LANDMARK JUDICIAL PRONOUNCEMENTS STRENGTHENING THE PROVISIONS OF THE PMLA, 2002

(1)

SECTION 3 OF PMLA, 2002-MONEY LAUNDERING OFFENCE IS A CONTINUING OFFENCE HAVING RETROSPECTIVE EFFECT

1.Joint Director, Enforcement Directorate and Others Vs. M/s.Obulapuram Mining Company Pvt Ltd Date of Judgment (D.O.J) 13.03.2017 High Court of Karnataka Writ Petition No. 5962 of 2016 (GM-MM-C);
2017 SCC online Kar 2304

SLP (Cri) No.(S)4466/ 2017 is pending in the Hon'ble Supreme Court

It was held that the Enforcement Case Information Report and the order of attachment are without jurisdiction and are liable to be quashed since the offences alleged, are not scheduled offences under the PML Act rather being under Mines and Geology (Development and Regulation) Act, 1957, the Forest (Conservation) Act, 1980, the Indian Penal Code and the Prevention of Corruption Act, 1988 and were included in the PML Act w.e.f. June 1, 2009. Hence, the ED cannot invoke the provisions of the PML Act with retrospective effect. (Para 11)

2. Directorate of Enforcement Vs. Arun Kumar Mishra (2015 SCC OnLine Del 8658)(Decided on 09.04.2015)

1. By way of the present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') the petitioner seeks quashing of the proceedings in ECIR No. 03/DZ/2011/AD(SC)/SDS dated 24.02.2011 under sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') and the proceedings emanating therefrom.

2. 20. In '*Tech Mahindra's* case' (supra) it was observed as under: -

"70. It is settled principle of law that no person can be prosecuted on the allegation which occurred earlier by applying the provision of law which has come into force after the alleged incident. In other words, there can be no retrospective application of criminal liability for the incident occurred prior to introduction of such liability in the statute book.

71. Admittedly, prior to Amendment Act, 2009, none of the provisions which are now invoked by the Enforcement Directorate were on the statute book except Section 467 IPC. Thus, the petitioner cannot be prosecuted by invoking those provisions."

21. It is settled principle of law that the provisions of law cannot be retrospectively applied, as Article 20(1) of the Constitution bars the ex-post facto penal laws and no person can be prosecuted for an alleged offence which occurred earlier, by applying the provisions of law which have come into force after the alleged offence.

3. Mahanivesh Oils & Foods Private Limited VDirectorate Of Enforcement
2016 SCC OnLine Del 475

The central issue in the present case is not on whether the scheduled offence was committed, but whether the attachment under Section 5 of the Act can be sustained where the principal offence as well as the offence of using its proceeds is alleged to have been committed prior to the Act coming into force. (para 32)
After Amendment to Section 3 in 2013, the words “concealment, possession, acquisition or use” appearing in Section 3 of the Act must be read in the context of the process or activity of money laundering and this is over once the money is laundered and integrated into the economy. Thus, a person concealing or coming into possession or bringing proceeds of crime to use would have committed the offence of money laundering when he came into possession or concealed or used the proceeds of crime. For any offence of money laundering to be alleged, such acts must have been done after the Act was brought in force. The proceeds of crime which had come into possession and projected and claimed as untainted prior to the Act coming into force, would be outside the sweep of the Act.

In the circumstances, it cannot be readily accepted that any offence of money laundering had been committed after the Act coming into force. This Act cannot be read as to empower the authorities to initiate proceedings in respect of money laundering offences done prior to 1-7-2005 or prior to the related crime being included as a scheduled offence under the Act. (para 38 and 39)

4. A.K.Samsuddin Vs. UOI, and 03 others 2016 SCC OnLine Ker 24144

It was contention of the petitioner, that the investigation initiated against him is unsustainable in law, in as much as the PML Act was not in force when the petitioner is alleged to have committed the offences under the Prevention of Corruption Act.

It was held that though the commission of a scheduled offence is a fundamental pre-condition for initiating proceedings under the Act, the offence of money laundering is independent of the scheduled offences. The scheme of the Act indicates that it deals only with laundering of money acquired by committing the scheduled offences. In other words, the Act deals only with the process or activity with the proceeds of the crime including its concealment, possession, acquisition or use. In other words, there cannot be any prosecution under the Act for laundering of money acquired by committing the scheduled offences prior to the introduction of the Act. The time of commission of the scheduled offences is therefore not relevant in the context of the prosecution under the Act. What is relevant in the context of the prosecution is the time of commission of the act of money laundering. There is, therefore, no substance in the argument that the investigation commenced as per Ext.P2 is hit by Article 20(1) of the Constitution. (Para 6).

5. Enforcemen Directorate Vs.A.Raja and Others Complaint Case No.01/14

PMLA(2G SPECTRUM CASES),NEW DELHI

"Proceeds of crime" is the essence and an indispensable element of the offence of money laundering. It is the core constituent of the offence. Without the existence of proceeds of crime, there cannot be any commission of an offence of money laundering. It is only when "proceeds of crime"is projected or attempted to be projected as untainted property, the offence of money laundering arises.

161. In brief, the ingredients of money laundering are as under:

(a) Commissionof a scheduled offence;
(b) "Proceeds of crime", that is, property, is derived or

obtained by he accused as a resul tofcriminal activity relating to suchs cheduled offence;

(c) Such "proceeds of crime" is projected as untainted property.

162. In nutshell, the existence of a scheduled offence and emergence of "proceeds of crime" therefrom, is sine qua non for the existence of the offence of money laundering.

6. Uday Shankar Awasthi Vs State of UP and another (2013) 2 SCC 435 (Decided on 09.01.2013)

16. Thus, in view of the above, the law on the issue can be summarised to the effect that, in the case of a continuing offence, the ingredients of the offence continue, i.e., endure even after the period of consummation, whereas in an instantaneous offence, the offence takes place once and for all i.e. when the

same actually takes place. In such cases, there is no continuing offence, even though the damage resulting from the injury may itself continue.

7. Gokak Patel Volkart Ltd vs Dundayya Gurushiddaiah Hiremath

1991 SCC (2) 141

The concept of continuing offence does notwipe out the original guilt, but it keeps the contravention alive day by day.
The expression `continuing offence' has not been defined in the Code. The question whether a particular offence is a 'continuing offence' or not must,therefore,necessarily depend upon the language of the statute which creates that offence, the nature of the offence and the purpose intended to be achieved by constituting the particular act as an offence. (para 4)
The offence under section 630 of the Companies Act is not one time but a continuing offence and the period of limitation must be computed accordingly, and when so done, the complaints could not be said to have been barred by limitation. (para 6)

8.State Of Bihar vs Deokaran Nenshi and another(24 August, 1972) -1972 2 SCC 890

HELD: The failure to furnish, the annual returns by January 21, in the succeeding year, is undoubtedly an offence punishable under s. 66 of the Mines Act. A complaint has to be filed under s. 79, within 6 months from the date of the offence; but as regards the question whether the offence was covered by s. 79 or whether it was a continuing offence, covered by the Explanation thereto, it was held that a continuing offence is one which is susceptible of continuance and is distinguishable from the one

which is committed once and for all. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and

an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it Continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place. when an act or omission is committed once and for all.

