



# THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

## Criminal Revision Application No.129 of 2023

Shyam Radhakrishna Malpani

Age:62 Years,

Occupation: Chartered Accountant,

Resident of 701, NavKaran,

Near Spring Field Building,

Near HDFC Bank,

Lokhandwala Complex,

Andheri (W), Mumbai-400053

... Applicant

Versus

1. The State of Maharashtra

2. The Directorate of Enforcement

Through the Assistant Director,

Mumbai Zonal Office, 4<sup>th</sup> Floor,

Kaiser E Hind Building,

Ballard Estate, Mumbai-400001

... Respondents

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Mr Pranav Badheka, Senior Advocate, along with Ms Aishwarya Sharma i/by Prashant Pawar, for the applicant.

Mr SS Pednekar, APP, for respondent No.1/State.

Mr HS Venegavkar, along with Mr Ayush Kedia, for respondent No.2/Enforcement Directorate.

Mr Nitin Sharma, EO, ED, present.

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**Coram: R.N.Laddha, J.**

**Reserved on: 13 June 2025**

**Pronounced on: 16 June 2025**

**Order:**

By this revision application, the applicant (accused No.44) seeks to challenge the order dated 17 March 2021 passed by the learned Additional Sessions Judge (Special Judge), Mumbai, below Exhibit 410, in PMLA Case No.2 of 2016, thereby rejecting the discharge application filed by the applicant.

2. The prosecution alleges that the applicant (accused No.44) actively participated in the offence of money laundering through both acts of omission and commission serving as the Chartered Accountant for the entities controlled by the Bhujbals. The applicant was responsible for auditing their financial records and was aware of the suspicious transactions and sham arrangements carried out by these entities. However, he failed to fulfil his professional obligations as an auditor and, by his inaction, enabled the Bhujbals to accumulate and launder illicit funds. The specific details of these allegations are outlined in paragraph 11.44 of the complaint, which reads thus:

*“11.44 – Shri Shyam Radhkrishna Malpani has indulged himself in the criminal activity of money laundering by his acts of omission and commission. Shri Shyam Malpani was*

*the Chartered Accountant and audited the books of accounts of the entities controlled by the Bhujbals and was in knowledge of all the dubious transactions and sham deals. He neglected his duties relating to auditing and allowed the Bhujbals to indulge in acquisition of illicit funds and its laundering. Despite his experience and knowledge of accounting and auditing, he allowed Shri Sameer Bhujbal in carrying out the criminal deeds resulting in the laundering of the huge proceeds of crime. He has, therefore, by his acts of omission and commission become directly responsible for the offence of money laundering as defined under Section 3 of PMLA, 2002, and is liable for punishment under Section 4 of PMLA, 2002.”*

3. Mr Pranav Badheka, the learned Senior Counsel appearing on behalf of the applicant, submitted that the Enforcement Case Information Report (‘ECIR’) dated 17 June 2015 was registered on the basis of two predicate offences: FIR No.32 of 2015 dated 8 June 2015, registered by the Anti-Corruption Bureau, Worli, under Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 (‘PC Act’), along with Sections 420, 465, 468, 471, 474, 477A, read with 120B and 34 of the Indian Penal Code (‘IPC’); and FIR No.35 of 2015 dated 11 June 2015, also registered by the Anti-Corruption

Bureau, Worli, under Sections 13(1)(c) and 13(1)(d) read with 13(2) of the PC Act, and Sections 406, 420, 465, 468, 471, 120B, 109, read with 34 of the IPC. Additionally, ECIR/BZO/08/2015, dated 17 June 2015, was registered based on FIR No.69 of 2015, dated 13 June 2015, registered by Taloja Police Station, under Sections 120B, 406, and 420 of the IPC and Sections 3, 4, 5 and 8 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, by respondent No.2.

