

IN THE COURT OF MS. SANTOSH SNEHI MANN,
SPECIAL JUDGE (PC ACT): CBI-08:
ROUSE AVENUE COURTS COMPLEX: NEW DELHI

CC No. 04/15
CIS No. 21/2019

B. K. Singh,
Assistant Director,
Directorate of Enforcement, Delhi Zone,
(Prevention of Money-Laundering Act)
Government of India,
Delhi Zonal Office, 10-A, Jam Nagar House,
Akbar Road, New Delhi.

Versus

1. Suraj Pal @ Chacha (Since deceased)
S/o late Sh. Jagmohan
R/o B-539, Gali No. 5, Majlis Park,
Adarsh Nagar, Delhi.
2. Surajbhan @ Sarju
S/o Late Sh. Daliya
R/o Village Akbarpur Barota, PS Kundli
Tehsil & District Sonapat, Haryana-131103.
3. Naresh @ Lala
S/o Sh. Rampat Sharma
R/o Village Akbarpur Barota, PS Kundli
Tehsil & District Sonapat, Haryana-131103.

Date of filing of complaint : 01.04.2015
Date of conclusion of final arguments : 01.08.2019
Date of announcement of judgment : 09.09.2019



CC No. 04/15
B. K. Singh, Enforcement Directorate Vs. Surajpal @ Chacha & others

Page 1 of 61

JUDGMENT

1. This complaint has been filed by the Assistant Director/ Directorate of Enforcement (hereinafter 'ED'), Delhi Zonal Office, under the Prevention of Money-Laundering Act (hereinafter 'PMLA'), against accused Surajpal @ Chacha (A-1), accused Surajbhan @ Sarju (A-2) and Naresh @ Lala (A-3) for committing the offence of money-laundering under Section 3 of PMLA, punishable under Section 4 of PMLA. Accused Surajpal @ Chacha (A-1) died during the trial at the stage of final arguments and hence proceedings against him abated on 14.03.2019.

Background Facts:

2. On 07.09.2013, on the basis of an information about movement of a wildlife offender Sarju in Delhi, a team comprising officers of Delhi Police Crime Branch, Maharashtra Forest Department and Wildlife Crime Control Bureau, New Delhi (hereinafter 'WCCB') had intercepted a white colour Indigo Manza Car No. HR-11E-1001 at T-point red light, near Chandgiram Akhara, Delhi. 02 persons travelling in the car were identified as accused Surajbhan @ Sarju (A-2) and Naresh @ Lala (A-3). Accused Naresh @ Lala (A-3) was driving the said car.
3. A sack containing uncured trophies of Tiger parts was recovered from the boot of the car and Rs.2,70,000/- in cash was recovered from under the car seat, on which



accused Surajbhan @ Sarju (A-2) was sitting. The recovered wildlife contraband was put in 04 bags, which were sealed and seized. Money recovered from the car was also sealed. Consequently, FIR No. 155/2013 was registered for various offences under the Wildlife (Protection) Act.

4. During interrogation by the Delhi Police Crime Branch, accused Surajbhan @ Sarju (A-2) disclosed that he had received Rs. 06 lac from deceased accused Surajpal @ Chacha (A-1) for procuring Tiger parts from a person named Syed, resident of UP, and for this purpose, he (Surajbhan @ Sarju (A-2)) had contacted accused Naresh @ Lala (A-3), who had accompanied him in his car to bring the Tiger parts. Accused Surajbhan @ Sarju (A-2) further disclosed that the recovered uncured trophies of the Tiger parts were purchased from the said money and were to be delivered to the deceased accused Surajpal @ Chacha (A-1), for which he was to get about Rs.50,000/- – Rs.60,000/- as commission. Surajbhan @ Sarju (A-2) further disclosed that Rs.2,70,000/- recovered from the car was the unutilized money given by accused Surajpal @ Chacha (A-1). Consequently, FIR No. 155/2013 dated 07.09.2013 was registered for various offences under the Wild Life (Protection) Act.

5. Disclosure by Surajbhan @ Sarju (A-2) led the raiding team to the house of deceased accused Surajpal @ Chacha



CC No. 04/15

B. K. Singh, Enforcement Directorate Vs. Surajpal @ Chacha & others

Page 3 of 61

(A-1) situated at B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33 on 08.09.2013, from where Rs. 50 lac in cash and 18 Tiger nails were recovered and seized.

6. During interrogation, deceased accused Surajpal @ Chacha (A-1) confessed that he was involved in the trade of wildlife contraband and had given Rs. 06 lacs in cash to accused Surajbhan @ Sarju (A-2) to procure wildlife contraband from Bijnaur, UP. He also disclosed that in May 2013, accused Surajbhan @ Sarju (A-2) had brought 05 Tiger skins and bones from Nagpur, for which he had paid a sum of Rs. 20 lac to accused Surajbhan @ Sarju (A-2).
7. Pulandas of the wildlife contraband were produced in the Court of ACMM, Tis Hazari and vide order of the Court dated 08.09.2013, they were handed over to Sh. Nishant Verma, Regional Deputy Director, WCCB. Further investigation was carried out by WCCB.
8. After completion of investigation by WCCB, a complaint under Section 55 of the Wildlife (Protection) Act was filed against deceased accused Surajpal @ Chacha (A-1), accused Surajbhan @ Sarju (A-2) and Naresh @ Lala (A-3), for various offences under the said Act.

The case under the Prevention of Money-Laundering Act:

9. Since offences under Sections 39, 44, 49-B and 51 Wildlife (Protection) Act, 1972, alleged in the complaint of WCCB fall in the category of scheduled offences under the PMLA,



an ECIR No. ECIR/13/DZ/ AD(BKS)/2013 (RUD-III) was registered at Delhi Zonal Office of ED, New Delhi, on 30.12.2013 against all the 03 accused persons for commission of offence under Section 3 of PMLA, punishable under Section 4 of PMLA.

10. In the course of investigation, ED recorded statements of various persons, including statements of accused persons, under Section 50 of the PMLA and collected relevant evidence. The car Tata Indigo Manza bearing No. HR-11E-1001, Rs. 2,70,000/- recovered from the car and Rs. 50 lac recovered from the house of deceased accused Surajpal @ Chacha (A-1), were provisionally attached by the competent authority which were subsequently confirmed by the Adjudicating Authority.

Alleged roles of accused persons:

11. Deceased accused Surajpal @ Chacha (A-1) was allegedly the mastermind and kingpin of illegal trade of uncured trophies of Tiger parts and had invested huge amount in the business. He had been procuring Tiger parts through accused Surajbhan @ Sarju (A-2). He had given Rs. 06 lacs in cash to accused Surajbhan @ Sarju (A-2) to procure Tiger parts and Rs. 2,70,000/- in cash, recovered from the car in possession of accused Surajbhan @ Sarju (A-2) and Naresh @ Lala (A-3) on 07.09.2013, was the part of that money. Rs. 50 lacs recovered from his house is allegedly the



proceeds of crime generated from the illegal wildlife trade.

12. Accused Surajbhan @ Sarju (A-2) is allegedly a habitual carrier of uncured trophies of Tiger parts, who received money from deceased accused Surajpal @ Chacha (A-1) to procure and transport the Tiger parts on commission basis to deceased accused Surajpal @ Chacha (A-1). Rs.2,70,000/- was the part of the amount of Rs. 06 lac received by him from deceased accused Surajpal @ Chacha (A-1) to procure 02 sets of uncured trophies of Tiger parts.

13. Accused Naresh @ Lala (A-3) allegedly is the owner of car No. HR-11E-1001, who accompanied Surajbhan @ Sarju (A-2) in his car for transporting the wildlife contraband from UP and Maharashtra on payment of commission.

14. It is therefore alleged in the complaint that all the 03 accused persons were involved in the criminal activity relating to the scheduled offence under the Wildlife (Protection) Act and they were involved with the proceeds of crime, hence committed the offence of money-laundering under PMLA.

Cognizance:

15. Cognizance of the complaint was taken by the Ld. Predecessor vide order dated 01.04.2015 and accused were summoned, who were in judicial custody. Copies of the complaint and documents were supplied to them.



Charge:

16. On the basis of material on record, Ld. Predecessor found that prima facie offence under Section 3 of PMLA, punishable under Section 4 of PMLA, was made out against all the 03 accused persons. Charge was framed accordingly, to which all of them pleaded not guilty and claimed trial.

Prosecution Evidence:

17. ED has examined 06 witnesses to prove its case.

18. PW-1 Sh. Binod Kumar Singh, Assistant Director, Directorate of Enforcement, Delhi Zonal Office, Delhi, is the complainant and has testified that WCCB had referred a matter to ED pertaining to an incident dated 07.09.2013 when on the basis of a specific information, a Tata Indigo Manza car having registration No. HR-11E-1001, was intercepted, from which uncured trophies of Tiger parts and Rs.2,70,000/- in cash were recovered. PW-1 further deposed that WCCB further informed that the said car was driven by accused Naresh @ Lala (A-3) and accused Surajbhan @ Sarju (A-2) was sitting besides him, who disclosed that the uncured trophies of Tiger parts were to be delivered to deceased accused Surajpal @ Chacha (A-1), who had given him Rs.06 lacs to procure Tiger parts and that Rs.2,70,000/- was the unspent amount. WCCB further informed ED that the house of deceased accused Surajpal @



Chacha (A-1) was raided and searched on 08.09.2013 by a raiding team comprising officials of WCCB, Delhi Police and Nagpur Forest Division, from where Rs. 50 lac in cash and certain Tiger parts were recovered. Deceased accused Surajpal @ Chacha (A-1) disclosed that he had given Rs. 06 lac to accused Surajbhan @ Sarju (A-2) to procure Tiger parts from Bijnaur, UP, and further that in the past also, he had procured Tiger parts through accused Surajbhan @ Sarju (A-2) on payment of Rs. 20 lac for which he had paid Rs. 2.5 lac to accused Surajbhan @ Sarju (A-2) as commission of his entire team, out of which share of Surajbhan @ Sarju (A-2) was Rs.75,000/-. Deceased accused Surajpal @ Chacha (A-1) also disclosed that Rs. 50 lac recovered from his house was earned by him by sale and purchase of Tiger parts.

