22.03.2022

ORDER

1. Vide this order I shall dispose of the applications under Section 207 Cr.P.C. filed on behalf of accused No.3, 5 and 6 as also on behalf of accused No.7. It was submitted that the application filed on behalf of accused No.3, 5 and 6 be also treated as on behalf of accused No.2.

2. In the application filed on behalf of accused No.2, 3, 5 and 6, it is stated that the same was merely preliminary and not exhaustive and the accused were still in the process of scrutinizing the records. It is averred that upon partial scrutiny of the documents supplied to the accused, the documents being bulky and voluminous, it was found that amongst the documents supplied by the prosecution, there was certain material which had been placed reliance upon by the prosecution but had not been incorporated in the list of documents.

3. It is averred that the investigating agency had allegedly recorded statements of witnesses and accused persons but had chosen not to supply the same along with their complaint though it was the duty of the ED to place on record all the documents, including statements of witnesses, collected by them during their investigation, although not relied upon. It is submitted that Sections 207/208 Cr.P.C. compel the

investigating agency to supply all the statements recorded by them. It is stated that all the statements that the prosecution agency had recorded had not been provided to the accused persons. Further the investigating agency had recorded the statements of some witnesses multiple times and the agency under Sections 207/208 Cr.P.C. was compelled to supply all the statements that had been recorded. It is stated that it is for the prosecution agency to disclose and supply the complete list of witnesses whose statements they had recorded and not forwarded to the court along with the complaint. It is submitted that the investigating agency had chosen to rely upon certain complaints received by PS Bowbazar and PS Chirpore which fact found mention in the complaint but the documents and the material did not find mention in the list of documents and the accused persons wanted to be allowed to inspect the material which had not been forwarded to the Court. The investigating agency had also relied on certain summons issued to persons from whose possession digital evidence was seized during investigation as mentioned in para 3.8 of the complaint and the accused persons wanted a copy of the summons in order to decipher if the evidence had been procured by following the due process of law.

4. It is averred that ED had stated about various documents seized from the premises of accused Kanwar Deep Singh which reflected his association with Alchemist Township India Ltd., Alchemist Holdings Ltd and other companies and a list of all such seized documents with their description was sought by the accused persons. The ED had also relied on certain information from the Income Tax Department relating to Singapore but the complaint was conspicuously silent about

the details. It is averred that the ED was bound to disclose the details and contents of the said information. It is submitted that every document which is seized is required to be produced before the court and reliance is placed on the judgment of the Hon'ble Supreme Court in **Suo Moto** W.P. (CRL)1/2017 wherein detailed guidelines have been laid down and of the Hon'ble High Court of Delhi in **Ashutosh Verma** v. **CBI** 2014 SCC Online Delhi 6931 to contend that even at the stage of scrutiny of documents under Sections 207/208 Cr.P.C., the Court should supply all documents to the accused even if the same are not relied upon by the prosecution.

5. It is submitted that as regards the position of unrelied documents and their inspection, the issue had been put to rest by the judgment of the Hon'ble High Court of Delhi in **CBI** v. **INX Media** dated 10.11.2021. Reliance is also placed on the judgment of the Hon'ble High Court of Delhi in **Shakuntala** v. **State of Delhi** (2007) 139 DLT 178 wherein it had been held that before charges are framed, it is the right of the accused to be supplied documents which had been collected during investigation but had deliberately been withheld and not been made a part of the charge sheet by the prosecution agency. Further as regards the right to get copies of electronic evidence relied upon by the prosecuting agency, for due compliance of Section 207 Cr.P.C., reliance is placed on the judgment of Hon'ble Supreme Court in **Tarun Tyagi** v. **CBI** (2017) 4 SCC 490. Reliance is also placed on the judgment of the Hon'ble Supreme Court in **V. K. Sasikala** v. **State** (2012) 9 SCC 771 on the point that the accused has a right to be supplied a copy of all documents which are a part of the police report regardless of whether the same had been relied upon by the prosecuting agency and it

was also held that in the absence of a claim at an earlier point of time for supply of documents which were part of the police report, it could not have the effect of foreclosing the right of an accused under Section 207 Cr.P.C. It is averred that grave prejudice would be caused to the accused persons if the application is not allowed as their right to free, fair and proper trial would be compromised. It is submitted that the scrutiny of documents is continuing and the application has been filed to bring to the notice of the court the deficiencies in the documents identified till date. It is, thus, prayed that ED be directed to make a complete disclosure of the witnesses examined during investigation other than the ones specified as also a complete disclosure of the number of statements recorded by them during investigation other than the ones specified. It is further prayed that ED be directed to supply a list of all the material documents and statements recorded/ collected by them during investigation but not forming part of the record and it be directed to supply copy of the summons as mentioned in para 3.8 of the complaint. Further ED be directed to file a list of various documents along with their description seized from the premises of A-7 which reflected his association with Alchemist Township India Ltd, Alchemist Holdings Ltd. and other companies and the same be supplied and ED be also directed to share the contents and material of information from the Income Tax Department relating to Singapore and the accused persons be allowed inspection of the entire material seized by ED during investigation.