4. The learned Senior Counsel further submitted that pursuant to these FIRs, ACB Special Case No.10 of 2016 was initiated based on FIR No.35 of 2015, in which all accused, including the prime accused, have been discharged except accused No.5. Similarly, in Sessions Case No.584 of 2018 arising from FIR No.69 of 2015, all four accused have been discharged except accused No.5. In fact, in both of the aforementioned predicate offence cases, accused Chhagan Bhujbal and his family members have been discharged by the learned Special Court, Mumbai. The learned Senior Counsel further submitted that the applicant has neither been named as an accused in any of these FIRs nor has he been charge sheeted in connection with any of the said offences.

5. According to the learned Senior Counsel, the role of a statutory auditor and the requirements under the Companies Act, 1956 ('CA, 1956'), are clearly laid out in Section 227 of the CA, 1956. This section governs the appointment of auditors and outlines the specific circumstances in which the auditor must seek clarification from the company's management. The section comprehensively defines the scope of an auditor's rights and duties, providing an exhaustive framework for their responsibilities. The financial records, including the balance sheet and notes to accounts, are prepared by the company's management. The statutory external auditor's role is limited to forming an opinion based on the supporting documentation, explanations provided by the management, and the financial statements prepared by the company. Relying on this material, the statutory auditor issues an opinion on whether the accounts are properly maintained and whether the balance sheet and profit and loss account have been prepared in accordance with auditing standards. The auditor is not expected to function as an investigator, nor is he obliged to scrutinise every individual transaction recorded in the company's books.

6. The learned Senior Counsel contended that negligence and knowledge are mutually exclusive and cannot co-exist in relation to the same transaction. Even assuming, for the sake of

argument, that the applicant was negligent, such negligence alone does not render him liable for any offence under the PMLA. There is no evidence on record, nor any material in the complaint, to substantiate the claim that the applicant failed in his duties as an auditor. A mere lack of due diligence, even if presumed, does not constitute the commission or omission of an offence. Negligence, by its nature, cannot be equated with involvement in money laundering, and it is not an element required to attract the offence under Section 3 of the PMLA.

7. Mr Badheka further submitted that the applicant audited the financial accounts only for the period from the financial year ending March 2012 to 2015. The alleged proceeds of crime-tainted money-are stated to have originated around 2007-2008. Therefore, there is no logical connection between the applicant's audit conducted in 2012 and the purported generation of tainted property in 2007-2008. Significantly, the learned Special Judge, while allowing the applicant's application under Section 88 of the CrPC (CRA No.129 of 2023), noted in paragraph 9 of the order dated 22 October 2016 that there are no allegations suggesting the applicant was involved in money laundering. Instead, the complaint only raises issues of alleged negligence in the applicant's duties as an auditor for various companies owned by accused Nos.1 to 3,

namely the Bhujbals. The Special Judge also observed that the allegations against the applicant are not of a serious or grave nature.

8. The learned Senior Counsel submitted that there is no allegation of money laundering or proceeds of crime ('PoC') attributable to the applicant. Notably, in a paragraph of the complaint titled 'Estimation of PoC', a table lists the names of individuals/ entities, the alleged laundered amounts and the relevant offence period. The applicant is listed at serial No.44 and the corresponding amount shown is 'NIL'. This, according to the learned Senior Counsel, amounts to an admission in the complaint itself that the applicant has not laundered any money and, therefore, cannot be said to have committed any offence under the relevant Act. Furthermore, the applicant is not mentioned in paragraph 4, serial No.13, under the column titled 'Concluding Facts', wherein others are alleged to have admitted to sham transactions intended to cover up cash exchanges. The applicant's statement contradicts this allegation. The learned Senior Counsel referred to paragraphs 15 and 16 of the impugned order, where the Special Judge categorically observed that the applicant had no knowledge of any cash-for-cheque transactions.