9. Raymond Limited and another Vs M.P. Electricity Board and others (decided on November 16, 2000) (2001) 1 SCC 534

It cannot legitimately be contended that the word continuously has one definite meaning only to convey uninterruptedness in time sequence or essence and on the other hand the very word would also mean `recurring at repeated intervals so as to be of repeated occurrence`.

10. Sankar Dastidar Vs. Banjula Dastidar 2006 (13) SCC 470

It is of the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the injury. If the wrongful act causes an injury which is complete, there is no continuing wrong through the damage resulting from the act may continue.

11. R. Subramanian vs The Assistant Director

W.A.No.764 of 2015& M.P.No.1 of 2015 Madras High Court

The matter involves a core question as to whether the relevant date is the date of acquisition of illicit money or the date on which such money is being processed for projecting it untainted. The question cannot be decided merely on the basis of the affidavit filed by the appellant. The respondent should be permitted to conduct investigation to arrive at a definite finding. The jurisdiction in a case of this nature is a mixed question of law and fact and the same cannot be decided on the basis of half baked materials produced by the appellant. (para no. 15)

12. B.Rama Raju Vs. UOI & others 2011 SCC OnLine AP 152

50. On analysis of the provisions of Section 5, 8, 17 and 18, it is clear that provisions of the Second Amendment Act have carefully ironed out the creases and the latent rucks in the texture of the provisions of the Act relating to attachment, adjudication and confiscation in Chapter-Ill. Attachment or confiscation of proceeds of crime in the possession of a person who is not accused or charged of an offence under Section 3 is thus not an incorporation for the first time by the provisions of the Second Amendment Act, 2009. The contention on behalf of the petitioners that the second proviso to Section 5(1) of the Act, applies only to property acquired/possessed prior to enforcement of this provision or if interpreted as being retrospective, the provision itself must be invalidated for arbitrary retrospective operation is therefore without substance or force.

Ithe provisions of the second proviso to Section 5 are applicable to property acquired even prior to the coming into force of this provision (*vide* the second amendment Act with effect from 6.3.2009); and even so is not invalid for retrospective penalisation.

13. Alive Hospitalty &Food Private limited vs Union of India

7.1 The offence of money-laundering as defined in Section 3 comprises direct or indirect attempt to indulge, knowingly assist, and knowingly be a party to or actual involvement in any process or activity connected with the proceeds of crime and projecting it as untainted property. Proceeds of crime is any property derived or obtained directly or indirectly by any person as a result of a criminal activity relating to a scheduled offence or the value of any such property (Section 2 (u). Qua the provisions in Chapter-III of the Act, the process of provisional attachment, confirmation of such attachment by the adjudicating authority and confiscation of the property attached is operative against property constituting the proceeds of crime involved in money-laundering whether in the ownership, control or possession of a person who has committed an offence under Section 3 or otherwise.

14. Narendra Mohan Singh And Anr vs Directorate Of Enforcement And Anr(decided on 22 March, 2014

9. From reading of the provision as contained in Sections 3, 2(u) and 2(v), it would appear that any person who involves himself directly or indirectly with any process or activity connected with the proceeds of crime and projects it as untainted money can very well be prosecuted under Section 3. Therefore, it would be that date when one person is found involved in any process or activity connected with the proceeds of crime and projected it as untainted property would be relevant for the purpose of prosecution under Section 3 of the P.M.L. Act and not the date when the scheduled offence was committed.

15. **Hari Narayan Rai vs Union Of India & Ors** on 6 August, 2010W.P. (Cr.) No. 325 of 2010

"What is being targeted by Section 3 and another provisions of the Act is the "laundering of money" acquired by committing the scheduled crimes and, therefore, it would be the date of "laundering" which would be relevant. The "laundering" as used in Section 3 comprises of involvement in any process or activity by which the illicit money is being projected as untainted.

Thus, the relevant date is not the date of acquisition of illicit money but the dates on which such money is being processed for projecting it untainted. (para 6 & 7)

16. **Union of India v. Hassan Ali Khan, (2011) 10 SCC 235 : (2012) 1 SCC (Cri) 256at page 243**

34. The allegations may not ultimately be established, but having been made, the burden of proof that the said monies were not the proceeds of crime and were not, therefore, tainted shifted to Respondent 1 under Section 24 of the PML Act, 2002

37. It is true that having a foreign bank account and also having sizeable amounts of money deposited therein does not ipso facto indicate the commission of an offence under the PML Act, 2002. However, when there are other surrounding circumstances which reveal that there were doubts about the origin of the accounts and the monies deposited therein, the same principles would not apply.

17. Sanjay Kumar Choudhary vs Govt. Of India & Anr. (Decided on 2 December, 2009)(In the High Court of Jharkhand at Ranchi)

Amplitude of the provision as contained in Section 3 appears to be quite wide as anyone who gets himself involved directly or indirectly or assists in the activity connected with the proceeds of crime and projecting it as untainted property shall be guilty for the offence of money-laundering.

The provision as contained in Section 3 never does suggest that the offence of money-laundering can be launched only when one is found guilty of a crime, proceeds of which has been projected as untainted property, rather the offence of money-laundering as defined under Section 3 unambiguously prescribes that anyone, who directly or indirectly meddles with the property connected with the proceeds of the crime projecting it as untainted property, is liable to be punished for the offence of money-laundering.

18. Nitish J Thakur, Vs. State of Maharashtra, and the Directorate of Enforcement
AB.No.823/2012

Bombay High Court while considering the submission of ASG that offence of money laundering is a continuing offence since it also punishes possession of property acquired from crime and therefore there is

no question of retrospective criminalisation; the Court while referring to the judgement in the case of *State of Bihar versus Devkaran 1972 (2) SCC 890*held that a continuing offence is one which is susceptible of continuous and distinguishable from the one which is committed once and for all it is for those offences which arises out of a failure tour bhaiya comply with the rule or its requirement and which involves a penalty the liability for which continues until the rule or its requirement is obaid ur complied with.

19. M.Saraswathy vs The Registrar (decided on 13 July, 2012)

24. From the provisions of Section 5(1) of P.M.L.A., 2002 five conditions are pre-requisite for attaching the proceeds of crime provisionally without issuing notice prior to the attachment. They are:

i. The Director, or any other officer, who provisionally attaches any property, shall have reasons to believe on the basis of materials in his possession;

ii. The person, against whom proceedings under P.M.L.A., 2002 has been initiated, must be in possession of any proceeds of crime;

iii. Such person must be charged of having committed any scheduled offence;

iv. Such proceeds of crime are likely to be concealed, transferred or dealt with in any manner; and

v. If the provisional attachment is not ordered immediately such concealment or transfer of such proceeds of crime may result in frustrating the proceedings relating to confiscation of such proceeds of crime.