6. Reply was filed on behalf of ED to the said application making the preliminary submissions that the application was baseless and frivolous and premature as the

accused persons had specifically stated that only partial scrutiny of the documents had been completed and the documents stated to be missing may be part of the remaining documents. It is averred that the reliance of the accused persons on the decision of the Hon'ble Supreme Court in W. P. (Crl.) No. 1319/2019 was misconceived as the said order was a general order and did not deal specifically with Special Acts such as PMLA. Reliance was placed on the judgment of Hon'ble High Court of Delhi in **Sarla Gupta and Anr.** v. **Directorate of Enforcement** (2019) 262 DLT 661. It is submitted that the said decision was challenged in the Hon'ble Supreme Court and the Ld. Trial Court was directed not to frame charges, however, there was no stay of the operation of the order passed by the Hon'ble High Court of Delhi. It is averred that the reliance placed by the accused persons on the decision of the Hon'ble High Court of Delhi in **CBI** v. **INX Media Pvt. Ltd.** was also misconceived as that was a CBI case and was governed by certain rules mentioned in the CBI manual. It is submitted that further investigation in the present case was under progress and providing documents or the list of documents pertaining to which further investigation was ongoing would be detrimental to the investigation itself.

7. On merits, it is averred that the statements which the accused persons are seeking are essential for further investigation and supplying the same to the accused at this stage would hamper the ongoing investigation. It is also stated that the complaints received are part of FIRs registered by Kolkata police and are part of D-1 of relied upon documents already supplied to the accused persons. It is also submitted that the

documents related to procedure mentioned in para 3.8 i.e. the copies of *panchnamas* drawn at the time of retrieval of data from digital devices seized during searches had already been supplied as D-6 of relied upon documents to the prosecution complaint. It is further submitted that the relied upon documents from seized material during searches under Section 17 of PMLA had been made part of D-39 of the relied upon documents supplied to the accused persons and investigation in respect of remaining seized documents was under process and could not be supplied in view of the pending investigation. Further the relied upon documents in respect of the information received from Income Tax department had already been made part of D-39 and D-46 of the relied upon documents to prosecution complaint and had been supplied to the accused persons and investigation in respect of the remaining documents was under progress and could not be supplied in view of the pending investigation. It is averred that no prejudice would be caused to the accused persons if the present application was not allowed as charges are yet to be framed in the instant matter. It is stated that the application has been filed only to pressurize the complainant to part with documents which are essential for further investigation so that investigation may be hampered and prejudice would be caused to the complainant if the application is allowed as that would disclose the line of investigation being conducted by the complainant. It is, thus, prayed that the application be dismissed.

8. An application under Sections 207/208 of Cr.P.C. has also been filed on behalf of A-7 seeking supply of deficient documents. It is submitted that the application is

merely illustrative and not exhaustive and the accused is still in the process of scrutinizing the records which are voluminous in nature. It is stated that the contents of pages 43-50 of the complaint are completely illegible and the complainant be directed to supply legible copies of the same. It is averred that upon partial scrutiny of the documents supplied to the accused, it was revealed that amongst the documents supplied by the complainant, there was certain material upon which reliance had been placed by the prosecution but had not been incorporated in the list of documents and not supplied to the accused No.7. Similar averments are made as in the application filed on behalf of accused No.2, 3, 5 and 6 regarding statements of witnesses and it is submitted that the complainant must disclose and supply the complete list of witnesses whose statements had been recorded but not forwarded to the court along with the prosecution complaint as that would not only maintain transparency but would also discover the truth which was the ultimate aim of every court. Regarding the other material also, similar averments are made as in the application filed on behalf of accused No.2, 3, 5 and 6 and reliance is also placed on the same judgments. Similar prayers are made as in the application on behalf of accused No.2, 3, 5 and 6 and in addition, it is prayed that the complainant be directed to supply legible copies of pages No.43 to 50 of the prosecution complaint.

9. Reply was filed on behalf of ED to the application filed on behalf of accused No.7 making similar averments as made in the reply to the application filed on behalf of accused No.2, 3, 5 and 6.

10. I have heard Shri Hemant Shah, Ld. Counsel for accused No.2, 3, 5 and 6, Shri Harshit Sethi, Ld. Counsel for accused No.7 and Shri N. K. Matta, Ld. SPP for ED.

11. The Ld. Counsel for accused No.2, 3, 5 and 6 had submitted that the said application was a preliminary application as by the said application the accused persons were seeking supply of a list of the unrelied upon documents and subsequently the appropriate application would be moved. It was submitted that essentially three types of documents were sought i.e. documents which were collected but were not relied upon; statements which were recorded under Section 50 PMLA but had not been placed on record as ED had relied on some of the statements which were recorded but not on the others and the documents, contents of which were mentioned in the complaint but were either not relied on or partly relied on or not supplied with the complaint. The averments made in the application were reiterated. Reliance was placed upon various judgments:

i) Ashutosh Verma v. **CBI** (dated 04.12.2014 Delhi High Court, Criminal M.C No. 79/2014).

ii) V. K. Sasikala v. **State represented by Superintendent of Police** AIR 2013 SC 613.

iii) Tarun Tyagi v. **CBI** (dated 08.02.2017 of Hon'ble Supreme Court in Criminal Appeal No.102/2017).

iv) Shashibala v. **State of Delhi** (dated 08.07.2016 of Hon'ble High Court of Delhi in Criminal MC No.1752/2016).

v) CBI v. **M/s. INX Media Pvt. Ltd. & Ors.** (dated 10.11.2021 of Hon'ble High Court of Delhi in Criminal MC No.1338/2021).

vi) In Re: To issue certain guidelines regarding inadequacies and deficiencies in criminal trials v. **The State of Andhra Pradesh & Ors.** (dated 20.04.2021 of Hon'ble Supreme Court in Suo Moto Writ (CRL) No.(S) 1/2017).