9. Mr Badheka further highlighted that in paragraph 13 of the order in CRA No.129 of 2023, the Special Judge correctly noted that framing of a charge requires legally admissible evidence. The statement of co-accused Jagdish Purohit, deemed inadmissible, does not implicate the applicant in any manner. Despite these observations, the learned Special Judge erroneously rejected the applicant's discharge application based on apparent mistakes and incorrect assumptions. Specifically, 'Note No.28' referred in paragraph 17 of the order was incorrectly attributed to the applicant. The note, part of the company's financial statements under Section 211 of the CA, 1956, is signed by the company's management, not its auditors. The Special Judge erroneously treated this as part of the applicant's audit report, which is factually incorrect and a patent error. Additionally, the Special Judge mistakenly assumed that Note No.28 pertained to transactions with Kumaon Engineering Private Limited. In reality, Note No.28 relates to unsecured loans from 'Bodies Corporate under the Same Management', which are detailed in Note No.39. As Kumaon Engineering was not under the same management, there is no connection between Note No.28 and the said transaction.

10. The learned Senior Counsel further contended that the



applicant was appointed as the statutory auditor for specific companies within the Bhujbal Group, rather than for those connected to Jagdish Purohit. As the statutory auditor for these particular Bhujbal Companies, the applicant could not reasonably have been aware of the financial activities of the companies linked to Jagdish Purohit.

11. The learned Senior Counsel further submitted that the observations made by the learned Special Judge in paragraph 18 of the impugned order, stating that Rs.4,56,000/- constituted more than 50% of the company's reserves and surplus, is factually incorrect and unsupported by the record. In reality, the company's reserves and surplus at the relevant time amounted to Rs.88.90 crores, as clearly reflected in the company's balance sheet. Furthermore, in the same paragraph, the learned Special Judge erroneously inferred that the applicant failed to verify the relevant documents during the audit. This conclusion is based on an incorrect assumption, as there is neither any material on record nor any such allegation made by respondent No.2. Notably, this is not even the case of the prosecution, nor has any witness made such a claim.

12. The learned Senior Counsel also drew the Court's attention to Sub-Section (3) of Section 215 of the CA, 1956,

and submitted that the learned Special Judge, in paragraphs 19, 20, and 21 of the order, proceeded on a misconception of the law and facts. He contended that the findings are contrary to the statutory provisions, the guidelines issued by the Institute of Chartered Accountants of India ('ICAI'), and the legal framework governing the scope, duties, and responsibilities of an auditor. The learned Senior Counsel further contended that the prosecution's reliance on the Guidance Note issued by the ICAI, concerning the audit of debtors, loans, and advances, to substantiate the applicant's alleged professional negligence, is fundamentally misplaced. He pointed out that the scope of the said Guidance Note is confined to auditing aspects related to loans and advances granted to debtors, and does not extend to the examination or verification of the receipts or recoveries arising from such advances. Consequently, he argued, the document is inapplicable to the present case and cannot be used as a valid benchmark to assess the applicant's alleged dereliction of duty.

13. The learned Senior Counsel further contended that the applicant had no role whatsoever in the alleged projection of tainted money. He emphasised that the funds in question were received through proper banking channels. Furthermore, the prosecution itself has categorised the applicant's statement

under paragraph 3.11.1 of the complaint, titled ‘Statements of Other Persons’ and the individuals listed in this section, Ajay Nensee, Manullah Kanchwala, and Claude Fernandez, have neither been named as accused nor cited as witnesses. The learned Senior Counsel further referred to Annexure-C of the complaint, where the prosecution has compiled a chronology of evidence detailing the documents relied upon and their evidentiary significance. At serial No.72, the prosecution references the applicant’s statement dated 8 March 2016, attributing its relevance solely to his role as an auditor of certain Bhujbal-controlled entities. This clearly indicates that the statement is being used only to establish that the applicant audited the books of these entities in his capacity as an external statutory auditor and nothing more. Additionally, the applicant’s association is limited to a period post-April 2012. Significantly, paragraph 7.9 of the complaint, titled ‘During the course of investigation, the following persons admitted to their roles in the sham transactions.....’, makes no reference whatsoever to the applicant. The absence of the applicant’s name in this context is of considerable legal relevance, as it unequivocally indicates that, during the investigation, no admission or acknowledgement of involvement in the alleged sham transactions has been attributed to the applicant. This