20. Sajjan Singh vs The State Of Punjab (decided on 28 August, 1963)1964 SCR (4) 630

Held: To take into consideration the pecuniary resources or property in the possession of the accused or any other person on his behalf which were acquired before the date of the Act, was in no way giving the Act a retrospective operation. Maxwell on Interpretation of statutes, 11th Edition, P. 210 and State of Bomaby v. Vishnu Ramchandra, [1961] 2 S.C.R. 26, relied on. Sub-section 3 of s. 5 does not create a new kind of offence. It merely prescribes a rule of evidence for the purpose of
proving the offence of criminal misconduct as defined in s. 5(l) for which an accused person is already under trial.

21. *State v. K.B. Chandra*, 1954 SCC OnLine Pat 15 : ILR (1954) 33 Pat 507 : AIR 1954 Pat 371 : 1954 Cri LJ 1187at page 517

The term “offence” has been defined in section 3(38) of the General Clauses Act as meaning “any act or omission made punishable by any law for the time being in force”. The definition includes an omission. In the present case, there was an omission to construct the required creche. This omission may be a completed

offence or a continuing offence. The expression “continuing offence” means that, if an act or omission on the part of an accused constitutes an offence, and if that act or omission continues from day to day, then a fresh offence is committed on every day on which the act or omission continues.

22. Bhagirath Kanoria and Others Vs. State of MP (DOJ-24.08.1984)- (1984) 4 SCC 222

Acts involved :Employees Provident Fund and Family Pension Fund Act 1952. Section 14 and Employees' Provident Fund Scheme 1952, Paragraph 38; Sections 468 and 473 of the Code of Criminal Procedure Code. HELD: The offence of which the appellants are charged, namely non-payment of the employer's contribution to the Provident Fund before the due date, is a 'continuing offence' and, therefore, the period of limitation prescribed by section 468 of the Code cannot have any application.The concept of 'continuing offence' does not wipe out the original guilt. It keeps the contravention alive day by day. Courts when confronted with provisions which lay down a rule of limitation governing prosecutions, in cases of this nature will give due weight and consideration to the provisions contained in section 473 of the Code. The question whether a particular offence is a 'continuing offence' must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence.

23. ***Attorney General for India v. Amratlal Prajivandas*, (1994) 5 SCC 54 : 1994 SCC (Cri) 1325at page 98**

(3) (*b*) An order of detention to which Section 12-A is applicable as well as an order of detention to which Section 12-A was not applicable can serve as the foundation, as the basis, for applying SAFEMA to such detenu and to his relatives and associates provided such order of detention does not attract any of the sub-clauses in the proviso to Section 2(2)(*b*). If such detenu did not choose to question the said detention (either by himself or through his next friend) before the Court during the period when such order of detention was in force, — or is unsuccessful in his attack thereon — he, or his relatives and associates cannot attack or question its validity when it is made the basis for applying SAFEMA to him or to his relatives or associates.

(5) The application of SAFEMA to the relatives and associates [in clauses (*c*) and (*d*) of Section 2(2)] is equally valid and effective inasmuch as the purpose and object of bringing such persons within the net of SAFEMA is to reach the properties of the detenu or convict, as the case may be, wherever they are, howsoever they are held and by whomsoever they are held. They are not conceived with a view to forfeit the independent properties of such relatives and associates as explained in this judgment. The position of 'holders' dealt with by clause (*e*) of Section 2(2) is different as explained in the body of the judgment.

24.Devas Multimedia Pvt Ltd. Vs. the Joint Directorand others– 04.10.2017 (Karnataka High Court)

23. The emphasis of Section 5 is to attach property involved in money laundering regardless of whether it was in possession of person charged of having committed a scheduled offence or any other person, provided it was shown to be proceeds of crime and that such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under the PML Act.

26. The Act seeks to prevent money laundering which in plain term means - preventing legitimization of money earned through illegal and criminal activities. Such actions of money laundering would wreck the economy of the nation as also the security and well being of its citizens. Commercial frauds associated with money laundering of higher magnitude would certainly affect economic fabric of the nation. Therefore, as per Section 5 of PML Act, the authority concerned is entitled to pass a provisional attachment order if he had reason to believe that any person is in possession of any proceeds of crime. Whether any person is in possession of proceeds of crime is a question of fact. At the stage when an order of provisional attachment is passed, the authority must have reason to believe that property in possession of person constitutes proceeds of crime involved in money laundering. This conclusion is reached before the process of hearing had begun without any participatory process of hearing. The provisional attachment being preemptive in nature is an urgency clause. The purpose of a provisional attachment order is to prevent a scenario where any proceedings under the PML Act might get frustrated if the property was not attached immediately. It would be always open to the affected person to place such materials as would convince the authorities that the property attached was not involved in money laundering or that it was not part of the proceeds of crime.

Hence, at this stage, the contention urged by petitioner alleging that authorities have acted against the settled principles of law by retrospectively operating penal laws thereby violating Article 20(1) of the Constitution of India, cannot be accepted, at this stage. The said contention proceeds on the assumption that the act of money laundering had occurred in the year 2005 or prior to 2009. What shall happen if any person continues to derive the property or value of such property, no matter when the offence was inserted in the schedule? Whether proceedings can be initiated against such person at all are larger questions that can be examined based on relevant facts as and when they emerge during the course of adjudication.

(2)

PMLA, 2002 A STAND-ALONE ENACTMENT AND INDEPENDENT PROCESS

(2)

Radha Mohan Lakhotia Vrs. The Deputy Director, PMLA, Directorate of Enforcement,

Ministry of Finance, Department of Revenue (Bombay HC)

Held:The Appellate Tribunal has also noticed that there exists many enactments like The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA), Terrorist and Disruptive Activities (Prevention) Act, 1987, the Prevention of Terrorism Act, 2002, Narcotic Drugs and Psychotrophic Substances (Amendment) Act, 1988 (NDPS) (Chapter VA) Code of Criminal Procedure (Amendment) Act, 1993 (Chapter VIII A), which dealt with illegal acquired properties from specified

criminal activities by providing for forfeiture/confiscation of illegally acquired properties. Even counsel appearing for the parties have placed before us decisions under the respective enactments, which dealt with the purport of provisions regarding forfeiture/confiscation of the properties under the said Acts. On analysing the provisions of those enactment, though the form of the provision, may appear to be different, the substance of of subject dealt with the purport of section 5 of the Act, it may not be necessary to specifically deal with each of the authorities cited across the bar which deal with the interpretation of provisions of the concerned enactment.

A. K. Samsuddin Vrs. Union of India & others (High Court of Kerela)

The investigation was commenced against the petitioner on a suspicion that he has committed the offence under section 3 of the Prevention of Money Laundering Act, 2002. The investigation is in progress. As such, merely for the reason that the information report filed for initiation of investigation does not disclose all the ingredients of the offence under section 3 of the Prevention of Money Laundering Act, 2002, the investigation cannot be interfered with.