12. The Ld. Counsel had further submitted that as directed by the Hon'ble High Court of Delhi in the case of **CBI** v. **M/s. INX Media Pvt. Ltd**. **and others (supra)**, the prosecution was bound to give a list of all the unrelied upon documents which was essential. It was also argued that it was open for the prosecuting agency to have sought privilege from the court that they did not want to supply certain statements to the accused at the time of filing the complaint but no such privilege was sought.

13. The Ld. Counsel for accused No.7 had submitted that he would adopt the arguments as advanced on behalf of accused No.2, 3, 5 and 6.

14. The Ld. SPP for ED had argued that all the judgments which had been relied upon by the Ld. Counsel for the accused persons related to cases under IPC or PC Act and as regards the PMLA, the only judgment in this regard was of the Hon'ble High

Court of Delhi in **Sarla Gupta and Anr.** v. **Directorate of Enforcement (supra)** wherein the issue was considered and the Hon'ble High Court held that only the relied upon documents in a complaint case could be supplied. It was submitted that **CBI** v. **M/s. INX Media Pvt. Ltd**. **and others (supra)** was also of CBI and therein the question was of supply of documents which were in the Malkhana. It was submitted that in the present case, investigation was still going on and if the ED was compelled to part with the documents, it would prejudice the further investigation. It was also submitted that the order in related cases of **CBI** v. **M/s. INX Media Pvt. Ltd**. **and others (supra)** wherein directions were given to supply the list of documents had been challenged before the Hon'ble High Court. It was also submitted that the present being a complaint case, identical applications were earlier moved in cases under FERA and Custom Act cases and it had been held that it being a complaint case, the only statutory requirement was to give a list of witnesses. Reliance in this regard was placed on the judgment of the Hon'ble High Court of Delhi in **Lachhman Singh, Inspector** v. **Mahinder Singh & Ors.** 37 (1989) DLT 241 and of the Hon'ble Supreme Court in **Assistant Collector of Customs, Bombay and Another** v. **Melwani and Another** (1969) 2 SCR 438. It was submitted that it would be argued on behalf of the accused persons that the said judgments would not be applicable as the trial under PMLA is a Sessions trial but in the instant case, the trial had not yet commenced and the accused persons could ask for the documents only at the stage of trial. It was contended that PMLA is a complete Code in itself and lays down provisions for seizure which were contained in Section 17 PMLA and the original

application had been filed before the adjudicating authority. It was argued that if the accused persons wanted the documents, they could have approached the concerned authority under Section 21 of the PMLA and not now. Reliance was also placed on Section 173 (6) Cr.P.C. and Section 207 (5) Cr.P.C.

15. In rebuttal the Ld. Counsel for accused No.2, 3, 5 and 6 had submitted that even as per the averments made by the ED, the judgment in **Sarla Gupta and Anr.** v. **Directorate of Enforcement (supra)** had been stayed and the legislature at the time of framing PMLA was well aware of Section 17 PMLA, yet Section 65 PMLA was added which provided that provisions of Cr.P.C. would be applicable and in PMLA there was no section which related to supply of documents so Sections 207/208 Cr.P.C. would be applicable. Moreover, if as per ED, the present was a complaint case, it had not been stated by ED whether the complaint was filed under Section 2 (d) or 2 (r) Cr.P.C. and the present case was definitely akin to a charge sheet and the final report under Section 173 Cr.P.C. Moreover, the judgments which had been relied upon by the Ld. SPP for ED were of 1989 when PMLA did not even exist.

16. A perusal of the record shows that the present ECIR was registered based on scheduled offences under Sections 406,420,120B IPC in FIR No.84 dated 16.03.2007, PS Bowbazar, Kolkata and FIR No.82/2017, FIR No.83/2017 and FIR No.84/2017 dated 01.04.2017 at PS Chitpore, Kolkata and other FIRs at Kanpur and Agra against the accused persons. It is alleged that the accused persons had entered into criminal

conspiracy and in pursuance of the same they cheated investors/ victims and fraudulently collected money and induced the complainants to invest in MIS scheme but after maturity of the scheme they did not return the amount. As per the allegations Rs.444.67 crores were raised from investors by Alchemist Holdings Ltd. from 2005 onwards but the funds were diverted/siphoned off into group companies of Alchemist Group and further Rs.1403.51 crores were raised from investors in the garb of giving plots by Alchemist India Ltd. from 2012 onwards and the said funds were also diverted siphoned off into group companies of Alchemist Group and the investors did not get the amount back. As such, as per the case of ED, the said funds were proceeds of crime and were still outstanding to be paid.