19. PW-1 further deposed that FIR No. 155/2013 was registered at Crime Branch Delhi Police and further investigation was carried out by WCCB by the order of ACMM, Tis Hazari Courts, Delhi. After completion of investigation, a complaint was filed by Sh. Nishant Verma, Regional Deputy Director, WCCB, in the Court. Since the offence under the Wild Life (Protection) Act is a predicate offence under the PMLA, after getting the information from the WCCB, ED registered an Enforcement Case Information Report (ECIR) vide No. DLZO/13/ AD(BKS)/2013 and the



investigation was assigned to PW-1.

20. PW-1 deposed that after due permission of the Court, he recorded the statements of all the 03 accused persons. Statements of accused Naresh @ Lala (A-3) and Surajpal @ Chacha (A-1) were recorded in the jail campus, Tihar Central Jail, where they both were lodged as Ex. PW-1/A and Ex. PW-1/B respectively. PW-1 recorded statement of Surajbhan @ Sarju (A-2) in the jail premises of Nagpur Central Jail on 02.06.2014, vide Ex. PW-1/C.

21. PW-1 referred to the ECIR as Ex. PW-1/D and the copy of FIR registered by Delhi Police Crime Branch as Ex. PW-1/E. He further referred to the copy of complaint filed by Sh. Nishant Verma, Regional Deputy Director, WCCB, against the accused persons under the Wildlife (Protection) Act as Ex. PW-1/F; the statements of accused Surajbhan @ Sarju (A-2), recorded by Crime Branch & WCCB as Ex. PW-1/G, Ex. PW-1/G-1 & Ex. PW-1/G-2; statement of accused Naresh @ Lala (A-3), recorded by Crime Branch & WCCB as Ex. PW-1/H, Ex. PW-1/H-1 & Ex. PW-1/J; statement of deceased accused Surajpal @ Chacha (A-1), recorded by Crime Branch as Ex. PW-1/K, Ex. PW-1/K-1, Ex. PW-1/K-2 & Ex. PW-1/K-3.

22. PW-1 further testified that during investigation by him, provisional attachment orders were passed by the competent authority separately with respect to the car



bearing No. HR-11E-1001; Rs.2,70,000/- recovered from this car; and Rs. 50 lacs recovered from the house of deceased accused Surajpal @ Chacha (A-1) vide Ex. PW-1/M, Ex. PW-1/L & Ex. PW-1/P respectively. Thereafter, original complaints, Ex. PW-1/O, PW-1/N & Ex. PW-1/Q, were filed by the competent authority before the Adjudicating Authority separately with respect to the above referred 03 properties under provisional attachment orders. Provisional attachment orders of the above 03 properties were confirmed by the Adjudicating Authority vide orders Ex. PW-1/S, Ex. PW-1/R & Ex. PW-1/T respectively.

23. PW-2 Ms. Mohini Makhijani was the Deputy Director, Enforcement Directorate, at the relevant time, who has testified that after registration of ECIR on the basis of offence under the Wildlife (Protection) Act, 1972, the investigation was assigned by the Joint Director, ED to Sh. Binod Kumar Singh (PW-1), Assistant Director, ED and she was the supervisory officer. On the basis of material collected and statements recorded during investigation, she passed 03 provisional attachment orders vide Ex. PW-1/L, Ex. PW-1/M and Ex. PW-1/P with respect to the properties seized and subsequently on the basis of these orders, she filed 03 complaints, Ex. PW-1/N, Ex. PW-1/O and Ex. PW-1/Q, before the Adjudicating Authority. The provisional attachment orders were confirmed by the Adjudicating



Authority vide orders Ex. PW-2/A, Ex. PW-2/B and Ex. PW-2/C. (Photocopies of these orders have been referred by PW-1 in his testimony as Ex. PW-1/R, Ex. PW-1/S & Ex. PW-1/T respectively).

24. PW-3 Sh. Jai Kishan, retired Sub-Inspector, has testified that on 07.09.2013, he was posted as Sub-Inspector in the Crime Branch Division, Darya Ganj, when he was called by his superior officers and was directed to conduct a raid along with the officers of Nagpur Forest Department and WCCB in search of a wildlife accused Surajbhan @ Sarju (A-2). PW-3 constituted a raiding party, which reached at T-point, Chandgiram Akhara at about 3:00 PM, where he requested 03-04 persons to join the raiding party, but they refused. The raiding party took position and barricades were put on the road.

25. PW-3 has testified that around 4:00 PM, a white colour Tata Indigo Manza car No. HR-11E-1001 was seen coming from Rajghat side, which was intercepted on the pointing out of the informer. The car was driven by accused Naresh @ Lala (A-3) and accused Surajbhan @ Sarju (A-2) was sitting besides him. Strong foul smell was coming from the boot of the car and on checking, a big plastic sack was found which contained bones and flesh, which were identified as Tiger bones and parts by the officers of forest department and WCCB in the raiding party. PW-3 had put



the recovered wildlife material in 04 bags, which he marked as A, B, C, D. Those bags were weighed and were sealed by him with his seal of 'JK'. During search of the car, Rs. 2,70,000/- in cash was recovered from under the seat of the car on which accused Surajbhan @ Sarju (A-2) was sitting. PW-3 seized the car & the cash and prepared the documents, including Tehrir on the basis of which FIR was registered.

26. PW-3 further testified that during investigation, accused Surajbhan @ Sarju (A-2) disclosed that he had received Rs.06 lac from deceased accused Surajpal @ Chacha (A-1) for procuring Tiger body parts from Nagpur, he had procured Tiger body parts recovered from the car on payment of Rs. 03 lac and the money recovered from the car was the balance amount, out of which he had spent Rs.30,000/- on miscellaneous expenditure. Accused Surajbhan @ Sarju (A-2) also disclosed that 05-06 times in the past he had procured animal parts for deceased accused Surajpal @ Chacha (A-1) from Nagpur. Accused Naresh @ Lala (A-3) disclosed that he had accompanied accused Surajbhan @ Sarju (A-2) in his car to Nagpur in the past 05-06 times for procuring animal parts and that he had received Rs.75,000/- from Surajbhan @ Sarju (A-2) as his share of remuneration, which he had used for purchasing the car.



27. PW-3 has testified that on 08.09.2013, at 7:00 AM he along with the raiding party had raided the house of accused Surajpal @ Chacha (A-1) on the pointing out of accused Surajbhan @ Sarju (A-2) and Naresh @ Lala (A-3), from where he recovered & seized Rs. 50 lac in cash and 18 Tiger nails. The nails were sealed in a pulanda, which was marked as Mark E. During interrogation, deceased accused Surajpal @ Chacha (A-1) disclosed that he was involved in smuggling of animal body parts since long.

28. PW-3 further testified that on 08.09.2013, he produced all the 03 accused persons and the case property in the Court where the sealed pulandas were opened by the Ld. ACMM and then resealed with the Court seal after perusal. The sealed pulandas containing Tiger parts were handed over to Sh. A. K. Jha, Assistant Director, WCCB, whereas the remaining case property comprising money and the car was given in his custody by the Court.

29. PW-3 referred to the certified copy of FIR as Ex. PW-3/A; photocopies of seizure memos of the car, recovered money & the wildlife contraband collectively as Ex. PW-3/B and disclosure statements of accused Surajbhan @ Sarju (A-2), Naresh @ Lala (A-3) & Surajpal @ Chacha (A-1) recorded by him as Ex. PW-3/C, Ex. PW-3/D & Ex. PW-3/E respectively.

30. PW-4 Arvind Kumar Jha, Assistant Conservator of Forest,



Government of Rajasthan, Forestry Training Institute, has deposed on the line of PW-3 retired SI Jai Kishan, being the member of the raiding party on 07.09.2013 and 08.09.2013 when the wildlife contraband was recovered and seized; the car used for transporting the wildlife contraband on 07.09.2013 was seized; money recovered from the car was seized; the house of accused Surajpal @ Chacha (A-1) was raided and the money along with Tiger nails recovered from the house of Surajpal @ Chacha (A-1) was seized. He identified his signatures on the seizure memo of the car, money and Tiger parts recovered from the car as Ex. PW-3/B; statement of accused Surajbhan @ Sarju (A-2) as Ex. PW-3/C; statement of accused Naresh @ Lala (A-3) as Ex. PW-3/D; statement of accused Surajpal @ Chacha (A-1) as Ex. PW-3/E; personal search memo of deceased Surajpal @ Chacha (A-1) as Ex. PW-4/A; seizure memo of currency notes and Tiger parts recovered from the house of Surajpal @ Chacha (A-1) as Ex. PW-4/B.

31. PW-5 Sh. Bhupender Singh, retired Assistant Conservator of Forest, Nagpur, testified that he was a member of the team constituted on 07.09.2013 to apprehend accused Surajbhan @ Sarju (A-2) on the basis of a secret information. PW-5 has deposed on the lines of PW-3 retired SI Jai Kishan and PW-4 Sh. A. K. Jha about interception of Tata Indigo Manza car No. HR-11E-1001 at T-point,



Chandgiram Akhara; recovery of a sack from the boot of the car containing Tiger body parts; seizure of the Tiger body parts by putting them in 04 pulandas; recovery and seizure of Rs. 2,70,000/- from the car; identity of the driver of the car as accused Naresh @ Lala (A-3), his companion as accused Surajbhan @ Sarju (A-2) and disclosure by accused Surajbhan @ Sarju (A-2) & accused Naresh @ Lala (A-3) about involvement of deceased accused Surajpal @ Chacha (A-1) in the illegal wildlife trade.