Dy. Director, Directorate of Enforcement Vs Rajiv Chanana (High Court of Delhi)

this Appeal is disposed of by setting aside the impugned order/judgment and by disposing of the writ petition (from which this appeal arises) filed by the respondent/writ petitioner by directing the Appellate Authority under PMLA to dispose of the appeal preferred by the respondent/writ petitioner against the order of attachment within a period of eight weeks from today. It was further directed to the parties/counsels to appear before the Appellate Authority and the Appellate Authority may hear further arguments, if any sought to be addressed by either of the counsels on the merits of the appeal or may fix a date for such hearing, ensuring that the appeal is disposed of within eight weeks.

M. Shobana Vrs Rajiv Chanana (High Court of Madras)

The Writ Petitions are dismissed, leaving the parties to bear their own costs. In view of the fact that this Court has dismissed the Writ Petitions today, M.P.No.3 of 2013 filed by M/s.Al Tirven Steels Limited, Chennai Petitioner praying to implead it as 2nd Respondent in W.P.No.14083 of 2013 is also dismissed. Consequently, connected M.P.Nos.1, 1, 1, 2, 2 and 2 are also dismissed. It was also pointed out by the Court that the Respondent has issued show cause notices/summons dated 10.04.2013 to the Petitioners in question based on authority in terms of Section 50(2) and (3) of the Prevention of Money-Laundering Act and ordinarily, the parties are to project their case or place their case before the authority. The Court further held that the court is not inclined to interfere with the issuance of summons dated 10.04.2013 by the Respondent to the Petitioners. Consequently, the Writ Petitions fail.

Anosh Ekka Vrs.State of Jharkhand through Directorate of Enforcement (High Court of Jharkhand

W.P. (Cr.) No. 257/2012)

The Court dismissed the petition and observed that keeping in view the provision as is enshrined in Section 3 postulating therein that whoever is connected with the proceeds of the crime projecting it as untainted property would be committing offence of Money Laundering Act and further that the proceeds of crime must have been derived or obtained, directly or indirectly by any person as a result of criminal activity relating to scheduled offence in terms of sub-section (u) of Section 2 of the Prevention of Money

Laundering Act, there has been no doubt that unless one is held guilty for the scheduled offences, he cannot be held guilty of the offence punishable under Section 4 of the Prevention of Money Laundering Act but hardly there appears to any embargo for the special court to proceed with the trial of the scheduled offences as well as offence under Section 4 of the Prevention of Money Laundering Act simultaneously particularly when there has been nothing in the Act nor intention of the legislator seem to be there of taking of the trial of the offence punishable under Section 4 after one is found guilty for the scheduled offence. Of course, the Special Court trying the offence under the PMLA Act will have to wait for the result of the trial relating to scheduled offence. This recourse not only seems to be the practical solution of the matter but it will also expedite the trial. Accordingly, the Special Court may proceed with the trial for the scheduled offence as well as trial of the offence punishable under the PMLA Act simultaneously.

(3)

PMLA, 2002 ACT HAS AN OVERRIDING EFFECT-SECTION 71 OF PMLA, 2002

PMLA, 2002 ACT HAS AN OVERRIDING EFFECT-SECTION 71 OF PMLA, 2002

1. C.A.No.3760/1995 (Solidaire India ltd. V s. Fair Growth & Others)

Citation: 2003 SCC 71

Relevant Para 11

We are in agreement with the aforesaid decision of the case, more so when we find that whenever the legislature wishes to do so it makes appropriate provisions in the Act in that behalf. Mr Shiraz Rustomjee has drawn our attention to Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 wherein after giving an overriding effect to the 1993 Act it is specifically provided that the said Act will be in addition to and not in derogation of a number of other Acts including the 1985 Act. Similarly under Section 32 of the 1985 Act the applicability of the Foreign Exchange Regulation Act and the Urban Land (Ceiling and Regulation) Act is not excluded. It is clear that in the instant case there was no intention of the legislature to permit the 1985 Act to apply, notwithstanding the fact that proceedings in respect of a company may be going on before the BIFR. The 1992 Act is to have an overriding effect notwithstanding any provision to the contrary in another Act.

2. C.A.No.3652/2008 S.L.P.(C).No.774/2006 (Bank of India Vs. ketan Parekh)

Citation: (2008) 8 SCC 148

Relevant Paras; 14 to 18

Para 14. The admitted facts are that Respondent 1, Ketan Parekh was a notified party on 6-10-2001. Therefore, on 6-10-2001 all his movable and immovable properties stood attached. Under the Act of 1992, under Section 3(3) [*sic* Section 3(4)], the Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before 6-6-1992, notify the name of such person in the Official Gazette and from the date when such party is notified all properties, movable or immovable or both belonging to any person notified shall stand attached simultaneously with the issue of the notification, notwithstanding anything contained in the Code and any other law for the time being

in force. After attaching that property the Custodian will have the right to deal with such property in such manner as directed by the Special Court. Therefore, an analysis of this section means that the moment a person is notified, his property stands attached and the Custodian is in authority of that property and he shall deal with the property in the manner as directed by the Special Court notwithstanding anything contained in the Code (Code means the Civil Procedure Code). Therefore, the property of the respondent herein stood attached under the orders of the Special Court on 6-10-2001 when the respondent was declared a notified person under sub-section (2) of Section 3 of the Act of 1992.

Para 15. Section 9-A which was introduced in 1994 gives full power from the date this amended provision came into force i.e. in 1994 that the Special Court alone will have the jurisdiction to deal with all the cases pending immediately before such commencement by any civil court in relation to any matter or claim relating to the property standing attached under sub-section (3) of Section 3. Sub-section (2) of Section 9-A says that every suit, claim or other legal proceeding (other than an appeal) pending before any court immediately before the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994, being a suit, claim or proceeding, the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of the Special Court under sub-section (1), shall stand transferred on such commencement of the Special Court and the Special Court may, on receipt of the records of such suit, claim or other legal proceedings proceed to deal with it so far as may be in the same manner as a suit, claim or legal proceeding from the stage which was reached before such transfer or from any earlier stage or de novo as the Special Court may deem fit. Sub-section (3) further says that no court other than the Special Court shall have, or be entitled to exercise any jurisdiction, power or authority in relation to any matter or claim referred to in sub-section (1). Sub-section (4) further says that the Special Court shall not be bound by the procedure laid down by the Code of Civil Procedure. But it shall be guided by the principles of natural justice and subject to the other provisions of

this Act and the rules framed thereunder. Sub-section (5) further says that the Special Court shall have all powers as a civil court under the Code of Civil Procedure for trying such suits.

Para 16. Section 11 deals with the discharge of liabilities. It also starts with a non obstante clause and says that notwithstanding anything contained in the Code or any other law for the time being in force, the Special Court shall direct the Custodian for disposal of the property under attachment and liabilities shall be discharged in the order i.e. (*a*) all revenues, taxes, cesses and rates due from the persons notified by the Custodian under sub-section (2) of Section 3 to the Central Government or any State Government or any local authority, (*b*) all amounts due from the person so notified by the Custodian to any bank or financial institution or mutual fund; and (*c*) any other liability as may be specified by the Special Court. Therefore, by virtue of Section 11, the first priority has been given to all dues of the revenues, taxes, cesses, etc. The second priority has been given to any bank or financial institution or mutual fund and the last priority has been given as directed by the Special Court.

