crime. So, the activity of “acquisition” takes place. Even if he does not retain it but “uses” it, he will be guilty of the offence of money-laundering, since “use” is one of the six activities mentioned in Section 3”.*

**108.** Further, it needs to refer herein the statutory provisions regarding discharge of an accused person and framing charges against him, are contained in Sections 227 and 228 of the Criminal Procedure Code.

**109.** The difference between the approach with which the Court should examine the matter in the aforesaid Sections has been explained by the Hon'ble Supreme Court in ***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460***, in the following words:—

*“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and*

*the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.*

*\* \* \**

*30. We have already noticed that the legislature in its wisdom has used the expression “there is ground for presuming that the accused has committed an offence”. This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in State of Maharashtra v. Som Nath Thapa (1996) 4 SCC 659 referred to the meaning of the word “presume” while relying upon Black's Law Dictionary. It was defined to mean “to believe or accept upon probable evidence”; “to take as proved until evidence to the contrary is forthcoming”. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was a civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence.*

**110.** Thus, it is evident that the law regarding the approach to be adopted by the court while considering an

application for discharge of the accused persons under Section 227 and approach while framing charges under Section 228 of the Code, is that while considering an application for discharge of the accused under Section 227 of the Code, the Court has to form a definite opinion, upon consideration of the record of the case and the documents submitted therewith, that there is not sufficient ground for proceeding against the accused. However, while framing charges, the Court is not required to form a definite opinion that the accused is guilty of committing an offence. The truth of the matter will come out when evidence is led during the trial. Once the facts and ingredients of the Section exist, the court would presume that there is ground to proceed against the accused and frame the charge accordingly and the Court would not doubt the case of the prosecution.

**111.** The learned counsel for the petitioner has contended that the alleged trap case from which the petitioner has been booked in this case and if the circumstances of that case even if taken on its face value for the sake of argument, even then the alleged money which has been allegedly trapped from this petitioner was under deemed custody of CBI (ACB), because it was having ambush watch over the entire episode. Hence, the

petitioner was never put in possession of the alleged cash, which is said to have been recovered from the possession of the petitioner.

**112.** At this juncture, it needs to refer herein that as per ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.(supra)*** the condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. It has been given therein that on plain reading of Section 3 of the Act, 2002, an offence under Section 3 can be committed after a scheduled offence is committed. By giving an example, it has been clarified that if a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime, in that case, he can be held guilty of committing an offence under Section 3 of the PMLA.

**113.** It is settled position of law that Section 3 of the PMLA captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The expression “and” occurring in Section 3 has to be construed as “or” so as to include “every” process or activity indulged into by anyone. Projecting or claiming the property as untainted

property would constitute an offence of money laundering on its own, being an independent process or activity. The interpretation suggested that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, is not tenable.

**114.** In the backdrop of the aforesaid settled legal position and in the light of contention of the learned counsel for the petitioner that in the alleged trap case the alleged money which has been allegedly trapped from this petitioner was under deemed custody of CBI (ACB), because it was having ambush watch over the entire episode hence, the petitioner was never put in possession of the alleged cash, which is said to have been recovered from the possession of the petitioner, therefore alleged offence is not made out herein, this Court is going to revisit the factual aspects of the instant case.

**115.** It has come in the investigation that during the trap laid by the CBI, Shree Amit Sarwagi gave bribe of Rs. 5 Lakh to Shri Sanjay Kumar Agarwal (petitioner) on 11.02.2020 out of which Rs. 3 Lakh was accepted by him and for remaining Rs. 2 Lakhs, he directed Shri Amit Sarawgi to deliver in Patna. Immediately after the incident, CBI officials caught Shri Sanjay Kumar Agarwal red

handed. Shri Sanjay Kumar Agarwal stated under section 50 of PMLA that Shri Amit Sarawgi withdrew cash of Rs. 10 lakhs from the current Account of Adi Ispat Pvt. Ltd. of Andhra Bank Giridih and when Shri Sanjay Kumar Agarwal came to know, he objected and desired to hand over the cash to Sanjay Kumar Agarwal so that he could carry it all the way from Giridih to Kolkata and deposit in ICICI Bank account of Adi Isapat Pvt. Ltd, which he opened after the process of resolution started.