32. PW-5 has further testified that on 08.09.2013, 02 teams were constituted at police station Darya Ganj, ATS branch. He was the member of the team which went to the house of accused Surajbhan @ Sarju (A-2) at Sonapat, Haryana, whereas the other team went in search of deceased accused Surajpal @ Chacha (A-1). PW-5 testified that nothing incriminating was found in the house of accused Surajbhan @ Sarju (A-2) and the team returned to ATS police station Darya Ganj, where he came to know that deceased accused Surajpal @ Chacha (A-1) had been brought to the police, who was arrested and disclosed about his previous involvement in the illegal wildlife trade and involvement of accused Surajbhan @ Sarju (A-2) in procurement of Tiger skins and bones from Nagpur on his behalf. He identified his signatures on the recovery memo of car, cash amount of Rs. 2,70,000/- and Tiger body parts as Ex. PW-3/B;



disclosure statements of accused Surajbhan @ Sarju (A-2) as Ex. PW-1/G-1, Ex. PW-1/G-2 & Ex. PW-3/C; disclosure statement of accused Naresh @ Lala (A-3) as Ex. PW-3/D; disclosure statement of accused Surajpal @ Chacha (A-1) as Ex. PW-3/E; personal search memo of deceased accused Surajpal @ Chacha (A-1) as Ex. PW-4/A.

33. PW-6 Nishant Verma, Deputy Inspector General, National Tiger Conservation Authority, New Delhi, was posted as Additional Deputy Director, WCCB, in the year 2013 and had filed complaint under Section 55 of Wild Life (Protection) Act against the accused persons vide Ex. PW-1/F. He referred to his letter to ED as Ex. PW-6/1. Being IO of the wildlife crime case, he had recorded the statements of accused persons and referred to the statements of accused Naresh @ Lala (A-3) as Ex. PW-1/H-1 and Ex. PW-1/J. (Wrongly mentioned as Ex. PW-1/T in the statement) and statements of accused Surajpal @ Chacha (A-1) as Ex. PW-1/K-3 and Ex. PW-6/2.

Statement of accused

34. After conclusion of prosecution evidence, statements of accused persons were recorded under Section 313 CrPC separately. They denied the incriminating evidence against them and claimed to be falsely implicated. Accused Naresh @ Lala (A-3) did not wish to lead any evidence in his defence, whereas deceased accused Surajpal @ Chacha



(A-1) & Surajbhan @ Sarju (A-2) examined a defence witness each.

Defence Evidence

35. D1W1 Smt. Chanda Devi is the wife of accused Surajpal @ Chacha (A-1), who testified that she is the owner of the house No. B-539, Gali No. 5, Adarsh Nagar, Majlis Park, New Delhi, where she is residing with her family. She stated that on 04.09.2013, she had entered into an agreement with one Surender Singh, resident of Sonapat to sell the house for consideration of Rs.1,70,00,000/- (Rs. One Crore and Seventy lac only). Out of total sale consideration, Surender Singh had given her Rs. 50 lac in cash as 'Bayana' with respect to which she has signed a receipt, the original being taken by Surender Singh. She filed a carbon copy of the receipt as Ex. D1W1-A on which she identified her signatures. D1W1 further testified that after about 03-04 days, few persons entered her house and conducted search. They took keys from her and opened the almirah in which she had kept cash, which was taken by those persons, who also took along her husband.

36. D2W1 Smt. Parmeshwari is the wife of accused Surajbhan @ Sarju (A-2) and testified that on 07.09.2013, she along with her husband had left home at Sonapat to board a bus for Panipat for taking medicines for their son. When they were walking towards the bus-stand, 05-06



persons came on a vehicle, apprehended her husband and took him away in the vehicle. She testified that after about 03 days she came to know that her husband is in the custody of police.

Application of ED under Section 8(7) of PMLA

37. After death of accused Surajpal @ Chacha (A-1) at the final stage of the trial, ED moved an application dated 02.04.2019 under Section 8(7) of PMLA for confiscation of property of the deceased accused Surajpal @ Chacha (A-1), i.e., Rs. 50 lacs in cash recovered & seized from his house No. B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33 on 08.09.2013.

38. The application of ED is contested by Smt. Chanda Devi, wife of deceased accused Surajpal @ Chacha (A-1), by filing a reply claiming that she is the owner of the house No. B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33, which she had agreed to sell to one Surender Singh, from whom she had received Rs. 50 lac as *Bayana*. It is contended that the money recovered and seized from her house was the said money which was illegally seized. It is claimed that in an inquiry conducted by the ED regarding the trail of money, it was revealed that the money recovered belongs to her and that the prosecution has miserably failed to prove that the money recovered was the proceeds of crime or that her deceased husband was involved in Tiger trading or



poaching or had any connection with the co-accused.

39. I have heard at length Sh. Nitesh Rana, Spl. PP for ED, Advocate Ekta Aggarwal, Legal Aid Counsel for accused Surajbhan @ Sarju (A-2), Advocate Deepanker Mohan, Legal Aid Counsel for accused Naresh @ Lala (A-3) and Advocate Amit Vohra, counsel for respondent Chanda Devi, wife of deceased accused Surajpal @ Chacha (A-1). I have perused the record including the written submissions filed by the parties.

40. Sh. Nitesh Rana, Spl. PP for ED, argued that on 07.09.2013, a team comprising officers of Delhi Police Crime Branch, officers of Maharashtra Forest Department and WCCB had intercepted a car bearing No. HR-11E-1001 at T-point red light, near Chandgiram Akhara, Delhi, which was driven by accused Naresh @ Lala (A-3) and accused Surajbhan @ Sarju (A-2) was travelling along with him. On search of the car, wildlife material and Rs. 2,70,000/- were recovered. The matter was investigated by WCCB, which filed a complaint against the accused persons under Section 55 of the Wildlife (Protection) Act, 1972, for the offences under Sections 39, 40(2), 44, 48A, 49B, 52, 56 read with 51 of the Act. Accused Surajbhan @ Sarju (A-2) and Naresh @ Lala (A-3) have been convicted by this Court for committing the offences under the Wild Life (Protection) Act.



41. It was further argued by the Spl. PP for ED that offences under the Wildlife (Protection) Act are scheduled offences under the PMLA and thus, ECIR DLZO/13/ AD(BKS)/2013 was registered by the ED and matter was investigated. Rs. 50 lac recovered from the house of deceased accused Surajpal @ Chacha (A-1); Rs. 2,70,000/- recovered from the car and the car bearing registration No. HR-11E-1001 were attached during investigation by the ED vide separate provisional attachment orders, which were confirmed by the Adjudicating Authority.

42. It was argued against accused Surajbhan @ Sarju (A-2) and Naresh @ Lala (A-3) that Rs. 2,70,000/- recovered from the car is part of Rs. 06 lac received by accused Surajbhan @ Sarju (A-2) from deceased accused Surajpal @ Chacha (A-1) for procurement of uncured trophies of Tiger parts, which is confirmed by both accused persons in their statements recorded under PMLA and Wild Life (Protection) Act. Recovery of Rs. 2,70,000/- from the car in possession of accused Surajbhan @ Sarju (A-2) and Naresh @ Lala (A-3) is proved by the witnesses PW-3 SI Jai Kishan and PW-4 Sh. Arvind Kumar Jha. The vehicle bearing registration No. HR-11E-1001 was used for criminal activity relating to illegal trade of Tiger parts and has been attached by the Adjudicating Authority, being proceeds of crime. It was argued that since accused have been charged and tried



for the offence of money-laundering under the PMLA, there is presumption against them which they have failed to discharge as per Section 24 of the PMLA. Hence the submission that the money & the car seized and attached during investigation be confiscated to the Central Government, being the proceeds of crime.

43. It was argued by the Legal Aid Counsels in defence of the accused persons that accused have been falsely implicated and the prosecution has failed to prove its case against them beyond reasonable doubts.

44. While pointing out deficiencies and discrepancies in the statements of witnesses, it was argued that PW-1 Sh. Binod Kumar Singh has not done independent investigation; there is no corroboration of the statements of accused persons by any independent evidence; there is no investigation with respect to the procurement of Tiger parts; there is no evidence to prove that accused Naresh @ Lala (A-3) is the owner of the car allegedly involved in the offence; CDR of the mobile phones was not collected to prove that accused were connected with each other; there is no evidence or document to show that WCCB had any specific information about movement of accused persons at the alleged time and place; alleged statements of accused persons under PMLA were not voluntarily made; there is no independent witness to prove that the statements were



made voluntarily; the money was produced during the trial and the forensic expert has not been examined.

45. It was further argued by the Legal Aid Counsels that there are contradictions in the statements of PW-3 SI Jai Kishan, PW-4 Sh. Arvind Kumar Jha and PW-5 Sh. Bhupender Singh about the presence of informer; all members of the raiding party involved in the proceedings on 07.09.2013 have not been examined as witnesses during trial; there are material contradictions in the statement of PW-3 SI Jai Kishan with respect to description of the wildlife material seized vis-a-vis seizure memo; the DD entry about constitution of the raiding party and its movement is not proved; no independent witnesses were asked to join the proceedings on 07.09.2013; the Tiger parts and the cash amount of Rs. 2,70,000/- allegedly recovered from the car were not deposited in the Malkhana on the same day; there is contradiction in the testimony of PW-3 SI Jai Kishan and PW-4 Sh. Arvind Kumar Jha about number of vehicles used by the raiding party and that case diary was not proved by PW-6 Sh. Nishant Verma, who had investigated the wildlife case.

46. Ld. Counsel for respondent Smt. Chanda Devi, wife of deceased accused Surajpal @ Chacha (A-1), argued that Rs. 50 lacs seized from house No. B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33, belongs to Smt. Chanda Devi,



who is the owner of the house. The money was an advance payment received by her from a prospective buyer to whom she had agreed to sell the house. It was argued that as per the expert opinion in the connected case of the scheduled offence, the wild animal nails/Tiger nails allegedly recovered from the house of Smt. Chanda Devi, at the instance of her deceased husband Surajpal @ Chacha (A-1), are not of Tiger or any wild animal.