Para 17. Section 13 clearly lays down that this Act will have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority. The analysis of these necessary provisions clearly establishes that once the property of a notified person is attached by the Custodian and the same having been notified then the property of the notified person being movable or immovable shall be subject to the order passed by the Special Court and the manner in which properties for discharge of the liabilities would be dealt with has already been mentioned in Section 11 of the Act of 1992 and lastly that the provisions of this Act will have the overriding effect even on tribunals as is clearly and categorically mentioned in Section 13 of the Act of 1992. Therefore, in the scheme of things this Act has been given priority over all Acts. The Act of 1993 came for recovery of

debts due to the banks and financial institutions. This Act also contains the overriding effect. Section 34 of the Act of 1993 clearly says that this Act will have the overriding effect for recovery of debts due to the banks and financial institutions. Both the Acts have non obstante clause.

Para 18. The Act of 1993 is a subsequent legislation and the Act of 1992 is a prior legislation. Therefore, it was contended by the learned Senior Counsel for the appellant that since the Act of 1993 is a subsequent legislation, it should have the overriding effect over the Act of 1992. As against this, the learned Senior Counsel for Respondent 1, contended that Section 9-A of the Act of 1992 came by the amending Act 24 of 1994 on 25-1-1994 and it is specifically provided that after a person is notified under Section 3(3) of the Act of 1992, his property pertaining to the transactions in securities entered after the 1st day of April, 1991 and on and before 6-6-1992 shall stand attached and the Special Court will have the jurisdiction and none else. The learned Senior Counsel for Respondent 1 submitted that this provision having come subsequently after the Act of 1993, Section 9-A of the Act of 1992 (came into force w.e.f. 25-1-1994) will have the overriding effect over the Act of 1993. The contention of the learned Senior Counsel for Respondent 1 appears to be justified. Apart from that it is provided in sub-section (4) of Section 3 that the transactions in securities entered into after 1st day of April, 1991 and on or before 6-6-1992, the properties pertaining to these securities shall vest with the Custodian to be dealt with as directed by the Special Court. Therefore, the properties pertaining to these transactions during the aforesaid period, will be subject to the jurisdiction of the Special Court only.

3. C.A.No.3760/1995 (Narcotics Control Bureau Vs, Kishan Lal)

Citation 1991 SCC (Cri) 265

Relevant Para 6 and 7

It is held in his case that NDPS Act was enacted with the object to make stringent provisions for the control and regulation of operations relating to Narcotic Drugs and psychotropic substances. It is a special enactment, Section 37 thereof starts with a non obstinate clause and is in negative terms limiting the scope of the applicability of the provisions of the Cr.P.C. regarding Bail. The non obstinate clause with which the section starts should be given its due meaning and clearly it is intended to strict the powers to grant bail. In view of section 4 of Cr.P.C. when there is a special enactment enforce relating to the manner of investigation, inquiry or otherwise dealing with such offenses, the other powers under Cr.P.C. should be subject to such special enactment. In prating the scope of such a statute the dominant purpose underling the statute has to be borne in mind. Consequently, the power to grant bail under any of the provisions of the Cr.P.C. Should necessarily be subject to the condition mentioned in sec 37 of the NDPS Act. It must, therefore, be held that the powers of the High Court to grant bail U/S 439 are subject to the limitations contended in the amendment section 37 of the NDPS Act and the restrictions placed on the powers of the court under the said section are applicable to the High Court also in the matter of granting bail.

4. W.P (Cr).No.257/2012 (Binod Kumar Singha Vs The ED) (Jharkhand High Court)

This Case is not available on the web site of SCC Online

(4)

CONVICTIONS UNDER SECTION 3 & 4 OF PMLA, 2002

1. CONVICTIONS UNDER SECTIONS 3 AND 4 OF PMLA, 2002

a. ED v. Harinarayana Rai ECIR/01/PAT/2009

In the High Court of Jharkhand at Ranchi, B.A. No. 6829 of 2010, the order on the bail petition was made by the petitioner arising out of E.C.I.R. Case No. 01/PAT/09/AD/2009 registered under section 3 read withSection 4 of the Prevention of Money Laundering Act, 2002. A S.L.P. was filed i.e. S.L.P. (Cr) No. 9586 of 2009 before Hon'ble Supreme Court, which was dismissed on 19.2.2010. The Supreme Court passed the order of rejection of the bail petition . The Special Leave Petitions were, accordingly, dismissed. However, the petitioner is given liberty to renew his prayer for bail after a period of six months.Section 45 of Money Laundering Act provides that bail is to be granted by the Court only on the satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of such offence and he is not likely to commit such offence while on bail. Hence, in this case, the bail was rejected .

In the High Court of Jharkhand at Ranchi, W.P. (Cr.) No. 325 of 2010, writ petition has been filed alleging that the prosecution should be quashed, on the ground that it violates the fundamental right of the petitioner guaranteed under Article 20(1) of the Constitution of India. More specifically the said fundamental right is said to have been violated because the acts constituting the offences, which are said to have generated money, were committed prior to 1.6.2009. Prior to that date the offences under Indian Penal Code andPrevention of Corruption Act, which are given in the impugned complaint, were not mentioned in the Schedule of the

Act. The Court found out that petitioner has not being prosecuted merely for any act which was not a scheduled offence on the date when it was committed. Therefore, the fundamental right of the petitioner guaranteed by Artlcle 20 (1) has not being violated.
In 2017, the court held guilty Hari Narayan Rai, a former minister in the cabinet of three former CMs of the state, for laundering Rs 3.7 crore earned through corrupt means. The minister has been sentenced to seven years of imprisonment, the maximum sentence available under PMLA by the Special CBI Court in the disproportionate assets case.This is a historic judgement as this becomes the first conviction under the PMLA in the country which was enacted in 2002 and implemented from 2005 in order to check and curb black money and grave financial crimes.

b. ED v. Allaudin s. k. @ halai ECIR/ KLZO/34/2010

In this case, the ED Court delivers second conviction under PMLA . The case dates back to 2006 when Alauddin Sheikh was arrested by the Narcotics Control Bureau for trading opium. While he had 3.9 kg opium in his possession while being arrested, 24.5 kg opium was recovered from his residence afterwards. In March, 2017, a special court of kolkata sentenced a man to eight years of rigorous imprisonment and slapped a fine of Rs 2 lakh on money laundering charges related to illegal possession of narcotic drugs.

This is the second case in India where conviction has been secured under the Prevention of Money Laundering Act and the first such case under NDPS. Further, this is the highest sentence awarded under PMLA.

c. ED v. Mohammed Fahad Hai and anr. Spl. C. No. 289/2010

This case dates back to January, 2007 when the man was arrested with an AK series assault rifle, 200 bullets, five hand grenades and a satellite phone by the Karnataka Police while he was getting down from a bus in Bengaluru. The Enforcement Directorate (ED) later booked the accused under the criminal provisions of the Prevention of Money Laundering Act (PMLA) in 2009, taking cognizance of the police charges by the court. This was followed by the conviction of Pakistani terrorist Mohammed Fahad Hai, belonging to the banned terror group Al-Badr, who was sentenced to 7 years rigorous imprisonment by a Bengaluru court under the anti-money laundering law in 2017 by Principal City, Civil and Sessions Judge.