17. In the applications under Section 207 Cr.P.C. that have been filed on behalf of accused No.2, 3, 5, 6 and 7 it is submitted that upon partial scrutiny of the documents supplied to the accused persons, it was found that there were certain other documents which had been relied upon by the prosecution but had not been incorporated in the list of documents. The Ld. Counsels for accused No.2, 3, 5, 6 and 7 had relied upon the judgment of the Hon'ble High Court of Delhi in **Ashutosh Verma** v. **CBI (supra)** wherein the Hon'ble High Court had observed that no specific request had been made by the police officer forwarding the charge sheet to the Magistrate for withholding any statement under Section 161 (3) of Cr.P.C. or any particular document or portion thereof from the petitioner what to say of citing reasons thereof and the opposition made by the CBI to the request of the petitioner for supplying the requisite statements

under Section 161 (3) of Cr.P.C. of prosecution witnesses and also copies of documents was regarded as unjustified and not tenable in the eyes of law. It was submitted that the same is the position in the present case wherein no permission was sought from the court not to supply certain documents or certain statements and hence the opposition to supplying the same would be unjustified. There is no dispute that in the present case, no such request had been made by ED at the time of filing the complaint. Reliance was also placed on the observations made in the said judgment as under:

> *"If the arguments of learned Special PP for CBI are to be accepted, it would mean that the prosecution can at its own will and pleasure pick and choose the statement of witnesses in respect of which the copies are to be and are not to be, furnished to the accused to suit its convenience, thus eliminating all chances of witnesses being confronted with their previous statement in consistence with or contradictory to the case which the prosecution seeks to establish, which could never be the intention of the legislature."*

It was also observed that in case the prosecution was permitted to withhold what might be vital evidence for an accused to establish his case, the unscrupulous investigating agency would be with utmost ease able to keep the court in the dark. It was further observed:

> *"Since the charges framed by CBI are of criminal nature, the petitioner under such circumstances has the full right to lay down his defences for the purposes of which all necessary disclosures have to be duly made in accordance with the procedures laid down under Cr.P.C. Accused can ask for the documents that withhold his defence and would be prevented from properly defending himself, until all the evidence collected during the course of investigation is given to the accused. Defence has to be build up from day one and not on ad-hoc basis denying the same*

would seriously prejudice the rights of the accused as enshrined in the Constitution of India.

28. In view of the dictum in the aforementioned judgments, this Court is of the opinion that petitioner cannot be denied an access to the documents in respect of which prayers have been made in the petition merely because CBI does not consider it relevant. If there is a situation that arises wherein an accused seeks documents which support his case and do not support the case of the prosecution and the investigating officer ignores these documents and forward only those documents which favour the prosecution, in such a scenario, it would be the duty of investigating officer to make such documents available to the accused."

Thus, it was held that the documents as prayed for had to be supplied to the accused.

To similar effect is the judgment of the Hon'ble High Court of Delhi in **Shashi Bala** v. **State Govt. of NCT of Delhi & Ors. (supra)** wherein it was observed as under:

"13. In other words, it is only when specific request has been made by a police officer in his forwarding memorandum of the charge-sheet while being forwarded to the Magistrate stating that any particular statement recorded under Section 161(3) of Cr.P.C. or any document or any part thereof should not be supplied to the accused that the, Magistrate shall on the basis of the discretion conferred upon him, by virtue of first proviso attached to Section 207 of Cr.P.C. after considering the reasons given by the police officer making such request, would either issue directions for furnishing copy of that part of statement or would issue directions for furnishing any relevant portion of that statement thereof to the accused or otherwise. It thus, necessary follows therefrom that in case where no such specific request has been made by a police officer while forwarding the chargesheet to the Magistrate then the copies of all the statements recorded under Section 161 (3) of Cr.P.C., documents or relevant extract thereof, etc. as provided in clause (I) to (v) of Section 207 of Cr.P.C. are required to be provided to the accused."

The Hon'ble High Court referred to the judgment of the Hon'ble High Court of Delhi in **Shakuntala** v. **State of Delhi (supra)** on which reliance was placed by the Ld. Counsels for accused No.2, 3, 5, 6 and 7 wherein it was observed as under:

> *"4. It is settled law that fair and just investigation is a hallmark of any investigation. It is not the duty of the Investigating Officer to strengthen the case of prosecution by withholding the evidence collected by him. If an Investigating Officer withholds the evidence collected by him, the accused has a right to rely upon that evidence and tell the Court to take that evidence into account while framing the charges. The Court while framing charges may not take into account the defence of the accused or the documents in custody of the accused which were not produced by the accused before the Investigating Officer or which did not form part of the investigation but the Court is duty bound to consider the evidence collected by the Investigating Officer during the investigation of the case. If it is brought to the notice of the Court by the accused that some of the evidence or documents have been withheld by the Investigating Officer or the prosecution deliberately, so that truth does not come out before the Court, the Court, before framing of charge can order the Investigating Officer to place the entire investigation before it and ask him to produce case diaries. Fair investigation is the right of the accused and this right can be exercised by the accused at the time of charge and the accused can insist upon the Court to consider the evidence collected by the Investigating Officer but not made part of the charge-sheet."*

The Hon'ble High Court had also then referred to the judgment in **Ashutosh Verma** v. **CBI (supra)** and held that in order to do substantial justice, the accused persons were entitled to the documents/ statements as mentioned in their applications.