47. Before proceeding to analyze the evidence produced on record in the light of arguments put forth, it is deemed necessary to take note of the object of PMLA and its relevant provisions. The object of PMLA reads as:

An act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

(emphasis supplied)

48. The offence of money-laundering is defined in Section 3 of the PMLA, which reads as under:

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 and projecting it as untainted property shall be guilty of offence of money-laundering.

49. By virtue of The Finance (NO.2) Act, 2019, No.23 of 2019, notified on 01.08.2019, Section 3 of PMLA has been amended and following explanation has been inserted in



the Section, which reads as under:

"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".

50. "Proceeds of crime" is defined in Section 2(1)(u) of PMLA, which reads as under:

"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.

51. Section 2(1)(v) of PMLA defines "property" as under:

"property" 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;



52. Section 2(1)(x) of PMLA defines "schedule" as under:

"Schedule" means the Schedule to this Act;

53. Section 2(1)(y) of PMLA defines "scheduled offence" as under:

"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;

54. Section 4 of PMLA prescribes punishment for the offence of money-laundering, which reads as under:

*Punishment for money-laundering.—Whoever
commits the offence of money-laundering shall be
punishable with rigorous imprisonment for a term
which shall not be less than three years but which may
extend to seven years and shall also be liable to fine:
Provided.....*

55. Section 8 of PMLA provides for disposal of the proceeds of crime on conclusion of trial. Relevant portion of the Section is reproduced as under:

8. Adjudication.—

(1)

(2)

(3)

(4)

*(5) Where on conclusion of a trial of an offence under
this Act, the Special Court finds that the offence of
money-laundering has been committed, it shall order
that such property involved in the money-laundering or
which has been used for commission of the offence of
money-laundering shall stand confiscated to the Central
Government.*

CC No. 04/15

Page 25 of 61

B. K. Singh, Enforcement Directorate Vs. Surajpal @ Chacha & others



(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8)
(emphasis supplied)

56. On the basis of above provisions, PMLA contemplates 02 proceedings in the Court – one, trial of a person accused of the offence of money-laundering and the other, for the confiscation of the property derived from or involved in money-laundering. A person would be guilty of committing the offence of money-laundering under Section 3 PMLA if he deals with the proceeds of crime in any manner specified in the section and for this purpose “proceeds of crime” would mean a property derived or obtained as a result of criminal activity relating to a scheduled offence. In other words, the offence of money-laundering is about dealing with the “proceeds of crime”, generated from a scheduled offence.



57. Further, if a trial concludes with the finding that offence of money-laundering has been committed, the Court shall order confiscation of the property involved in money-laundering to the Central Government. And if on conclusion of trial the Court finds that offence of money-laundering is not committed or that the property is not involved in money-laundering, it shall order release of the property to the rightful claimant. The trial Court is under the statutory mandate to decide the fate of the property attached during investigation, even when the trial cannot be conducted for any reason, including death of the accused.

Proceeds of Crime – Evidence & Analysis

58. Case of the prosecution is that the Tata Indigo Maza car No. HR-11E-1001, Rs. 2,70,000/- recovered from this car and Rs. 50 lac recovered and seized from the house of deceased accused Surajpal @ Chacha (A-1) are the proceeds of crime, they being derived and obtained by the accused persons from illegal trade of wildlife, a criminal activity relating to the offence under the Wild Life (Protection) Act, which is scheduled offence under PMLA.

59. The schedule appended to PMLA contains various offences under various Statutes. Paragraph 6 of the schedule includes some offences under the Wildlife (Protection) Act. It is not disputed that a complaint under Section 55 Wildlife (Protection) Act was filed against the accused persons



including deceased accused Surajpal @ Chacha (A-1), for contravening various provisions of the Wild Life (Protection) Act, punishable under Section 51 of the Wildlife (Protection) Act. In a separate trial vide CC No. 01/2018, titled "*Wildlife Crime Control Bureau Vs. Surajbhan @ Sarju and others*", accused Surajbhan @ Sarju (A-2) and Naresh @ Lala (A-3) have been convicted by this Court for committing the offences under Sections 40(2)/48-A/49-B punishable u/s 51 of the Wildlife (Protection) Act vide judgment dated 23.08.2019 and have been sentenced vide order dated 26.08.2019. Trial against accused Surajpal @ Chacha (A-1) abated at the final stage due to his death. Contravention of Section 49-B of the Wild Life (Protection) Act relating to prohibition of dealings in trophies, animals, articles etc., derived from scheduled animals, an offence punishable under Section 51 of the Wildlife (Protection) Act, is included in the list of scheduled offences in PMLA.

60. Evidence led by the prosecution to prove the proceeds of crime includes – testimony of 04 witnesses (PW-3 retired SI Jai Kishan, PW-4 Sh. Arvind Kumar Jha, Assistant Conservator of Forest, Government of Rajasthan, Forestry Training Institute, PW-5 Sh. Bhupender Singh, retired Assistant Conservator of Forest, Nagpur & PW-6 Sh. Nishant Verma, Deputy Inspector General, National Tiger Conservation Authority, New Delhi), seizure memo of car



No. HR-11E-1001 & Rs. 2,70,000/- (Ex. PW PW-3/B), seizure memo of Rs. 50 lacs (Ex. PW-4/B) and statements of the accused persons recorded during investigation under Section 50 of PMLA & Wild Life (Protection) Act.

61. With respect to the seizure of car No. HR-11E-1001 & Rs. 2,70,000/- in cash, deposition of PW-3, PW-4 & PW-5 is on the line that on 07.09.2013 they were all members of a raiding party constituted to conduct raid and apprehend a wildlife offender regarding which there was a secret information. They reached at T-point, near Chandgiram Akhara at about 03:00 PM where PW-3, being the leader of the raiding party, requested 03-04 persons to join, but they refused. At about 04:00 PM, the raiding party intercepted a white colour Tata Indigo Manza car No. HR-11E-1001, which was driven by accused Naresh @ Lala (A-3) and accused Surajbhan @ Sarju (A-2) was a fellow passenger. On search of the car, a sack containing uncured trophies of Tiger parts was recovered from the boot and Rs. 2,70,000/- was recovered from a plastic bag kept under the car seat on which accused Surajbhan @ Sarju (A-2) was found sitting.

62. It has come in the deposition of PW-3, PW-4 & PW-5 that the wildlife contraband recovered from the car boot was put in 04 packets, which were weighed and sealed by PW-3 with his seal of 'JK'. The car bearing No. HR-11E-1001, Rs. 2,70,000/- recovered from it and the wildlife contraband



were seized with respect to which memos were prepared. PW-3 proved the common seizure memo of car and money as Ex. PW-3/B, on which PW-4 identified his signatures. Accused Surajbhan @ Sarju (A-2) & accused Naresh @ Lala (A-3) were interrogated and arrested.

63. With respect to seizure of Rs. 50 lacs in cash, it has come in the testimony of PW-3 & PW-4 that on the basis of disclosure statements of accused Surajbhan @ Sarju (A-2) & accused Naresh Lala (A-3), they conducted raid and search of house of deceased accused Surajpal @ Chacha (A-1) at B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33 on 08.09.2013, from where Rs. 50 lac in cash and Tiger nails were recovered and seized at the instance of deceased accused Surajpal @ Chacha (A-1). PW-3 testified that he had prepared the documents with respect to the proceedings and PW-4 identified his signatures on the seizure memo in this regard Ex. PW-4/B.

64. Ld. Spl. PP for ED argued that recovery of proceeds of crime is proved by the witnesses, supported by documents and statements of the accused, which are admissible in evidence. He referred to *K. I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin, (1997) 3 SCC 721*, in support of the argument. On the other side, legal Aid Counsels have contended that there are material contradictions and discrepancies in the statements



of the witnesses with respect to search & seizure of car and Rs. 2,70,000/- on 07.09.2013. They referred to A. *Tajudeen Vs. Union of India, (2015) 4 SCC 435*, to argue that accused cannot be convicted merely on the basis of their statements recorded under PMLA. Ld. Counsel for the respondent Smt. Chanda Devi, wife of deceased accused Surajpal @ Chacha (A-1), though admitted the recovery & seizure of Rs. 50 lacs, but contended that it is not the proceeds of crime.

65. In *Shyamal Ghosh Vs. State of West Bengal, (2012) 7 SCC 646* while dealing with the effect and consequences of contradictions, inconsistencies, discrepancies and omissions in the statements of the witnesses, it was held by the Hon'ble Supreme Court as under:

68. From the above discussion, it precipitates that the discrepancies or the omissions have to be material ones and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear



contradistinction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution.

(emphasis supplied)

66. Therefore, only such omissions, contradictions or discrepancies in the testimony of the witnesses will prove fatal to the prosecution which affect the core of the prosecution case and create a serious doubt about the truthfulness or creditworthiness of the witnesses.

67. In *K. I. Pavunny (supra)*, in an appeal against conviction under Customs Act, 1962 and the Gold (Control) Act, 1968, the legal issue before the Apex Court was – “whether the confessional statement of the appellant made to the Customs Officers under Section 108 of the Customs Act, 1962 (for short “the Act”), though retracted at a later stage, is admissible in evidence and could form the basis for conviction and whether retracted confessional statement requires corroboration on material particulars from independent evidence?” Relevant paragraphs of the judgment are:

8.

The power to arrest, the power to detain, the power to search or obtain a search warrant and the power to collect evidence are vested in the Customs Officer for enforcing compliance with the provisions of the Sea Customs Act.

The Customs Officer is not a police officer nor is he empowered to file charge-sheet under Section 173 of



the Code though he conducts enquiry akin to an investigation under some of the provisions of the Code. His acts are in the nature of civil proceedings for collecting evidence to take further action to adjudicate the infringement of the Act and for imposition of penalty prescribed thereunder which would be self-evident from sub-section (4) of Section 108.