omission underscores the fact that the investigating authority while recording statements and admissions from various individuals allegedly implicated in the transactions in question, did not obtain or rely upon any such statement or confession from the applicant. Accordingly, paragraph 7.9 contains no direct incriminating material that connects the applicant to the commission or facilitation of the alleged sham or fictitious transactions, nor does it indicate any involvement on the part of the applicant in the placement, layering, or channelling of the proceeds of crime. Such a categorical absence of reference further weakens any presumption of involvement by the applicant at the stage of investigation, and militates against any inference of *prima facie* culpability. In a proceeding where *mens rea* and demonstrable participation are essential components of the alleged offence, the exclusion of the applicant's name from a list of admitted participants significantly undermines any attempt to implicate the applicant by mere association or inference.

14. The learned Senior Counsel invited this Court's attention to paragraph 7.9 (ii) of the complaint, noting that several auditors, secretarial professionals, and their associates, namely, Shri Ashish Agrawal, Shri Hemant Merchant, Shri Hemant Shetye, Shri Nitin Sarphare, Shri Vijay Kumar Tiwari, Smt

Jelphine Angel and Shri Roshan Kankaria have admitted to certifying documents for various dubious entities without verifying the underlying business activities or records. Despite these admissions, none of these individuals have been named as accused in the complaint. The learned Senior Counsel argued that the applicant's role as an auditor, which was based on documents provided by the company, should not be viewed more adversely than the conduct of those professionals. A combined reading of paragraph 7.9 and Annexure-C of the complaint makes it clear that the applicant's statement dated 8 March 2016 does not constitute an admission of knowledge of any sham transactions or involvement in the channelling or placement of proceeds of crime. This position has been acknowledged and accepted by the learned Special Judge in paragraph 13 of the impugned order dated 17 March 2021 (CRA No.129 of 2023).

15. In support of his contentions, the learned Senior Counsel cited the decisions in: (i) *Parvathi Kollur Vs State by Directorate of Enforcement*<sup>1</sup>; (ii) *Vijay Madanlal Choudhary Vs Union of India*<sup>2</sup>; (iii) *Indrani Patnaik Vs Enforcement Directorate*<sup>3</sup>; (iv) *Paru Mrugesh Jaikrishna Vs Asstt Collector of*

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1. SLP (Cri) No.4258 of 2022 dated 16 August 2022

2. 2022 SCC OnLine SC 929

3. Writ Petition (Civil) No.368 of 2021 dated 3 November 2022

*Customs<sup>4</sup>; and (v) Joti Parshad Vs State of Haryana<sup>5</sup>.*

16. On the other hand, Mr HS Venegavkar, the learned Counsel appearing on behalf of respondent No.2, opposed the applicant's plea, arguing that the investigation conducted under the PMLA revealed that the Bhujbals had laundered proceeds of crime through various methods. One such modus operandi involved routing illicit funds by collecting inflated share premiums from fictitious entities. It was discovered that the share price of Bhujbal Group companies remained consistently at Rs.9,900/- per share despite the shares being acquired over four different financial years from 2007-2011. Further investigation showed that the purported shareholders of these Bhujbal Group Companies did not exist at the addresses provided. Additionally, the probe revealed that certain individuals and entities had made payments to Bhujbal Group Companies via cheque in exchange for cash, under the pretext of questionable real estate transactions. One such individual, Jagdish Prasad Purohit, who is also an accused in the present case, admitted in his statement that these transactions were fictitious and that he had merely provided accommodation entries to two of the Bhujbal Group of Companies.

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4. MANU/MH/0039/1987

5. 1993 Supp (2) SCC 497

17. The learned Counsel contended that the applicant, in his capacity as the statutory auditor, conducted audits of companies controlled by the Bhujbals and, in doing so, camouflaged illicit transactions and concealed the unlawful flow of proceeds of crime generated by the Bhujbals. He further submitted that the applicant was aware of the suspicious transactions and sham dealings carried out by these entities. By neglecting to diligently perform his professional duties, he enabled the Bhujbals to acquire and launder illicit funds, thereby knowingly aiding the commission of money laundering as defined under Section 3 of the PMLA.