(5)

NO RESTRICTION TO DEPUTY DIRECTOR TO ISSUE ANY NUMBER OF PAOs UNDER SECTION 5(1) OF THE PMLA, 2002

2. NO RESTRICTIONS TO DEPUTY DIRECTOR TO ISSUE ANY NUMBER OF PAO's UNDER SECTION 5(1) OF PMLA, 2002

a. Indian Bank v. ED W.P. No. 4696, 12854/2012

The Indian Bank has come up with the first writ petition challenging a provisional order of attachment passed by the Joint Director of Enforcement, the Company whose property was so attached has come up with the second writ petition challenging the provisional

attachment well as a consequent complaint lodged with the Adjudicating Authority. The Prevention of Money Laundering Act, 2002 was enacted with the object of preventing money laundering and for providing for confiscation of property derived from or involved in money laundering and for matters connected therewith or incidental thereto (para 7). The Court has ordered that the Adjudicating Authority should have at least waited for this Court to dispose of the writ petition filed by the Bank or in the alternative, directed the impleadment of the Bank as a party. Adjudicating Authority has confirmed the attachment by the order dated 26.6.2012 passed during the pendency of the writ petition and during the operation of a stay order, without even impleading the Bank. By virtue of the interim order dated 28.2.2012, this Court has permitted the Bank to proceed with the auction sale of the property under theSARFEASI ACT, 2002 (Para 43). Hence, the writ petitions are allowed, the provisional order of attachment as well as all further proceedings pursuant thereto including the original complaint and the order of confirmation , are set aside as illegal.

(6)

WP CANNOT BE ENTERTAINED DURING SUMMONS STAGE- SECTION 50 SUB-SECTION (2) & (3) OF THE PMLA, 2002

1. M.Shobana vs The Assistant Director

W.P 14083 OF 2013; W.P 14084 OF 2013; and W.P 14085 OF 2013;

2013 SCC Online Mad 2961

The summons issued to the Petitioners is a preliminary one relating to the investigation under the Prevention of Money-Laundering Act by the authority concerned. The fact of the matter is that the Adjudicating Authority/machinery under the Prevention of Money

Laundering Act is designated to adjudge the breach of any statutory obligation and it is not a Court of Law or a Judicial Tribunal. Moreover, the Adjudicating Authority under the Prevention of Money Laundering Act is not trying a criminal case. But only decides the effect of breach of obligations by the concerned. As a matter of fact, the proceedings initiated under the Prevention of Money-Laundering Act by the Respondent through issuance of summons to the Petitioners is an Independent Process and where the ultimate object of the Respondent is to trace/ascertain the proceeds of crime and to attach the proceeds of crime if proved in a given case.

2. G.Radhakrishnan Vs. The Assistant Director, Directorate of Enforcement

W.P. (MD) Nos. 11525 and 11526 of 2014

2014 SCC Online Mad 3980

In these writ petitions, the challenge is to the summons issued by the Directorate of Enforcement, Madurai, calling upon the petitioners to appear before the designated authority and directed to produce following documents:

(a) Passport

(b) Bank Account details

(c) Ration Card/ Voter ID card

(d) Details of immovable property

All the documents called for clearly fall within the ambit of sub-sections (a) to (e) of Section 12(1) of the Act. In such circumstances the summons issued to the petitioners cannot be quashed at the very threshold. In any event, the summons is for production of the documents for the purpose of conducting an investigation under the Act.

3. R.Devadass vs. The Assistant Director, Directorate of Enforcement

W.P. No. 8494 of 2015

The petitioner had been issued summons by the respondent dated 04.12.2014 directing him to appear in person on 10.12.2014 at 10.30 hours and to produce the following documents:-

(i) Details of Bank loan in connection with DR Logistics

(ii) Copy of the IT Return and DR Logistics for the past five years.

(iii) Copy of the Bank statement of DR Logistics for the past two years.

According to the petitioner, he has appeared before the authority and he has also sent a legal notice on 15.12.2014 and in this regard the petitioner stated that those records are very much available before the

Registrar of Companies, since the record pertains to the transaction of a Company. The petitioner is now aggrieved by the fresh summons dated 10.03.2015 calling upon the petitioner to appear on 16.03.2015 at 10.30 hours, which he has not responded. The petitioner seeks to be informed whether the present summon is for a new case or for the old case.

In the light of the above, it was ordered that there will be a direction to the petitioner to appear before the respondent and when the petitioner appears before the respondent, the respondent shall inform the petitioner as to whether the present summon dated 10.03.2015 is for a new case or for old case and also consider his submission with regard to the records called for which according to the petitioner have already been produced by the petitioner in response to the earlier summon.

4. Kolakalapudi Brahma Reddy and Ors. vs Union Of India

W.P No. 38314 of 2013

(Not reported in SCC)

The provisions of the Act which clearly and unambiguously enable initiation of proceedings for attachment and eventual confiscation of property in possession of a person not accused of having committed an offence under section 3 as well, do not violate the provisions of the Constitution including Articles 14, 21 and 300-A and are operative proprio vigour.

Section 50(2) of the Act, vest power in the competent authority to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under the Act.

(8)

ACTION AGAINST NON-APPEARANCE OF SUMMONS-SECTION 63 (4) OF PMLA, 2002

1. M/s. Dalmia Cements Ltd. vs. The State of AP, Hyderabad & Others W.P.No.36838/2014 & WP.No.31143/2015

Investigation is only for the purpose of collecting evidence with regard to proceeds of crime in the hands of the persons suspected and their involvement, if any, in the offence under Section 3 of PMLA. Therefore, we cannot equate ECIR registered by the first respondent to an FIR under Section 154 Cr.P.C and consequently, under PMLA the petitioners are not accused at present. Hence, the submission on behalf of the petitioners on the assumption that petitioners are accused under PMLA is liable to be rejected.

SSC Online citation is not available.

2)Vijay Mallya vs. Enforcement Directorate; (2015) 8 SCC 799

The fact that the adjudicating officer chose to drop the proceedings against the appellant herein does not absolve the appellant of the criminal liability incurred by him by virtue of the operation of Section 40 read with Section 56 of FERA. The offence under Section 56 read with Section 40 of the Act is an independent offence.

(10)

SPECIAL COURT CAN TAKE COGNIZANCE U/S 45(1), 3, & 4 OF PMLA, 2002

1.Bhanu Pratap Shahi vs. The State of Jharkhand;(2014) Scc OnLine Jhar 1153

Since the investigation under the PMLA Act matter related to the main offence in which the petitioner is an accused along with Madhu Koda and others, after completion of the investigation by the Enforcement Directorate, the complaint was filed in the same Court of the Special Judge, CBI, AHD, who was trying the main offence. Consequently, on the basis of the complaint, learned Special Judge, CBI, Ranchi has taken

the cognizance and no fault can be found in the same and the said Court is the competent Court to take cognizance against the petitioner in the matter relating to the offences under the PMLA Act also.