17. It would thus be clear that the object of the Act empowering Customs Officers to record the evidence under Section 108 is to collect information of the contravention of the provisions of the Act or concealment of the contraband or avoidance of the duty of excise so as to enable them to collect the evidence of the proof of contravention of the provisions of the Act so as to initiate proceedings for further action of confiscation of the contraband or imposition of the penalty under the Act etc. By virtue of authority of law, the officer exercising the powers under the Act is an authority within the meaning of Section 24 of the Evidence Act.

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20.

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It is true that in a trial and proprio vigore in a criminal trial, courts are required to marshal the evidence. It is the duty of the prosecution to prove the case beyond reasonable doubt. The evidence may consist of direct evidence, confession or circumstantial evidence. In a criminal trial punishable under the provisions of the IPC it is now well-settled legal position that confession can form the sole basis for conviction. If it is retracted, it must first be tested whether confession is voluntary and truthful inculcating the accused in the commission of the crime. Confession is one of the species of admission dealt with under Sections 24 to 30 of the Evidence Act and Section 164 of the Code. It is an admission against the maker of it, unless its admissibility is excluded by some of those provisions. If a confession is proved by unimpeachable evidence and if it is of voluntary nature, it when retracted, is entitled to high degree of value as its maker is likely to face the



consequences of confession by a statement affecting his life, liberty or property. Burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in Bhagwan Singh v. State of Punjab (I) [AIR 1952 SC 214 : 1952 SCR 812] (AIR para 30).

.....
.....
If the court believes that the confession was voluntary and believes it to be true, then there is no legal bar on the court for ordering conviction. However, the rule of prudence and practice does require that the court seeks corroboration of the retracted confession from other evidence. The confession must be one inculcating the accused in the crime. It is not necessary that each fact or circumstance contained in the confession is separately or independently corroborated. It is enough if it receives general corroboration. The burden is not as high as in the case of an approver or an accomplice in which case corroboration is required on material particulars of the prosecution case. Each case would, therefore, require to be examined in the light of the facts and circumstances in which the confession came to be made and whether or not it was voluntary and true. These require to be tested in the light of a given set of facts. The high degree of proof and probative value is insisted in capital offences.

25. It would thus be seen that there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution case or to make the same basis for conviction of the accused. Practice and prudence require that the court could examine the evidence adduced by the prosecution to find out whether there are any other facts and circumstances to corroborate the retracted confession. It is not necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained in the confessional statement. The court is required to examine whether the confessional statement is voluntary; in other words, whether it was not obtained by threat, duress or promise. If the court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is



true. If the court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could be relied upon to base the conviction. However, prudence and practice require that court would seek assurance getting corroboration from other evidence adduced by the prosecution.

(emphasis supplied)

68. In *A. Tajudeen (Supra)* in a matter under Foreign Exchange Regulation Act (FERA), 1973 while dealing with the evidentiary value of the statement made by the accused in proceedings under Section 50 of the Act, it was held by the Hon'ble Supreme Court that:

28. Having given our thoughtful consideration to the aforesaid issue, we are of the view that the statements dated 25-10-1989 and 26-10-1989 can under no circumstances constitute the sole basis for recording the finding of guilt against the appellant. If findings could be returned by exclusively relying on such oral statements, such statements could easily be thrust upon the persons who were being proceeded against on account of their actions in conflict with the provisions of the 1973 Act. Such statements ought not to be readily believable, unless there is independent corroboration of certain material aspects of the said statements, through independent sources. The nature of the corroboration required, would depend on the facts of each case. In the present case, it is apparent that the appellant A. Tajudeen and his wife T. Sahira Banu at the first opportunity resiled from the statements which are now sought to be relied upon by the Enforcement Directorate, to substantiate the charges levelled against the appellant. We shall now endeavour to examine whether there is any independent corroborative evidence to support the above statements.

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31. We shall now deal with the other independent



evidence which was sought to be relied upon by the Enforcement Directorate to establish the charges levelled against the appellant. And based thereon, we shall determine whether the same is sufficient on its own, or in conjunction to the retracted statements referred to above, in deciding the present controversy, one way or the other. First and foremost, reliance was placed on "mahazar" executed (at the time of the recovery, from the residence of the appellant) on 25-10-1989. It would be pertinent to mention, that the appellant in his response to the memorandum dated 12-3-1990 had expressly refuted the authenticity of the "mahazar" executed on 25-10-1989. Merely because the "mahazar" was attested by two independent witnesses, namely, R.M. Subramanian and Hayad Basha, would not lend credibility to the same. Such credibility would attach to the "mahazar" only if the said two independent witnesses were produced as witnesses, and the appellant was afforded an opportunity to cross-examine them. The aforesaid procedure was unfortunately not adopted in this case.

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32. The only other independent evidence relied upon by the Enforcement Directorate is of pages from The Hindu and the Jansatta newspapers, in which the bundles of money were wrapped, when the recovery was effected on 25-10-1989. In view of the position expressed in the foregoing paragraph, we are satisfied that the charge against the appellant under Section 9(1)(b) of the 1973 Act, cannot be established on the basis of newspaper sheets, in which the money was wrapped. The newspaper sheets relied upon, would not establish that the amount recovered from the residence of the appellant A. Tajudeen was dispatched by Abdul Hameed from Singapore, through a person who was not an authorised dealer.

(emphasis supplied)



69. Both the judgments in *K. I. Pavunny (supra)* & *A. Tajudeen (supra)* deal with the evidentiary value of

retracted confession. The judgment in *K. I. Pavunny (supra)* is by a larger bench (03 Judges) and prior in time than *A. Tajudeen (supra)* (02 Judges). In *A. Tajudeen (supra)*, there was no admissible evidence other than the retracted confession, whereas in *K. I. Pavunny (supra)*, in addition to the retracted confession, there were statements of the witnesses of recovery and the seizure memo. There is no conflict in the ratio of these 02 judgments which can be harmoniously construed. The legal position on the basis of above 02 judgments can be summed up as, that depending on the facts and circumstances of the case, a confession including a retracted confession can be the basis of conviction.

70. Coming to the evidence brought on record by the prosecution to prove the case in hand, testimony of PW-3, PW-4 & PW-5 has remained unshaken in the cross-examination on the material facts, i.e., their presence at the spot on 07.09.2013, interception of car No. HR-11E-1001, recovery of wildlife contraband & Rs.2,70,000/- in cash from the car and identity of accused Surajbhan @ Sarju (A-2) & accused Naresh @ Lala (A-3) as occupants of the car. Testimony of Smt. Parmeshwari, wife of accused Surajbhan @ Sarju (A-2) as D2W1 that accused Surajbhan @ Sarju (A-2) was apprehended from bus stand at Sonapat is not corroborated by any material and so is not credible.



Contradictions and inconsistencies pointed out by Ld. Legal Aid Counsels are minor in nature, which do not go to the root of the matter and thus, can be safely ignored.

71. It is a settled legal position that statements of police witnesses cannot be discarded merely on the ground that there are no independent public witness (reliance is placed on *Karamjit Singh Vs. State (Delhi Administration)*, (2003) 5 SCC 291). For the purposes of present trial, evidence of procurement of Tiger parts from UP is not necessary because the possession itself is a complete offence. In the light of oral testimony of the witnesses PW-3 retired SI Jai Kishan, PW-4 Sh. Arvind Kumar Jha and PW-5 Sh. Bhupender Singh about presence of accused Surajbhan @ Sarju (A-2) and Naresh @ Lala (A-3) in the car at the given time & place, absence of CDR of mobile phones of the accused persons will not make a difference.

72. In order to prove the criminal activity relating to an offence under the Wild Life (Protection) Act, scheduled offence under PMLA, it is not necessary to examine the informer. Rather, Wildlife Crime Investigation Handbook (Chapter 02), published by Ministry of Environment and Forests, Government of India, prohibits examination of the informer as a witness in the Court to protect his identity and therefore, there is no merit in the defence argument in this regard.



73. With respect to non-production of wildlife contraband, Rs.2,70,000/- & the car during trial of this case, testimony of PW-3, PW-4 & PW-5 is sufficient to prove the fact that uncured trophies of Tiger parts & money was recovered from the car No. HR-11E-1001 in possession of accused Surajbhan @ Sarju (A-2) and Naresh @ Lala (A-3). In view of their testimony, non-production of wildlife contraband, money & the car during trial of this case is inconsequential because according to Section 59 of the Indian Evidence Act, all facts, except the contents of documents or electronic records, may be proved by oral evidence. The section further provides that if a fact refers to something which could be seen, it must be the evidence of the person who says he saw it. Therefore, physical production of the wildlife contraband, money & the car during trial is not essential to prove the recovery. It can be proved and has been proved by oral evidence of the witnesses PW-3, PW-4 & PW-5 and their testimony has remained unshaken in the cross-examination.

74. Further testimony of PW-3 and PW-4 is cogent and trustworthy about the fact that on 08.09.2013, Rs. 50 lacs in cash was recovered from the house of deceased accused Surajpal @ Chacha (A-1) situated at B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33. The fact of recovery and seizure is otherwise not contested or disputed by Smt.

CC No. 04/15

Page 39 of 61

B. K. Singh, Enforcement Directorate Vs. Surajpal @ Chacha & others



Chanda Devi, wife of deceased accused Surajpal @ Chacha (A-1).

75. This Court takes judicial notice of the fact that accused Surajbhan @ Sarju (A-2) & accused Naresh @ Lala (A-3) have been convicted in the separate connected trial of the scheduled offence.

76. In view of the evidence on record, it is established that on 07.09.2013, the car No. HR-11E-1001 and Rs.2,70,000/- from it were seized vide memo Ex. PW-3/B. It is also established that on 08.09.2013, Rs. 50 lacs in cash was recovered from the house of deceased accused Surajpal @ Chacha (A-1) and was seized vide memo Ex. PW-4/B.