18. The learned Counsel further submitted that the Bhujbal Group of companies received a total sum of Rs.50.20 crores from entities associated with Jagdish Prasad Purohit, without any legitimate justification for categorising the amount as a loan or investment. Given the financial position of Purohit's companies, which lacked any substantive net worth, the magnitude of these transactions appear highly disproportionate and questionable. Additionally, the learned Counsel emphasised that while the learned Judge noted that 'the basis of reliance upon the statement to hold that the applicant had knowledge of cash-for-cheque transactions is misplaced', no definitive conclusion was drawn in that observation. He argued that, at

the stage of deciding a discharge application, the Court is required to assume the truth of the prosecution's material and examine whether, on its face value, the facts disclosed are sufficient to constitute the offence alleged. Moreover, under Section 24 of the PMLA, the burden lies on the accused to prove that they are not guilty of the offence of money laundering. According to Mr Venegavkar, the impugned order is well reasoned, supported by the material on record, and does not warrant any interference.

19. Mr SS Pednekar, the learned Additional Public Prosecutor representing the respondent/ State, concurred with and fully supported the submissions made by Mr HS Venegavkar, the learned Counsel for respondent/ ED. He contended that the reasoning and conclusions reached by the learned trial Court are legally sound and based on the material available on record. He further submitted that the impugned order is neither arbitrary nor perverse and, as such, does not warrant any interference.

20. This Court has given anxious consideration to the rival contentions and perused the records.

21. It is a settled cannon of criminal jurisprudence that the



jurisdiction vested in a revisional Court is inherently limited and supervisory in nature. The revisional Court is empowered to examine the correctness, legality, or propriety of any finding, sentence, or order passed by the trial Court. This power, however, does not extend to a wholesale re-appreciation of evidence or re-evaluation of factual findings, as is permissible in appellate jurisdiction. The revisional forum is not an avenue for substituting its view on facts unless the order under challenge is vitiated by patent illegality, material irregularity, manifest error, or is otherwise perverse or irrational in its reasoning. In the absence of such demonstrable infirmities, any interference by the revisional Court would transgress the boundaries of its limited statutory mandate and amount to judicial overreach. The revisional jurisdiction, must, therefore, be exercised sparingly, with circumspection, and only to correct substantial miscarriage of justice.

22. Equally well entrenched in law is the principle that, in discharge proceedings, where the material on record does not disclose any legal evidence establishing a nexus between the accused and the alleged offence, the very act of framing a charge would be unwarranted and unsustainable. Compelling an accused to face the ordeal of a criminal trial in the absence of a foundational legal basis offends the guarantee of a fair

procedure under Article 21 of the Constitution of India.

23. While exercising its jurisdiction under Section 227 of the CrPC, the trial Court is not expected to act as a mere post office for the prosecution. The law mandates that the trial Court must independently and judiciously evaluate the material on record to determine whether the prosecution has succeeded in establishing a *prima facie* case. Although at the stage of discharge the Court is not required to conduct a meticulous or detailed analysis of the evidence-such as would be undertaken during trial-it must nonetheless consider the broad probabilities of the case, assess the cumulative effect of the documents produced, and ascertain whether the allegations, if taken at face value, disclose the commission of an offence.

24. It is well established that mere suspicion, conjuncture or surmise, however grave, cannot form the basis for framing a charge. The material must disclose a reasonable degree of evidence pointing toward the involvement of accused in the alleged offence. In the absence of such credible material, the continuation of criminal proceedings would be legally untenable, procedurally improper, and would constitute an abuse of the process of law, undermine both the integrity of the judicial system and the rights of the individual.