(11)

STATEMENTS CANNOT BE RETRACTED

1. C. Sampath Kumar vs The Enforcement Officer, (16 September, 1997) SCC ONLINE (1997) 8 SCC 358

Administration of caution to the person summoned under Section 40 of FERA that not making a truthful statement would be an offence cannot by any stretch of imagination be construed as use of "pressure" to "extract" the statement. Administration of such a caution, which has the statutory backing of Section 40(3) of FERA itself, is in effect in the interest of the person who is making the statement in view of the provisions of Section 40(4) of FERA.

2. Sanjay Dutt vs State Of Maharashtra through CBI(STF),Bomba 21.03.2013(2013 SCC ONLINE SC 252)

64. All these cases suggest that the only test which the court has to apply is whether the confession was voluntary and free of coercion, threat or inducement and whether sufficient caution is taken by the police officer who recorded the confession. Once the confession passes that test, it can become the basis of the conviction. We are completely convinced that the confession in this case was free from all the aforementioned defects and was voluntary."

3. K.I. Paunny Vs. Assistant Collector (Head Quarter), Central Excise Collectorate (1997) 3 SCC 721

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 inculpating the accused in the commission of the crime. If it is established from the record or circumstances that the confession is shrouded with suspicious features, then it falls in the realm of doubt. The burden of proof on the accused is not as high as on the prosecution. However, rule of prudence and practice does require that the Court seeks corroboration of the retracted confession from other evidence. 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.

(13)

ANY PERSON POSSESS PROCEEDS OF CRIME CAN BE ATTACHED- U/S 5(1) OF PMLA, 2002

1. Sri Ramalinga Raju vs. UOI & ED

Held: Property owned or in the possession of a person, other than the person charged of having committed scheduled offence is equally liable to attachment and confiscation proceedings under chapter 3. and section 2(1) (u) which defines the proceeds of the crime is not valid; That the provisions of the second proviso to section 5 are applicable to the property acquired even prior to the coming of the force of this provision (vide the second amendment act wef 6.3.2009 and even so is not valid for retrospective penalisation; that the presumption enjoined in the cases of interconnected transactions enjoined by section 23 is valid; that the burden

of proving that the proceeds of crime are untainted, the property is applicable not only to the prosecution and the trial of the person charged of commiting the offence under section 3 but to the proceedings of the attachment and having commited an offence under section 3.. the presumption under section 3 however applies interconnected transactions both the person accused of an offence under section 3 and the person not so accused .

V. Suryanayaran Prabhakara Gupta vs. UOI &Others (2011 scc online AP 463)

The question as to whether the impugned orders of provision attachment passed by the Enforcement Director cease to have any effect after expiry of the 150 days time-period provided under sub-section(1) of section 5 of the PML Act. Sub-section(3) of section 5 makes it clear that every order of attachment made under sub-section(1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of order, made under sub-section(2) of section 8 by the adjudicating authority,whichever is earlier.

J. Serkar and others v. ED

87. This Court summarizes its conclusions as under:

(i) The second proviso to Section 5(1) PMLA is not violative of Article 14 of the Constitution of India; the challenge in that regard in these petitions is hereby negatived.

(ii) The expression reasons to believe' has to meet the safeguards inbuilt in the second proviso to Section 5(1) PMLA read with Section 5(1) PMLA.

(iii) The expression reasons to believe' in Section 8(1) PMLA again has to satisfy the requirement of law as explained in this decision.

(iv) There has to be a communication of the ‘reasons to believe' at every stage to the noticee under Section 8(1) PMLA.

(v) The noticee under Section 8(1) PMLA is entitled access to the materials on record that constituted the basis for reasons to believe' subject to redaction in the manner explained hereinbefore, for reasons to be recorded in writing.

(vi) If there is a violation of the legal requirements outlined hereinbefore, the order of the provisional attachment would be rendered illegal.

(vii) There can be single-member benches of the AA and the AT under the PMLA. Such single-member benches need not mandatorily have to be JMs and can be AMs as well

(19)

INTER CONNECTED TRANSACTIONS-SECTION 23 OF PMLA, 2002 CONSTITUTIONAL

(20)

BURDEN OF PROOF-SECTION 24 OF PMLA, 2002 CONSTITUTIONAL

M. Saraswati & R. Devadoss v. E.D.(2012 SCC OnLine Mad 2583)

Para 74 c. The inherent power underSection 482 Cr.P.C. is intended to prevent the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent power in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court.

Principle of estoppel would apply where issue of fact has been judicially decided between parties and same issue comes directly in question subsequent proceedings between parties, then it would be illogical to allow parties to reopen same issue again.

(18)

Ashok Kumar and others v. State of Haryana (2007) 3 SCC 470

Para 12 The proviso appended to sub- section (1) of Section 6of the Land Acquisition Act 1892 is in the negative term. It is, therefore, mandatory in nature. Any declaration made after the expiry of one year from the date of the publication of the notification under sub-section (1) ofsection 4 would be void and of no effect. An enabling provision has been made by reason of the explanation appended thereto, but the same was done only for the purpose of extending the period of limitation and not for any other purpose. The purport and object of the provisions of the Act and in particular the proviso which had been inserted by act 68 of 1984 and which came into force w.e.f. 24.09.1984 must be given its full effect. The said provision was inserted for the benefit of the owners of land. Such a statutory benefit, thus, cannot be taken away by a purported construction of an order of a court which, in our opinion, is absolutely clear and explicit.

There is no warrant for the proposition, as was stated by the High Court that unless an order of stay passed once even for the limited period is vacated by an express order or otherwise; the same would continue to operate.

R. Rajamani v. The Govt. of Tamil Nadu (2001 SCConline MAD 2043)

Para 64-What was stated by the Supreme Court in the context of an order of injunction is equally applicable to an order of stay. When an order of stay is passed until further orders, obviously such order of stay continues till a different order is passed modifying or vacating such stay order. Where, however, the stay order is passed only till a particular date and thereafter the stay order is not specifically extended either because the matter is not listed or even where the matter is adjourned, it cannot be said that in the eye of law the stay order initially granted is automatically renewed.

(19)

B. Rama Raju v. UOI & Others (2011 SCC OnLine AP 152)

Para 73. Held, where property is in ownership, control or possession of person not accused of having committed an offence under Section 3 and where such property/proceeds of crime is part of inter-connected transactions involved in money-laundering, then and in such event presumption enjoined in Section 23 comes into operation and not inherence of burden of proof under Section 24 of Act - Therefore person other than one accused of having committed offence under Section 3 is not imposed the burden of proof enjoined by S 24 - On person accused of offence under Section 3 however burden applies, also for attachment and confiscation proceedings – Petition dismissed.