77. Now what is to be seen is whether the above properties are the proceeds of crime. For this purpose, circumstances in which the properties were seized and the statements of accused persons recorded under Section 50(3) of PMLA and under Section 50(8) of the Wild Life (Protection) Act during investigation are relevant. Statements of the accused so recorded are admissible in evidence. They are not hit by Section 25 of the Indian Evidence Act because the officers conducting investigation under the 02 Statutes are not police officers. [Reliance is placed on *K. I. Pavunny (supra)*]

78. With respect to the source of Rs.2,70,000/-, it has come in the statement of accused Surajbhan @ Sarju (A-



2), dated 02.06.2014, Ex. PW-1/C, recorded under Section 50 of PMLA by PW-1 Sh. Binod Kumar Singh, Assistant Director, Directorate of Enforcement, Delhi Zonal Office, Delhi, that he had received Rs. 06 lacs from deceased accused Surajpal @ Chacha (A-1) to procure Tiger parts and he had engaged co-accused Naresh @ Lala (A-3) for transportation of the wildlife contraband from UP. It has further come in his statement that the wildlife contraband recovered and seized from the car No. HR-11E-1001 was purchased by him from Bijnaur in UP on payment of Rs. 03 lacs and that Rs. 2,70,000/- recovered from the car was the remaining amount received from deceased accused Surajpal @ Chacha (A-1), out of which he had spent Rs. 25,000-30,000/- on miscellaneous expenditure. It has also come in his statement that in May, 2013 he had procured 05 Tiger parts & skins for deceased accused Surajpal @ Chacha (A-1), who had given him Rs. 20 lacs to purchase the wildlife contraband and paid him and accused Naresh @ Lala (A-3) Rs. 75,000/- each.

79. Nothing has come in the cross-examination of PW-1 Sh. Binod Kumar Singh to create any doubt that statement Ex. PW-1/C of accused Surajbhan @ Sarju (A-2) recorded by him was either not voluntary or was extracted through inducement, force or coercion. This statement was recorded after 09 months of recovery, which further rule



out any chances of force, inducement and coercion on Surajbhan @ Sarju (A-2) to make the statement, which is on the line of his statements Ex. PW1/G-1 & Ex. PW-1/G-2, recorded under Section 50 of Wild Life (Protection) Act by PW-6.

80. On the above fact, various statements of deceased accused Surajpal @ Chacha (A-1) made during investigation to the officers of ED and WCCB are also relevant. In his statement dated 01.03.2014, Ex. PW-1/B, recorded under Section 50 of PMLA by PW-1, it has come that in 1970s, he worked with one Mohd. Abdul Khalid, a trader in Tiger body parts and animal hides, at his shop at Sadar Bazar. When the wildlife trade was made illegal, Mohd. Abdul Khalid migrated to Dubai, while he started running a small *kiryana* shop. He denied that he paid Rs. 06 lacs to accused Surajbhan @ Sarju (A-2) to procure Tiger body parts for him or that Rs. 2,70,000/- recovered from the car No. HR-11E-1001 was part of his money. He denied that the wildlife contraband recovered from the car was to be delivered to him or that in the past he ever gave any money to accused Surajbhan @ Sarju (A-2) to procure Tiger parts for him.

81. However, it is to be noted that deceased accused Surajpal @ Chacha (A-1) in his statement dated 22.10.2013, Ex. PW-1/K-3, recorded under the Wild Life (Protection) Act by



PW-6 Sh. Nishant Verma, Regional Deputy Director, WCCB, corroborated the version of accused Surajbhan @ Sarju (A-2) that on 06.09.2013, he had given Rs. 06 lacs to accused Surajbhan @ Sarju (A-2) to procure 02 sets of Tiger body parts for him and also that in the past he had given Rs. 20 lacs to accused Surajbhan @ Sarju (A-2) to procure Tiger body parts and skin. Nothing has come in the cross-examination of PW-6 Sh. Nishant Verma to create any doubt that statement Ex. PW-1/K-3 of accused Surajpal @ Chacha (A-1) was not voluntary or was extracted through inducement, force or coercion.

82. Deceased accused Surajpal @ Chacha (A-1) in his statement Ex. PW-1/B, recorded by PW-1, under the PMLA has confessed about his past involvement in the wildlife trade and in view of his statement Ex. PW-1/K-3 recorded by PW-6 Sh. Nishant Verma under the Wild Life (Protection) Act, his retracted statement Ex. PW-1/B recorded by PW-1 under the PMLA is inconsequential.

83. In view of the statements of accused Surajbhan @ Sarju (A-2) and deceased accused Surajpal @ Chacha (A-1) recorded under PMLA and Wild Life (Protection) Act, corroborated with the testimony of PW-3, PW-4 & PW-5 about recovery of wildlife contraband, it is established that Rs. 2,70,000/- recovered from the car No. HR-11E-1001 on 07.09.2013 is the proceeds of crime.



84. With respect to Tata Indigo Manza car No. HR-11E-1001, it is the case of the prosecution that accused Naresh @ Lala (A-3) is the owner of this car, which was purchased by him from the money generated from criminal activity related to the offence under the Wild Life (Protection) Act, which is a scheduled offence under PMLA.

85. According to the statement of accused Naresh @ Lala (A-3) dated 01.03.2014 recorded under Section 50 of PMLA by PW-1 Sh. Binod Kumar Singh as Ex. PW-1/A, he had purchased this car in January 2013 for Rs. 3,35,000/-. It has come in his statement that for this purpose, he had taken Rs. 01 lac from his brother Subhash and Rs. 2,50,000/- from his father as his share in the land. There is not an iota of evidence to show that accused Naresh @ Lala (A-3) is the owner of the car or that he had purchased the car from the money generated from a criminal activity relating to a scheduled offence.

86. Though, it has been established that the car No. HR-11E-1001 was used for commission of the scheduled offence, but that does not make it a proceed of crime. Prosecution has failed to establish that Tata Indigo Manza car No. HR-11E-1001 is a proceed of crime.

87. With respect to Rs. 50 lacs, prosecution has heavily relied on various statements of the deceased accused Surajpal @ Chacha (A-1) recorded under PMLA and Wild Life



(Protection) Act during investigation to establish that this money recovered from the house of deceased accused Surajpal @ Chacha (A-1) on 08.09.2013 is proceeds of crime. It was argued by Ld. Spl. PP for ED that Sections 23 & 24 of PMLA create a presumption in favour of the prosecution that Rs. 50 lacs is proceeds of crime involved in the offence of money-laundering, which the accused is required to rebutt. Per contra, it was argued by Advocate Amit Vohra, Ld. Counsel for the respondent Smt. Chanda Devi, wife of deceased accused Surajpal @ Chacha (A-1) that the money seized from the house belongs to Smt. Chanda Devi and is not proceeds of crime.

88.D1W1 Smt. Chanda Devi, wife of deceased accused Surajpal @ Chacha (A-1), testified as a defence witness of accused Surajpal @ Chacha (A-1) during trial when he was alive that she is the owner of house B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33 in which she resides with her family, which included her deceased husband accused Surajpal @ Chacha (A-1) at the time of incident. She has testified that on 04.09.2013 she entered into an agreement to sell the house with one Surender Singh for Rs. 1,70,00,000/- and she had received Rs. 50 lacs in cash as *Bayana* from Surender Singh. She produced a carbon copy of the *Bayana* receipt in her evidence as **Ex. D1W1-A** and stated that original receipt was taken by Surender Singh.



89. It has come in the cross-examination of D1W1 by Spl. PP for ED that *Bayana* amount was paid by Surender Singh to her in the presence of one Kaptan Singh, who had not signed on the receipt, which was signed by her, Surender Singh and her husband deceased accused Surajpal @ Chacha (A-1).

90. In the cross-examination of D1W1 by the Spl. PP for ED, it has come that the deal with Surender Singh was made through one Kaptan Singh, who was a customer at the electrical shop of her son Subhash. She stated that the sale did not materialize because the *Bayana* money was seized by the police and so she cancelled the sale agreement. In answer to a specific question as to why did she cancel the deal, she stated that the agreement was cancelled after the police case as the purchaser became apprehensive and was no more interested in purchasing the house.

91. D1W1 stated in the cross-examination that the sale agreement was written on a plain paper and that Ex. D1W1-A was the said agreement. She claimed ignorance as to from where the printed proforma for making Ex. D1W1-A was arranged. It has come in her cross-examination that she has a bank account in which she gets her old-age pension, but did not deposit the *Bayana* money in the bank as at times domestic needs arise in the family. She does not pay income-tax and it has come in her cross-examination



that she has not returned the *Bayana* amount to Surrender Singh till date. She is not paying any interest on the said amount to Surrender Singh and Surrender Singh has not filed any case against her for recovery of *Bayana* amount. D1W1 stated that she has not filed any application to police or to Court for return of Rs. 50 lacs. It has come in her cross-examination that she did not give anything in writing to Surrender Singh about receiving *Bayana* amount from him and that Surrender Singh had simply given the cash, which was counted by her son and kept by her.

92. The circumstances in which Rs. 50 lacs was recovered from the house of deceased accused Surajpal @ Chacha (A-1), are relevant. On 07.09.2013, after recovery of wildlife contraband and Rs. 2,70,000/- from car No. HR-11E-1001 by a team comprising officials of Delhi Police Crime Branch, Maharashtra Forest Department and WCCB, accused Surajbhan @ Sarju (A-2) was interrogated by PW-3 retired SI Jai Kishan. During interrogation, accused Surajbhan @ Sarju (A-2) disclosed vide his statement Ex. PW-3/C (referred by PW-1 as PW-1/G) that the wildlife contraband recovered from the car was to be delivered to deceased accused Surajpal @ Chacha (A-1) at his residence and further that Rs. 2,70,000/- recovered from the car was the remaining amount of Rs. 06 lacs that he had received from deceased accused Surajpal @ Chacha (A-1) to procure



wildlife contraband. Accused Surajbhan @ Sarju (A-2) also disclosed during interrogation that in the month of May 2013, he had procured 05 skins & bones at the rate of Rs. 3.5 lacs each, for deceased accused Surajpal @ Chacha (A-1) for which deceased accused Surajpal @ Chacha (A-1) had given him Rs. 20 lacs and that for this task he and co-accused Naresh @ Lala (A-3) had received Rs. 75,000/- each from deceased accused Surajpal @ Chacha (A-1).