**116.** Thus, from the aforesaid fact, *prima facie* it appears that Sanjay Agarwal has given a baseless reason regarding the cash handling reason being that no complaint was filed by Sanjay Kumar Agarwal before NCLT regarding the claimed withdrawal of cash by Shri Amit Sarawgi. Further, Shri Sanjay Kumar Agarwal did not take any action against Shri Amit Sarawgi, even after knowing that if any key person of Corporate Debtors takes away/alienate/transfer any property/assets of the subjected company, a legal action is required to be taken by the IRP/RP wherein IRP/RP has to file an application with NCLT seeking directions and act on the directions of NCLT. But Shri Sanjay Kumar Agarwal had not informed regarding withdrawal of cash by Amit Sarawgi.

**117.** Further, Sanjay Kumar Agarwal has himself admitted in the statements recorded under Section 50 of PMLA that he accepted money from Amit Sarawgi though he stated that he had accepted the said money in order to deposit it in the bank account of Adi Ispat Pvt. Ltd, thus, it can be inferred that he accepted illegal gratification and tried to project it as untainted money.

**118.** It has revealed in the investigation that out of these 5 lakhs, petitioner asked Amit Sarangi to hand over Rs. 2 lakhs to him at Patna at the time of next meeting, therefore *prima facie* ingredients of Section 3 of PMLA i.e. acquisition, possession and transfer are all available in this case in order to establish case of offence of money laundering.

**119.** At this juncture it needs to refer herein that if any person deals with proceeds of crime in any manner whether concealment of possession or acquisition or use, whether directly or indirectly, such person shall be guilty of offence of money laundering. In the instant case, *prima facie* it appears that the petitioner has knowingly acquired, possessed and had projected the proceeds of crime (illegal gratification) in such a manner as if it was untainted money and therefore, ingredients of offence of money laundering as per the provisions of Section 3 of PMLA is available herein.

**120.** In view of the fact, it appears that the complaint contains material evidences for prosecution, thus, the petitioner has to prove her innocence by undergoing the trial therefore, the aforesaid contention of the learned counsel for the petitioner that the alleged money which has been allegedly trapped from this petitioner was under deemed custody of CBI (ACB), and the petitioner was never put in possession of the alleged cash, which is said to have been recovered from the possession of the petitioner, therefore alleged offence is not made out, cannot be adjudicated herein in the light of aforesaid discussion and settled position of law as mentioned in the preceding paragraph.

**121.** This Court on the basis of aforesaid discussion factual aspect as also the legal position is of the view that there is no reason to believe by this Court that the petitioner is not involved in the alleged offence.

**122.** Further, the Hon'ble Apex Court in the case of ***Central Bureau of Investigation Vs Santosh Krnani and Another, 2023 SCC OnLine SC 427*** has observed that corruption poses a serious threat to our society and must be dealt with iron hands. The relevant paragraph of the aforesaid judgment is being referred as under:-

*“31. The nature and gravity of the alleged offence should have been kept in mind by the High Court.*

*Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority." Hence, the need to be extra conscious."*

**123.** This Court, in view of the aforesaid material available against the petitioner, is of the view, that in such a grave nature of offence, which is available on the face of the material, applying the principle of discharge wherein the principle of having *prima facie* case is to be followed, the nature of allegation since is grave and as such, it is not a fit case to allow the application for discharge.

**124.** The core of the Section 3 of the Act 2002 and the principles laid down by the Apex Court in ***Vijay Madanlal Chaudhary's case*** (supra), the scope of Section 2(1)(u) in conjunction with Section 3 has been considered by the Trial Court in a right direction as held by the Hon'ble Supreme Court of India and thus, this Court does not find any infirmity in respect of the findings made by the Trial Court in the order impugned.

**125.** For the foregoing reasons, having regard to facts and circumstances, as has been analysed hereinabove, the

petitioner failed to make out a special case for exercise of power for discharge.

**126.** Therefore, this Court is of the view that it is not a case for showing interference with the order passed by the learned trial court.

**127.** In view of the above facts, reasons and analysis and considering the principles of discharge, this Court is of the view that there is no infirmity in the impugned orders to warrant interference by this Court, accordingly, the instant petition is hereby dismissed.

**128.** Before parting with the order, it is made clear that the findings so recorded at by this Court are restricted only for the purpose of dealing with the matter of discharge and, as such, the trial Court will not be prejudiced by any of the observations so recorded by this Court during trial.

**129.** Pending Interlocutory Applications stand disposed of.

**(Sujit Narayan Prasad, J.)**

Alankar/-

**A.F.R**