25. Upon carefully perusing the records, it appears that in Special Case of 10 of 2016, which was instituted pursuant to FIR No.35 of 2015, all individuals initially named as accused have been discharged from the proceedings, with the sole exception of accused No.5, who continued to face trial. Likewise, in Sessions Case No.584 of 2018, arising out of FIR No.69 of 2015, the same pattern has been observed, all four accused have been discharged, leaving only accused No.5 to stand trial. It is alleged that the co-accused were involved in a scheme wherein cash bribes were accepted and subsequently routed through various companies associated with the Bhujbal group.

26. The allegations levelled against the applicant centre on his role as a statutory auditor of certain companies controlled by the Bhujbals. It is alleged that, in the course of conducting audits for these entities, the applicant facilitated the concealment of illicit transactions and assisted mask the unlawful movement of proceeds derived from criminal activities allegedly committed by these companies. The prosecution contends that the applicant was aware of several suspicious transactions and fictitious business dealings undertaken by the said companies, yet failed to raise any red flags or report such anomalies, as required under his

professional obligations. By allegedly failed to exercise due diligence and discharge of his duties in accordance with the standards expected of a statutory auditor, the applicant is said to have enabled the Bhujbals in acquiring and laundering tainted funds. Consequently, his inaction is construed as having knowingly contributed to the commission of the offence of money laundering. It is, however, not the case of the prosecution that the applicant was directly involved in the initial placement, subsequent layering, or final integration of the proceeds of crime into the financial system. Nor is there any suggestion that he personally benefited from such proceeds. The core allegation remains that the applicant, through professional negligence and wilful oversight, facilitated the laundering of illicit gains by others.

27. In order to determine if the applicant was *prima facie* instrumental in the commission of the alleged offence, it is imperative to examine the collective impact of the allegations levelled and the material on record. At the outset, from a perusal of the complaint, particularly the paragraph titled ‘Estimation of PoC’, it transpires that the applicant is not a beneficiary of the proceeds of crime. This paragraph presents a tabulated summary enumerating various individuals and entities, the amounts allegedly laundered by them, and the

respective time frames during which the offences were purportedly committed. The applicant has been named as accused No.44 in this table; however, it is significant to note that the amount attributed to the applicant is explicitly stated as 'NIL'. Furthermore, in paragraph 4, at serial No.13 of the complaint, under the heading 'Concluded Facts', it is alleged that several individuals admitted to executing sham transactions with the objective of concealing the receipt of cash. The applicant's statement, however, directly contradicts these assertions.

28. Further, the complaint section titled 'During the course of Investigation the following persons admitted to their roles in the sham transactions.....' does not include any mention of the applicant. Additionally, paragraph 7.9 (ii) of the complaint highlights that several auditors, secretarial professionals, and their associates admitted to certifying documents for entities later deemed dubious without conducting adequate verification of their business activities or records. Yet, notably, none of these individuals have been named as accused in the complaint. The applicant's limited role was that of an auditor, acting upon and relying on the documents provided by the company. A combined reading of paragraph 7.9 and Annexure-C of the complaint makes it clear that the applicant's statement dated 8

March 2016 does not constitute an admission of knowledge regarding any sham transactions. Furthermore, the prosecution does not implicate the applicant in the placement or layering of the alleged proceeds of crime. This position has been duly acknowledged by the learned Special Judge in paragraph 13 of the impugned order.

29. Furthermore, the prosecution relies on the statement made by the co-accused Jagdish Purohit as key evidence to demonstrate that the applicant was aware of the alleged transactions. It is significant to point out that Purohit provided two distinct statements during the course of the investigation: the first on 6 February 2016 and a subsequent statement on 26 February 2016. In the subsequent statement given by the co-accused Purohit, there are no allegations or reference that implicate the applicant in any manner. In fact, in this later statement, Purohit expressly acknowledged that the earlier statement he made on 6 February 2016 was factually incorrect and had been made under duress. It is pertinent to note that the applicant was appointed solely in the capacity of a statutory auditor for certain companies within the Bhujbal Group. He had no professional association with Purohit, nor was he connected with the financial affairs of any company linked with Purohit. As a statutory auditor, the applicant's role was