93. Disclosure of accused Surajbhan @ Sarju (A-2) vide Ex. PW-3/C led the raiding party to the house of deceased accused Surajpal @ Chacha (A-1) at B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33, on 08.09.2013 from where deceased accused Surajpal @ Chacha (A-1) was apprehended, who made disclosure vide Ex. PW-3/E (referred by PW-1 as Ex. PW-1/K) that he had been involved in the sale & purchase of wildlife contraband since past many years and disclosed the names of his past associates as Khalid Hussain and Sansar Chand. He further disclosed that in May 2013, he had procured 05 skins through accused Surajbhan @ Sarju (A-2) for which he had given him Rs. 20 lacs. The said wildlife contraband (Tiger parts) was sold by him for Rs. 60 lacs to a Nepali person at Majnu Ka Tilla. Deceased accused Surajpal @ Chacha (A-1) further disclosed that out of those Rs. 60 lacs, he had given Rs. 06 lacs to accused Surajbhan @ Sarju (A-2) to procure Tiger



that she has not returned the *Bayana* amount to Surrender Singh till date. She is not paying any interest on the said amount to Surrender Singh and Surrender Singh has not filed any case against her for recovery of *Bayana* amount. D1W1 stated that she has not filed any application to police or to Court for return of Rs. 50 lacs. It has come in her cross-examination that she did not give anything in writing to Surrender Singh about receiving *Bayana* amount from him and that Surrender Singh had simply given the cash, which was counted by her son and kept by her.

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93. Disclosure of accused Surajbhan @ Sarju (A-2) vide Ex. PW-3/C led the raiding party to the house of deceased accused Surajpal @ Chacha (A-1) at B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33, on 08.09.2013 from where deceased accused Surajpal @ Chacha (A-1) was apprehended, who made disclosure vide Ex. PW-3/E (referred by PW-1 as Ex. PW-1/K) that he had been involved in the sale & purchase of wildlife contraband since past many years and disclosed the names of his past associates as Khalid Hussain and Sansar Chand. He further disclosed that in May 2013, he had procured 05 skins through accused Surajbhan @ Sarju (A-2) for which he had given him Rs. 20 lacs. The said wildlife contraband (Tiger parts) was sold by him for Rs. 60 lacs to a Nepali person at Majnu Ka Tilla. Deceased accused Surajpal @ Chacha (A-1) further disclosed that out of those Rs. 60 lacs, he had given Rs. 06 lacs to accused Surajbhan @ Sarju (A-2) to procure Tiger



parts and that the wildlife contraband recovered from the possession of accused Surajbhan @ Sarju (A-2) and accused Naresh @ Lala (A-3) on 07.09.2013 was the said consignment. He further disclosed that Rs. 04 lacs were spent on domestic expenditure and the remaining Rs. 50 lacs, which he had earned from sale of wildlife contraband was with him which he could get recovered.

94. Subsequent to the disclosure statement of deceased accused Surajpal @ Chacha (A-1) recorded by PW-3 retired SI Jai Kishan as Ex. PW-3/E, he led the police party to a room in his house, from where he got recovered Rs. 50 lacs in cash, kept in a metal box and 18 wild animal nails, which were seized vide memo Ex. PW-4/B.

95. Disclosure statements of deceased accused Surajpal @ Chacha (A-1), Ex. PW3/E, and accused Surajbhan @ Sarju (A-2), Ex. PW-3/C, are not admissible in evidence in view of Section 25 of Indian Evidence Act since they are recorded by a police officer PW-3 retired SI Jai Kishan. However, Section 27 of the Indian Evidence Act makes such portion of the statement of an accused made in police custody, admissible which leads to discovery of a fact (reliance is placed on *Mohd. Inayatullah Vs. State of Maharashtra, AIR 1976 SC 483* & *Smt. Selvi Vs. State of Karnataka, AIR 2010 SC 1974*).

96. Therefore, the presence and apprehension of deceased



accused Surajpal @ Chacha (A-1) at house No. B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33 at the instance of accused Surajbhan @ Sarju (A-2) and recovery of Rs. 50 lacs in cash from a metal box from a room in the house at No. B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33 at the instance of deceased accused Surajpal @ Chacha (A-1) are relevant and admissible being facts discovered under Section 27 of Indian Evidence Act, which were in the exclusive knowledge of the accused persons, to which the raiding party was not privy. But, their statements Ex. PW-3/C & Ex. PW-3/E about their involvement in the illegal trade of wildlife contraband is not admissible being inculpatory and hit by Section 25 of Indian Evidence Act. Recovery of wild animal nails is also significant because this is not a household article which can be expected to be commonly found in a residential complex, irrespective of the fact whether they were genuine or artificial nails.

97. However, statements of deceased accused Surajpal @ Chacha (A-1) and Surajbhan @ Sarju (A-2) recorded under the Wildlife (Protection) Act and PMLA are admissible in evidence and thus, relevant to prove the character of Rs. 50 lacs recovered from the house of deceased accused Surajpal @ Chacha (A-1) at his instance.

98. Statements of accused Surajpal @ Chacha (A-1) dated 22.10.2013 & 05.11.2013, recorded under Wild Life



(Protection) Act, by PW-6 Sh. Nishant Verma are Ex. PW-1/K-3 & Ex. PW-6/2 respectively. His statement dated 01.03.2014 recorded by PW-1 Sh. Binod Kumar Singh under PMLA is Ex. PW-1/B. In each statement deceased accused Surajpal @ Chacha (A-1) has disclosed a different fact about the source of Rs. 50 lacs. However, accused Surajbhan @ Sarju (A-2) in his statements, Ex. PW-1/G-1 & Ex. PW-1/G-2, recorded by PW-4 under the Wild Life (Protection) Act and his statement Ex. PW-1/C under PMLA recorded by PW-1 Sh. Binod Kumar Singh has consistently maintained that deceased accused Surajpal @ Chacha (A-1) was a trader in wildlife contraband for whom he had been procuring Tiger parts. It has come in his statements that in May, 2013, deceased accused Surajpal @ Chacha (A-1) had given him Rs. 20 lacs from which he had purchased 05 Tiger skins and had received commission from deceased accused Surajpal @ Chacha (A-1).

99. In the facts and circumstances of this case, in order to appreciate the statements of the accused persons recorded under the Wild Life (Protection) Act and PMLA, judgment of Hon'ble Supreme Court in *Sansar Chand Vs. State of Rajasthan, (2010) 10 SCC 604*, is relevant. It was an appeal against conviction under the Wild Life (Protection) Act and the facts were similar to the facts of the case in hand. The appellant therein was charge-sheeted and



convicted on the basis of disclosure by a person who was arrested by the police from a train carrying a carton containing Leopard skins. The person arrested had made disclosure to the police that the Leopard skins recovered from him were to be handed over to the appellant at Sadar Bazar, Delhi. Appeal was dismissed and relevant paragraphs of judgment are:

20. The learned counsel for the appellant submitted that the prosecution case is solely based on the extra-judicial confession made by co-accused Balwan vide Ext. P-33. We do not agree. Apart from the extra-judicial confession of Balwan there is a lot of other corroborative material on record which establishes the appellant's guilt.

21. It must be mentioned that persons like the appellant are the head of a gang of criminals who do illegal trade in wildlife. They themselves do not do poaching, but they hire persons to do the actual work of poaching. Thus a person like the appellant herein remains behind the scene, and for this reason it is not always possible to get direct evidence against him.

23. Ext. P-33, which contains the confession of the appellant, was written by PW 11, Arvind Kumar on the instructions given by the accused Balwan while in custody. Prior to Ext. P-33, Balwan has also disclosed the name of the appellant vide Ext. P-6 on 6-1-2003. In our opinion, Ext. P-33 supported by the evidence of Arvind, PW 11 and Ext. P-6 cannot be treated to be concocted documents which cannot be relied upon. As per the disclosure statement of Balwan the other co-accused persons were also arrested and articles used for killing and removing skins from the bodies of leopards were also recovered.

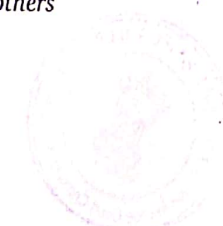
29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction,



although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore [(1970) 2 SCC 105 : 1970 SCC (Cri) 320 : AIR 1971 SC 1871], Mulk Raj v. State of U.P. [AIR 1959 SC 902 : 1959 Cri LJ 1219], Sivakumar v. State [(2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470 : AIR 2006 SC 653] (SCC paras 40 and 41 : AIR paras 41 & 42), Shiva Karam Payaswami Tewari v. State of Maharashtra [(2009) 11 SCC 262 : (2009) 3 SCC (Cri) 1320] and Mohd. Azad v. State of W.B. [(2008) 15 SCC 449 : (2009) 3 SCC (Cri) 1082 : AIR 2009 SC 1307]

(emphasis supplied)

100. Coming to the facts of the present case, there are 03 statements of the deceased accused Surajpal @ Chacha (A-1) recorded by PW-6 & PW-1 at different times, which are admissible in evidence. Deceased accused Surajpal @ Chacha (A-1) clearly stated in his first statement Ex. PW-1/K-3 recorded by PW-6 under Wild Life (Protection) Act on 22.10.2013 that Rs. 50 lacs recovered from his house was earned by him from sale and purchase of Tiger parts. This statement was recorded after more than 07 weeks of his arrest and recovery, when he was in judicial custody and is on the line of his disclosure statement Ex. PW-3/K to the police immediately after his arrest on 08.09.2013. Statement Ex. PW-1/K-3 is also on the line of various statements of accused Surajbhan @ Sarju (A-2) recorded under Wild Life (Protection) Act and PMLA. Nothing has come in the cross-examination of PW-6 Sh. Nishant Verma, who recorded the statement Ex. PW-1/K-3 of deceased



accused Surajpal @ Chacha (A-1) to create any doubt that this statement is a concocted document.