18. The Ld. Counsels for the accused No.2, 3, 5, 6 and 7 had also relied upon the judgment of the Hon'ble Supreme Court in **Tarun Tyagi** v. **Central Bureau of**

Investigation (supra) wherein it was observed that "*Section 207 puts an obligation on the prosecution to furnish to the accused, free of cost, copies of the documents mentioned therein, without any delay. It includes, documents or the relevant extracts thereof which are forwarded by the police to the Magistrate with its report under Section 173(5) of the Code.... It is but obvious that in order to prove his defence, the copies of the seized CDs need to be supplied to the appellant. The right to get these copies is statutorily recognized under Section 207 of the Code, which is the hallmark of a fair trial that every document relied upon by the prosecution has to be supplied to the defence/ accused at the time of supply of the chargesheet to enable such an accused to demonstrate that no case is made out against him and also to enable him to prepare his cross-examination and defence strategy.*" The Ld. Counsel also relied upon the order of the Hon'ble High Court of Delhi in **CBI** v. **M/s. INX Media Pvt. Ltd**. **and others (supra)** wherein the Hon'ble High Court had referred to the judgment of the Hon'ble Supreme Court in **V. K. Sasikala** v. **State** (on which as well reliance has been placed by the Ld. Counsel) and observed as under:

> *"In the decision reported as (2012) 9 SCC 771 V.K. Sasikala vs. State Hon'ble Supreme Court noted a common feature that seizure of a large number of documents takes place in the course of investigation in a criminal case and that after completion of the process of investigation and before submission of the report under Section 173 Cr.P.C., the investigating officer is bound to apply its mind to the two sets of documents i.e. the one which support the prosecution case and the other which support the accused, however it is not impossible to visualize a situation where the documents favouring the accused are not forwarded to the Court, even though the prayer in the said case was in relation to the documents forwarded to the Court but not relied by the prosecution".*

In the said case, the Hon'ble High Court had upheld the order of the Ld. Trial Court by which the Ld. Trial Court had directed supply of certain documents to the accused persons and inspection of records of the case lying in the Malkhana of CBI with some riders. Thus, in all the aforesaid judgments, the weight of authority is in favour of supply of documents collected during investigation to ensure fair trial.

19. The Ld. SPP for ED, on the other hand had contended that the judgments relied upon by the Ld. Counsels for the accused No.2, 3, 5, 6 and 7 pertained to offences under IPC or PC Act whereas the present was a special legislation i.e. PMLA and a complaint case has to be treated differently from a case under IPC or PC Act. Reliance in this regard was placed on the judgment of the Hon'ble High Court of Delhi in **Lachhman Singh, Inspector** v. **Mahinder Singh & Ors. (supra)** wherein the complaint under Section 135(1)(a) of Customs Act, 1962 and Section 5 of Imports and Exports (Control) Act, 1947 was dismissed in default due to non-prosecution and it was observed as under:

> *"4. Now, as regard the non-filing of the documents by the complainant, admittedly there is no provision in the Code of Criminal Procedure under which a complainant can be directed to file copies of the documents which he (the complainant) may have to produce on the record as a part of his evidence, either at the trial or at the enquiry stage. There is also no provision casting a duty on the complainant even to file any list of documents as relied on by him on the record of the case at any stage of the case. The complainant is entitled to produce documents as relied on by him and to get them proved as and when the witness from whom the relevant document is to be*

> *proved comes in the witness box. Thus, in my opinion, the order of the learned Magistrate directing the complainant to file copies of the documents as relied on by the complainant before the complainant was called upon to produce his evidence at the enquiry was unwarranted and strictly speaking the complainant was not bound to comply with the same."*

As such, it was held that in a complaint case, the complainant could not be called upon to file copies of the documents relied on by the complainant before the complainant was called upon to produce his evidence at the enquiry. Reliance was also placed on the judgment of the Hon'ble Supreme Court in **Assistant Collector of Customs, Bombay and Another** v. **Melwani and Another (supra)** which was a case under Sea Customs Act and it was observed that Section 173 Cr.P.C. was wholly inapplicable to the facts of the case as no report had been sent under Section 173 Cr.P.C. and it was a case instituted upon a complaint. It was observed that Section 94(1) of Cr.P.C. does not empower a Magistrate to direct the prosecution to give copies of any documents to an accused person and that the 'High Court was not justified, in indirectly applying to cases instituted on private complaints the requirements of Section 173(4), Criminal Procedure Code." However, as submitted by the Ld. SPP for ED fairly, PMLA is a special legislation and the procedure followed thereunder is of Sessions trial. There is no stage of enquiry or pre-charge evidence and in such circumstances, if the ED does not supply the documents or statements of witnesses to the accused persons, they would be left bereft of any material on the basis of which they could know as to what was the case set up against them or to even to argue for their discharge.

20. The Ld. SPP for ED had also submitted that PMLA being a special legislation, the provisions of Sections 207, 208 Cr.P.C. would not apply *mutatis mutandis* to the proceedings under PMLA. Reliance in this regard was placed on the judgment of Hon'ble High Court of Delhi in **Sarla Gupta** v. **Directorate of Enforcement (supra)** wherein the Hon'ble High Court had observed as under:

> *"The impugned order has come to be passed by the ld. Special Judge (PC Act) in the proceedings initiated under a special Act i.e. PMLA. The complaint made by the Directorate of Enforcement under Section 3/4 of the PMLA Act is the foundation thereof. On the complaint so made, the offence(s) are to be tried by the Special Court as provided for under sub- clause (d) of sub-Section (1) of Section 44 PMLA. Provision so made under the PMLA-a special enactment, is an exception created to the procedure to be followed for trial of the offences as provided for under the Code of Criminal Procedure. In that view of the matter neither Section 207 nor Section 208 Cr.P.C. can be applied mutatis mutandis to the proceedings under PMLA. Then, the matter is at the stage of pre-charge consideration and this stage, cannot be construed to be a stage of trial. Trial begins with the framing of charge. In the given factual conspectus, the observations and the conclusions drawn by the Co-ordinate Bench of this Court in Dharambir's case (supra) and relied upon by the Trial Court have a direct bearing. Relevant to the subject, the ld. Special Judge has aptly culled out the observations and the conclusions drawn in Dharambir's case (supra), as under:*
>
> *"(v) In terms of Sections 207(v) read with Section 173(5)(a) Cr.P.C., the prosecution is obliged to furnish to the accused copies of only such documents that it proposes to rely upon as indicated in the charge sheet or of those already sent to the court during investigation.*
>
> *(vi) The trial court or this Court cannot, at the pre-charge stage, direct the prosecution to furnish copies of documents other than that which it proposes to rely upon or which have already been sent to the court during investigation.*