confined to auditing the financial statements of the Bhujbal Group entities, based on the documents and information made available to him in the limited scope. Accordingly, it would be unreasonable to expect the applicant, merely by virtue of being an auditor to assume the role of an investigator or to be under an obligation to examine and investigate the genuineness of the documents provided to him by the companies' authorised persons. The role of the auditor is inherently distinct from that of the investigating agency. Furthermore, the prosecution has not alleged that Purohit had any professional association with the applicant, nor that the applicant possessed any knowledge or awareness of the Purohit's financial affairs or transactions. Importantly, there is no material on record to indicate that the applicant was aware of or involved in any cash-for-cheque transactions. This position is further supported by the findings of the learned Special Judge, who, in the impugned order, specifically observed that there is no evidence to establish that the applicant had any knowledge of such cash-for-cheque dealings.

30. Furthermore, the Note in the financial statements under Section 211 of the CA, 1956, was signed by the management of the company and not by its auditors. Nevertheless, in the impugned order, this Note was erroneously construed as part of

the applicant's audit report. Specifically, Note No.28, which the learned Special Judge linked to transactions involving Kumaon Engineering Pvt Ltd, in fact, relates to 'Unsecured Loans from Bodies Corporate under the Same Management', as further detailed in Note No.39. Admittedly, Kumaon Engineering was not under the same management, and there exists no connection between this entity and Note No.28. As to the allegation that the applicant failed to verify documents during the audit process, it is significant to note that there is no material on record to substantiate this claim. Moreover, respondent No.2 has not produced any material to support such assertion. The record further reveals that the funds in question have been received through banking channels. Mere absence of due diligence, even if assumed for arguments sake, does not amount to the commission or omission of an offence under Section 3 of the PMLA.

31. Additionally, the prosecution, in its complaint, alleges that the proceeds of crime originated around the years 2007-2008. In contrast, the applicant's professional engagement as an auditor was confined strictly to the financial years ending March 2012 to March 2015. This clear chronological gap between the purported origin of the illicit assets and the applicant's period of audit involvement negates any rational or



legal inference of a connection between two. The absence of temporal proximity significantly undermines any suggestion of complicity on the part of the applicant. Furthermore, in CRA No.129 of 2023, while allowing the applicant's application under Section 88 of the CrPC, the learned Special Judge unequivocally noted in paragraph 9 of the order dated 22 October 2016 that there were no allegations directly implicating the applicant in the offence of money laundering. The learned Special Judge also explicitly observed that the accusations levelled against the applicant were neither of a serious nor a grave nature. It is also significant that the prosecution has not alleged that the applicant played any role in the transfer of the alleged illicit funds to various entities. This absence of such an accusation was duly recognised by the trial Court. Moreover, the trial Court categorically recorded that there was no material to suggest that the applicant had knowledge of the said transactions or was aware of the nature of the funds being transferred.

32. Apart from the bare assertions made in paragraph 11.44 of the complaint, there is no substantive material on record to demonstrate that the applicant had any knowledge of the sham transactions or that he was in any way negligent in the discharge of his duties. The complaint lacks material to

establish a nexus between the applicant and the alleged criminal conspiracy or money laundering activities. Moreover, the applicant has neither been named nor charge sheeted in the related crimes, which further reinforces the absence of any direct or indirect involvement in the purported criminal conduct.

33. In light of the above, this Court is of the considered opinion that the learned trial Court (Special Court) committed an error in law by rejecting the applicant's application for discharge. The impugned order dated 17 March 2021, passed by the learned Additional Sessions Judge (Special Judge), Mumbai, below Exhibit 410, in PMLA Case No.2 of 2016, cannot be sustained and is accordingly quashed and set aside. As a result, the applicant is discharged from PMLA Case No.2 of 2016, pending before the Court of Additional Sessions Judge (Special Judge), Mumbai.

34. The revision application stands disposed of accordingly.

[ R. N. Laddha, J. ]