101. However, deceased accused Surajpal @ Chacha (A-1) in his subsequent statement to the WCCB dated 05.11.2013, Ex. PW-6/2, also recorded by PW-6, though maintained that his previous statement dated 22.10.2013, Ex. PW-1/K-3, was correct, but introduced a new fact about the source of Rs. 50 lacs recovered from his house by saying that it was his hard-earned money from interest on loan given to people and from commission from sale and purchase of properties.

102. Deceased accused Surajpal @ Chacha (A-1) in his statement to ED recorded on 01.03.2014 by PW-1 Sh. Binod Kumar Singh as Ex. PW-1/B, further changed his version about source of Rs. 50 lacs by saying that the money recovered from his house was advance money received from one Surrender Singh for sale of the house.

103. There are 03 versions given by deceased accused Surajpal @ Chacha (A-1) in the duration of about 05 months, about source of Rs. 50 lacs. After his arrest, for more than 07 weeks till 22.10.2013 when his statement Ex. PW-1/K-3 was recorded under the Wild Life (Protection) Act, he took the plea that it was earned from wildlife trade. Then on 05.11.2013, in his subsequent statement recorded under the Wild Life (Protection) Act, Ex. PW-6/2, he stated that it



was his hard-earned money, earned from interest and commission. Lastly on 01.03.2014, in his statement Ex. PW-1/B, recorded by PW-1 under PMLA, he came up with another theory that this money was advance money for sale of the house.

104. Nothing has come on record to indicate or show that statement of deceased accused Surajpal @ Chacha (A-1) dated 22.10.2013 Ex. PW-1/K-3 and statement of accused Surajbhan @ Sarju (A-2) dated 02.06.2014, Ex. PW-1/C, were recorded under inducement, threat or coercion. Till the last stage of trial while deceased accused Surajpal @ Chacha (A-1) was alive, he did not explain as to why he did not disclose or claim before any authority under the law till after 08 weeks of his arrest that Rs. 50 lacs recovered from his house was the advance payment received from one Surender Singh. There is nothing on record to show what stopped or prevented him to disclose this fact till 01.03.2014 when his statement Ex. PW-1/B was recorded under PMLA. It is not explained that if the money recovered was the advance payment for sale of the house, why did he give the statement dated 05.11.2013, Ex. PW-6/2, that it was his hard-earned money. No steps were taken by the deceased accused till the time he was alive before any authority or Court that his statements dated 22.10.2013 recorded under Wild Life (Protection) Act as Ex. PW-1/K-3



and dated 05.11.2013, as Ex. PW-6/2 were not correctly recorded. In the facts and circumstances, the statement of deceased accused Surajpal @ Chacha (A-1) dated 01.03.2014 to ED recorded by PW-1 as Ex. PW-1/B, seems to be an afterthought to create a desperate defence to protect and shield Rs. 50 lacs.

105. On the basis of circumstances in which Rs. 50 lacs was recovered at the instance of deceased accused Surajpal @ Chacha (A-1) from his house, recovery memo Ex. PW-4/B, proved by the witnesses, various statements of accused Surajbhan @ Sarju (A-2) recorded under Wild Life (Protection) Act and PMLA and statement of deceased accused Surajpal @ Chacha (A-1) dated 22.10.2013 recorded by PW-6 Sh. Nishant Verma under the Wild Life (Protection) Act as Ex. PW-1/K-3, the prosecution is able to discharge the initial burden to prove that Rs. 50 lacs recovered from the house of deceased accused Surajpal @ Chacha (A-1) at his instance and on the basis of his disclosure statement is proceeds of crime generated by him through a criminal activity relating to the scheduled offence.

106. Now it is to be seen whether Smt. Chanda Devi, wife of deceased accused Surajpal @ Chacha (A-1) has been able to rebutt the presumption under Sections 23 & 24 of PMLA. She testified as a defence witness D1W1 during the lifetime



of her deceased husband accused Surajpal @ Chacha (A-1) that she is the owner of house B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33 and that Rs. 50 lacs recovered from the house on 08.09.2013 was the advance money received by her from one Surender Singh with whom she had entered into an agreement to sell the house.

107. It is to be noted that though D1W1 claims to be the owner of the house, which she agreed to sell to one Surender Singh for Rs. 1,70,00,000/-, she did not produce any document in support of her claim of ownership. The prospective buyer Surender Singh has not been examined in the Court as a witness. Further, according to the deposition of D1W1, this deal was finalized through a broker Kaptan Singh, but no such person has been examined as a witness in the Court during trial.

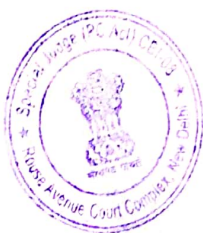
108. The only evidence brought on record to stake claim to Rs. 50 lacs, is the statement of Smt. Chanda Devi as D1W1 and photocopy of a *Bayana* receipt, Ex. D1W1-A. It is to be noted that the receipt produced is not a properly executed document. It does not bear signatures of Kaptan Singh, who is projected to have brokered the said deal and is witness of payment. D1W1 has contradicted herself in her cross-examination with respect to execution of *Bayana* receipt, Ex. D1W1-A. While in the examination-in-chief she stated that the receipt was made at the time of payment of



advance money, the original of which was kept by Surender Singh, but in the cross-examination she stated that while receiving the *Bayana* amount from Surender Singh she did not give anything in writing and further that the money was paid in cash by Surender Singh which was counted by her son and kept by her.

109. The document Ex. D1W1-A and testimony of D1W1 about the facts relating to this document appear to be highly doubtful because D1W1 has stated in her cross-examination that neither she has sold the house to Surender Singh, nor she has returned the *Bayana* (advance money) received from him. It has also come in her cross-examination that Surender Singh has not asked her to execute any sale deed and neither he has filed any claim in any Court of law against her to recover the advance money.

110. Rs. 50 lacs is a substantial amount. It is unbelievable that if this amount was paid by any prospective buyer to D1W1 for purchase of the house in the year 2013, he will remain silent and will not aggressively demand the money back when the sale agreement fell flat. In the overall facts and circumstances, testimony of D1W1 with respect to her claim about ownership of the house and Rs. 50 lacs received by her as *Bayana* amount is unbelievable and untrustworthy. Smt. Chanda Devi has failed to rebutt the evidence brought on record by the prosecution and presumption in the favour



of the prosecution that Rs. 50 lacs is proceeds of crime.

Offence of money-laundering – Evidence & Analysis

111. Prosecution has proved that Rs. 2,70,000/- recovered from car No. HR-11E-1001 on 07.09.2013 is proceeds of crime. It is also proved that this money was recovered from under the car seat on which accused Surajbhan @ Sarju (A-2) was sitting. It has come in the statement of accused Surajbhan @ Sarju (A-2) recorded by PW-1 Sh. Binod Kumar Singh under Section 50 PMLA proved as Ex. PW-1/C that Rs. 2,70,000/- recovered from the car was the part of Rs. 06 lacs received by him from deceased accused Surajpal @ Chacha (A-1) for purchase of Tiger parts. It has also been established that money given by deceased accused Surajpal @ Chacha (A-1) to accused Surajbhan @ Sarju (A-2) was proceeds of crime, generated through illegal wildlife trade.

112. On the basis of above, it is established that accused Surajbhan @ Sarju (A-2) was directly involved in possession, acquisition and use of Rs. 06 lacs which was proceeds of crime and thus, committed the offence of money-laundering under Section 3 of PMLA punishable under Section 4 of PMLA.

113. Accused Naresh @ Lala (A-3) has been prosecuted for the offence of money-laundering on the allegation that he is the owner of the car No. HR-11E-1001, which was used in the commission of scheduled offence and from which Rs.



2,70,000/-, proceeds of crime, was recovered.

114. Prosecution has failed to prove that car No. HR-11E-1001 is proceeds of crime or that accused Naresh @ Lala (A-3) is the owner of this car. Counter arguments and evidence on this aspect has been dealt in detail in the earlier part of this judgment under the heading "proceeds of crime". There is no evidence that at any point of time accused Naresh @ Lala (A-3) dealt with the proceeds of crime in any manner. As per evidence, his role was in transportation of wildlife contraband, for which he has been convicted under the Wild Life (Protection) Act. But his said act does not come within the ambit of offence of money-laundering defined under Section 3 of PMLA. Thus, the offence of money-laundering is not proved against him.

Conclusion

115. In view of the above discussion and evidence on record, prosecution has been successful in proving its case beyond reasonable doubt that accused Surajbhan @ Sarju (A-2) has committed the offence of money-laundering, defined under Section 3 of PMLA, punishable under Section 4 of PMLA and he is convicted accordingly. However, prosecution has failed to prove the offence of money-laundering against accused Naresh @ Lala (A-3) and thus he is acquitted.



Disposal of case property

116. Rs. 2,70,000/- in cash recovered from car No. HR-11R-1001 on 07.09.2013 and Rs. 50 lacs in cash recovered from house No. B-539, Gali No. 5, Majlis Park, Adarsh Nagar, Delhi-33 on 08.09.2013 have been found to be the proceeds of crime involved in the money-laundering, which are already under attachment by the order of Adjudicating Authority, Ex. PW-2/A & Ex. PW-2/C respectively. In view of Sections 8(5) & 8(7) of PMLA, it is ordered that the above property be confiscated to the Central Government.

117. The car No. HR-11E-1001, under attachment by the order of the Adjudicating Authority, Ex. PW-2/B, is not found to be involved in money-laundering. However, it is found to be involved in the commission of offence under the Wild Life (Protection) Act. Therefore, it is directed to be released to WCCB for confiscation to the State under the Wild Life (Protection) Act.

118. Convict Surajbhan @ Sarju (A-2) be heard on point of sentence.

Announced in the open Court
on September 09, 2019

— SP —
(Santosh Snehi Mann)
Special Judge (PC Act), CBI-08,
Rouse Avenue Courts Complex,
New Delhi.



Special Judge (PC Act), CBI-08
Rouse Avenue Court Complex
New Delhi