(vii) At the pre-charge stage the trial court cannot direct that a copy of each and every document gathered by the prosecution must be furnished to the accused irrespective of what the prosecution proposes to rely upon.

(viii) The prosecution is bound to indicate in the charge sheet submitted to the Court the documents it is proposing to rely upon for persuading the court to frame a charge against the accused. If it fails to do so, the court will proceed on the basis that whatever document is forwarded with the charge sheet is in fact proposed to be relied upon by the prosecution.

(ix) Where the accused insists that some other document apart from what is stated in the list of documents attached to a charge sheet should be taken as being proposed to be relied upon by the prosecution, and submits that this is evident from a reading of the charge sheet, the trial court will examine such submission and if it is satisfied that the charge sheet does in fact indicate that some other document is also proposed to be relied upon by the prosecution, then it can require the prosecution to furnish the accused a copy of such document as well.

(x) ...

(xi) ...

(xii) ...

(xiii) ...

(xiv) ...

(xv) As long as the statutory requirements of Sections 207(v) read with 173(5)(a) Cr.P.C. are strictly complied with, and in the absence of any challenge to their constitutional validity, the failure to furnish to the accused by the prosecution at the pre-charge stage all documents gathered during investigation will not be a violation of the right to a fair trial under Article 21 of the Constitution."

In Sasikala's case (supra) relied upon by the ld. counsel for the petitioners in W.P.(Crl) 1164/2019, which took note of the ratio of the judgment in Manu Sharma's case (supra), the Supreme Court had taken note of the perceived difficulties in answering or

explaining some part of evidence brought by the prosecution on the basis of specific documents and it was sought to be ascertained if the alleged incriminating documents could be better explained by reference to some other documents which were in the court's custody and therefore, an opportunity must be given to the accused to satisfy itself in that regard. There cannot be any dispute with regard to the ratio of the judgment in Sasikala's case (supra). The fact however remains that the principles enunciated in Sasikala's case (supra) would be attracted only during the course of trial, which is not the case in hand."

In the said case, the application filed for supply of documents was dismissed. It may be mentioned that as per the averments made by ED itself, the said judgment has been stayed by the Hon'ble Supreme Court though it was submitted that only the framing of charge by the Ld. Trial Court was stayed and not the operative portion of the judgment. It was thus, held in the said case that the provisions of Sections 207/208 Cr.P.C. would not apply *mutatis mutandis* to the proceedings under PMLA. It was further held that at the pre-charge stage, the considerations would be different. However, it is significant that in the said judgment, the Hon'ble High Court had not drawn any distinction that the case under PMLA was a complaint case so the complainant was liable to supply only the list of witnesses and not the documents as was sought to be drawn by the Ld. SPP for ED based on the judgments of the Hon'ble High Court of Delhi in **Lachhman Singh, Inspector** v. **Mahinder Singh & Ors. (supra)** and of the Hon'ble Supreme Court in **Assistant Collector of Customs, Bombay and Another** v. **Melwani and Another (supra)** and it was not held that there was no liability to supply the documents but only that at the stage of pre-charge, only those documents could be directed to be supplied which the prosecution had

relied upon, relying upon the observations in **Dharambir** v. **CBI** ILR (2008) II Delhi 842. Further, in **Dharambir** v. **CBI (supra)** it was also observed that "*where the accused insists that some other document apart from what is stated in the list of documents should be taken as being relied upon by the prosecution, as is evident from a reading of the charge sheet, the court can examine such submission and if it is satisfied that the charge sheet does in fact indicate that some other document is also proposed to be relied upon by the prosecution, then it can require the prosecution to furnish the accused a copy of such document as well."* Thus, it was contemplated that there could be documents which were not part of the list of documents but were proposed to be relied upon by the prosecution and then the prosecution could be required to furnish a copy of such documents as well.

21. The Ld. Counsels for accused No.2, 3, 5 and 6 had argued that ED should explicate whether the present was a complaint under Section 2(d) of Cr.P.C. which means 'any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report' or under Section 2 (r) of Cr.P.C. which refers to a 'police report' to mean 'a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173', however, that is not necessary for decision of the present application as even in the case of **Sarla Gupta** v. **Directorate of Enforcement (supra),** as noted above**,** while holding that PMLA was a special Act of which the complaint made under Sections 3/ 4 of PMLA was the

foundation, no observation was made that it being a complaint case, no documents were required to be supplied to the accused persons.

22. The Ld. SPP for ED had then submitted that the reliance placed by the Ld. Counsels for the accused No.2, 3, 5, 6 and 7 on the case of **CBI** v. **M/s. INX Media Pvt. Ltd**. **and others (supra)** was misplaced as that was a case under PC Act and IPC and the question therein was of the documents which were in the Malkhana and of supply of their copies and the said case was governed by the CBI Manual whereas in the present case investigation was already going on. However, in the said case, the order directing inspection of documents was upheld and in view of the above discussion, no distinction can be drawn in respect of a case under PMLA simply because it is a special enactment as regards the question of supply of documents. Further, the Hon'ble Supreme Court in **In re To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials** v. **State of Andhra Pradesh & Ors**. **(supra)** on which reliance has been placed by the Ld. Counsel for the accused No.2, 3, 5, 6 and 7 had observed as under:

> *"The amici pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208, Cr. PC, the magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the*

view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the Cr. PC. for their production during the trial, in the interests of justice."

The Ld. SPP for ED had submitted that the said order could not be relied upon as the same had not been incorporated in the rules of Hon'ble High Court of Delhi and hence would not be applicable. However, the same was also referred to by the Hon'ble High Court of Delhi in **CBI** v. **M/s. INX Media Pvt. Ltd**. **and others (supra)** wherein the Hon'ble High Court had observed that the issue in question had been dealt to a great extent by the Hon'ble Supreme Court in the said case and further observed as under:

"10. Further, reproducing Section 91 Cr.P.C. in the footnote does not qualify the directions in Para 11 of the judgment for the reason Hon'ble Supreme Court in response to the suggestion of the learned amicus curiae pointed out that there may be material with the Police or the prosecution which may be exculpatory in nature, or absolve or help the accused, however the accused is kept in dark with the said material. Hon'ble Supreme Court clearly directed that while furnishing the list of statements, documents and the material objects under Section 207/208 Cr.P.C., the Magistrate should also ensure that a list of other materials (such as statements, or objects/ documents seized, but not relied upon) should be furnished to the accused so as to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders under the Code of Criminal Procedure for their production during the trial. The draft Rules were accordingly modified and considering the efficacy of the draft Rules, the Hon'ble Supreme Court directed all High Courts to take expeditious steps to incorporate the said draft Rules 2021 as part of the Rules governing criminal trial within six months from the date of the order i.e. April 2020.

11. In view of the decision of the Hon'ble Supreme Court, CBI cannot take the plea that since the Rules have not been notified

as yet pursuant to the decision of the Hon'ble Supreme Court, the directions as laid down in Para 11 of the judgment whereby the draft Rules were amended, would not have the force of law till the Rules are notified....In Suo Moto Writ (Crl.) 1/ 2017 directions have been issued by the Hon'ble Supreme Court under Article 32 of the Constitution of India in order to ensure uniformity and clarity, to overcome the deficiencies which occur in the course of criminal trials and certain practices adopted by the trial courts in criminal proceedings thereby having a tendency of prolonging proceedings. Hon'ble Supreme Court also noted that Draft Rules of Criminal Practice 2020 as formulated and directed to be notified were not contrary to the provisions of Cr.P.C. Contention of learned counsel for the CBI that the same is violative of Article 50 of the Constitution of India which provides for separation of judiciary from executive deserves to be rejected for the reason that Draft Rules were in no way repugnant or contrary to the provisions of the Cr.P.C.

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13. In the present case after the Court has taken the cognizance and is in the process of supplying documents, applications have been filed under Section 207 Cr.P.C. wherein to ensure a fair trial, the impugned order has been passed by the learned Special Court keeping due regard to the fact that at that stage it was deciding neither the relevancy of the unrelied documents nor whether they were of sterling quality."

Thus, the argument raised in the said case that the order of the Hon'ble Supreme Court in **In re To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials** v. **State of Andhra Pradesh & Ors**. **(supra)** could not be relied upon as the same had not been incorporated in the rules of Hon'ble High Court of Delhi was dispelled and the same would hold true of the similar argument raised in the present case. It is pertinent that in the said order, the Hon'ble Supreme Court had drawn no distinction between trial of offences under IPC or under Special Acts.

23. As regards the contention of Ld. SPP for ED that the documents could be sought, at the most only at the stage of trial, it was observed in **CBI** v. **M/s. INX Media Pvt. Ltd**. **and others (supra)** as under:

> *"15. Further contention of CBI is that the documents can be sought under Section 91 Cr.P.C. only at the stage of defence and hence the stage for seeking inspection of the un-relied documents in possession of the CBI and kept in CBI Malkhana has not arrived. It is trite law that an accused can build the defence not only by leading defence evidence but even while cross-examining the prosecution witness. Further, a document which is relevant and is of sterling quality can also be looked into by the Court at the time of framing of charge and the Court is not barred to exercise its power to summon or rely upon the said document at the stage of charge, if it is of sterling quality and has a crucial bearing on the issue of framing of charge. Therefore, at the time of framing of charge an accused can bring to the notice of the Court that an un-relied document recovered during the course of investigation and kept back by the investigating agency is relevant and has a bearing on the prosecution case only if the accused is aware of the said document."*

As such, even at the stage of framing of charge, the accused can bring to the notice of the Court an un-relied upon document recovered during the course of investigation if it is relevant and for that the accused needs to be aware of the document. Reference may also be made to the judgment of the Hon'ble Supreme Court in **Nitya Dharmananda @ K. Lenin & Anr.** v. **Sri Gopal Sheelum Reddy** AIR 2017 SC 5846 regarding power of Court to refer to material of sterling quality.

24. It was also submitted by the Ld. SPP for ED that investigation was still going on and if the ED was compelled to part with the documents, it would prejudice the

further investigation. The said contention was also raised before the Hon'ble High Court of Delhi in **CBI** v. **M/s. INX Media Pvt. Ltd**. **and others (supra)** by CBI and it was observed that "indubitably, while passing an order of inspection of unrelied upon documents, the Court is bound to strike a balance between the competing interest of ensuring a fair trial to the accused as also maintaining the sanctity of further investigation, in case further investigation is to be carried on" and the same would hold true here. It was also argued by the Ld. SPP for ED that PMLA is a complete Code in itself and lays down provisions for seizure which are contained in Section 17 PMLA and the original application had been filed before the adjudicating authority so if the accused persons wanted the documents, they could have approached the concerned authority under Section 21 of the PMLA but not now. Section 21(2) of PMLA provides that "the person, from whom records were seized, shall be entitled to obtain copies of records retained under sub-section (1)." Thus, it is only the person from whom records were seized who shall be entitled to obtain copies of the records whereas the other accused persons would not be entitled to obtain the said records. As such there is no merit in this contention.

25. It is seen that by way of the present applications, the applicants are essentially seeking a list of the documents which have either not been relied upon or relied upon but not filed with the complaint or list of witnesses whose statements were recorded. It was submitted that the investigating agency had allegedly recorded statements of witnesses and accused persons but had chosen not to supply the same along with their

complaint to which the ED had replied that the statements which the applicants were seeking were essential for further investigation and supplying the same to the accused at this stage would hamper the ongoing investigation. However, it is seen that the accused persons are not seeking the supply of the statements but only a list of the witnesses whose statements were recorded and the disclosure of the witnesses examined during investigation other than the ones specified and the complete number of statements recorded by them during investigation other than the ones specified. There can be no objection to supplying a list of the witnesses and the number of their statements so recorded and it would be appropriate if ED, while filing the said list also indicates the statements of which of the witnesses cannot be supplied to the accused persons due to requirement in further investigation.

26. It was further submitted in the applications under Sections 207/208 Cr.P.C. that the investigating agency had relied upon certain complaints received by PS Bowbazar and PS Chitpore which fact found mention in the complaint but the documents or material did not find mention in the list of documents to which the ED had replied that the complaints received were part of FIRs registered by Kolkata Police and a part of D-1 of the relied upon documents. If the documents have been already supplied no question arises of supplying the same again. It was also stated that the investigating agency had relied upon certain summons issued to persons from whose possession digital evidence was seized during investigation (mentioned at para 3.8 of the complaint) and it was prayed that a copy of the said summons be directed to be

supplied to the accused persons in order to decipher if the evidence had been procured by following due process of law to which the ED had replied that the documents related to procedure mentioned in para 3.8 i.e. copies of *panchnama* drawn at the time of retrieval of data from digital devices seized during searches had already been supplied as D-6 of the relied upon documents, however, there is no specific mention that the copy of the summons had been supplied. There can be no objection to the supply of the said document and accordingly it is directed that the said document be supplied to the accused persons though in respect of other documents only a list is sought.

27. It was further submitted in the applications that the ED had stated that various documents were seized from the premises of Shri K.D. Singh which reflected his association with Alchemist Township India Ltd., Alchemist Holdings Ltd. and other companies to which it was stated in the reply that the relied upon documents from the seized material during searches under Section 17 of PMLA had been made part of D-39 of the relied upon documents supplied to the accused persons and investigation in respect of the remaining seized documents was under progress and they could not be supplied in view of the pending investigation. However, the applicants have not, at present sought that the said documents be supplied but only prayed for a list of the documents along with their description and accordingly ED is directed to supply a list of the seized documents which had not been relied upon and were not mentioned as part of D-39 and to also indicate which documents would be needed for further investigation.

28. It was also stated in the applications that the ED had relied on certain information from the Income Tax Department relating to Singapore but the complaint was silent about the said details to which it was submitted in the reply that the relied upon documents in respect of the information received from IT department had already been made part of D-39 and D-46 of the relied upon documents to the complaint and had been supplied to the applicants and investigation in respect of the remaining documents was under progress and they could not be supplied in view of the pending investigation. As such, as per the reply itself, only the relied upon documents had been supplied and investigation in respect of the remaining documents was under progress. Though in the applications it was prayed that ED be directed to share the contents and material of the information from the IT Department relating to Singapore, at this stage, the ED is directed to supply a list of the said documents and to indicate which documents are necessary for further investigation.

29. The ED is also likewise directed to supply a list of the material and documents collected during investigation but which do not form part of the record as has been prayed for and to indicate what documents or material out of the same would be necessary for further investigation. In the application it is also prayed that the applicants be allowed to inspect the entire material seized by ED during investigation. However, the said issue is kept open and after the list is supplied to the accused persons, they would be at liberty to move an appropriate application in that regard.

30. In the application filed on behalf of accused No.7, legible copies of pages number 43 to 50 of the complaint have also been sought. ED is accordingly directed to supply the same to the accused No.7. The application is disposed of in the above terms. The directions contained in the above order be complied within a period of 4 weeks from today.

ANNOUNCED IN THE OPEN COURT
On this 22nd day of March 2022

(GEETANJLI GOEL)
ASJ/ Special Judge (PC Act) (CBI) -24
(MPS/MLAS CASES),
ROUSE AVENUE DISTRICT COURT
NEW DELHI