Smt. K. Sowbaghya v. E.D. & 02 others (2016 SCC OnLine Kar 282)

Para 115-With theAmendment Actof 2013, by the inclusion of the phrase "or for the trial of the money laundering offence" after the words "for the purpose of adjudication or confiscation underSection 8" - the offence of money laundering is sought to be treated as not being dependent on the result of the trial of the scheduled offence. Such a presumption is now possible by virtue of the 2013 Amendment. As already noticed, the offence of money laundering is no more inextricably linked to the proceeds of crime of a scheduled offence.

Usha Agarwal v. Union of India & Others (2017 SCC OnLine Sikk 146)

Para 65- As already reflected in the foregoing discussions the offence under the Act is also a stand alone offence. In other words, a person need not necessarily be booked of a scheduled offence, but if he is booked and subsequently acquitted, he can still be prosecuted for an offence under the Act. Under Section 5 and Section 8 of the Act, proceedings can be against persons who are accused of a scheduled offence or against persons who are accused of having committed an offence of money-laundering or persons who are found to be in possession of the “proceeds of crime”. It is not necessary that a person has to be prosecuted for an offence under the Act only if he has committed a scheduled offence. The prosecution can be independently only for the offence of money-laundering as defined in Section 3 and Section 2(p) which provides that “money-laundering” has the meaning assigned to it in Section 3.

B. Rama Raju v. UOI & Others(2011 SCC OnLine AP 152)

Para 74- Held, where property is in ownership, control or possession of person not accused of having committed an offence under Section 3 and where such property/proceeds of crime is part of inter-connected transactions involved in money-laundering, then and

in such event presumption enjoined in Section 23 comes into operation and not inherence of burden of proof under Section 24 of Act - Therefore person other than one accused of having committed offence under Section 3 is not imposed the burden of proof enjoined by S 24 - On person accused of offence under Section 3 however burden applies, also for attachment and confiscation proceedings – Petition dismissed.

Smt. K. Sowbaghya v. E.D. & 02 others (2016 SCC OnLine Kar 282)

Para 119-Under the Amendment Act of 2013 there is an initial presumption that the alleged proceeds of crime on the basis of which an offence underSection 3 of the Act is alleged, are involved in money laundering. In a proceeding underSection 8(1) of the Act , the defendant is not an accused. It is now possible for the Adjudicating Authority in construing the provisions ofSection 24 as applicable to proceedings underSection 8(1) as well. This places a person being proceeded against underSection 8(1) at some disadvantage. This construction, by virtue of the impugned amendment, cannot be held to be violative ofArticle 14of the Constitution of India, merely on the ground that it may cause hardship on account of such proceedings being initiated.

Hence,Section 24 as amended by theAmendment Actof 2013 is held to be constitutionally valid.

Usha Agarwal v. Union of India & Others (2017 SCC OnLine Sikk 146)

para 69-Infact by shifting the onus to the accused, it affords him an opportunity of establishing his innocence and clarifying to the prosecution the source of his property and therefore, contains a safeguard for the accused. Consequently, it cannot be said that the provision is unconstitutional. Thus, when considering the Acts the object has to be given primary importance and the provision thereof cannot be said to be*ultra vires*when the end goal is to be achieved. Section 24 unequivocally extends an opportunity to the offender to establish the source of his property, which if legitimate can be fully justified by the Petitioner.

(21)

ED CAN TAKE POSSESSION U/S 8(4) OF PMLA, 2002 BEFORE CONVICTION OF ACCUSED FOR MONEY-LAUNDERING OFFENCE

(22)

BOTH MONEY-LAUNDERING OFFENCE AND SCHEUDLED OFFENCE CAN ONLY BE TRIED BY SPECIAL COURT PMLA, 2002

(23)

WHILE GRANTING BAIL, THE INGREDIENTS OF UNDER SECTION 45(1) OF PMLA, 2002 SHOULD BE COMPLIED

(23)

Gautam Kundu vs Manoj Kumar Assistant Director

Held by the Hon'ble Apex court that Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of the PMLA imposes two conditions for

grant of bail, specified under the said Act. There is no doubt that the conditions laid down under Section 45A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of the PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure.

Chhagan Chandrakant Bhujbal vs Union Of India And Ors (14 December, 2016)

Held by the Hon'ble Apex court that thus, none of the contention raised by the Petitioner to challenge his arrest as illegal holds merit. As a result, the Petitioner has failed to show that his arrest is wholly illegal, null and void and further failed to show that the Special Court has passed the Remand Order mechanically without application of mind, his petition for Habeas Corpus cannot be maintainable.

Rohit Tandon vs The Enforcement Directorate on 10 November, 2017

As per section 45 of PMLA, while considering grant of bail to accused, the court has to satisfy that: i. There are reasonable grounds for believing that accused is not guilty of such offence and that ii. He is not likely to commit any offence, while on bail. It has been observed in a catena of decisions by Hon'ble Superior Courts that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail.For the purpose of considering an application for grant of bail, although detailed reasons are not necessaryto be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail. However, while dealing with a special statute like MCOCAhaving regard to the provisions contained in Sub-section (4) of Section 21 of the Act, the Court may have to probe into the

matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction.

B. Rama Raju, S/o B. Ramalinga Raju Vs. Union of India (UOI), Ministry of Finance, Department of Revenue, represented by its Secretary, (Revenue) and Ors. [MANU/AP/0125/2011]

The object of Act is to prevent money-laundering and connected activities and confiscation of "proceeds of crime" and preventing legitimizing of money earned through illegal and criminal activities by investments in moveable and immovable properties often involving layering of money generated through illegal activities. Therefore, Act defines expression "proceeds of crime" expansively to sub-serve broad objectives of Act. Thus property owned or in possession of a person, other than a person charged of having committed scheduled offence was equally liable to attachment and confiscation proceedings under Chapter - III - Section 2(1)(u) which defines expression "Proceeds of Crime", is not invalid .

(24)

STATUTORY REMEDY TO BE EXHAUSTED – SEC 8(1), 26(1), & 42 OF THE PMLA, 2002

1. **Raj Kumar Shivhare v. Directorate of Enforcement, (2010) 4 SCC 772at page 78**1

The Supreme Court held that a right of appeal, it is well settled, is a creature of statute. It is never an inherent right, like that of filing a suit. A right of filing a suit, unless it is barred by statute, as it is barred

here under Section 34 of FEMA, is an inherent right but a right of appeal is always conferred by a statute. While conferring such right a statute may impose restrictions, like limitation or pre-deposit of penalty or it may limit the area of appeal to questions of law or sometime to substantial questions of law. Whenever such limitations are imposed, they are to be strictly followed. But in a case where there is no limitation on the nature of order or decision to be appealed against, as in this case, the right of appeal cannot be further curtailed by this Court on the basis of an interpretative exercise.In a case where right of appeal is limited only from a final order or judgment and not from interlocutory order, the statute creating such right makes it clear.the right of appeal, being always a creature of a statute, its nature, ambit and width has to be determined from the statute itself. When the language of the statute regarding the nature of the order from which right of appeal has been conferred is clear, no statutory interpretation is warranted either to widen or restrict the same.

2. **Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153 : 2013 SCC OnLine SC 143at page 483**

The Supreme Court held in para 23 of the judgment that contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be

interpreted without any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely.

3. U***nited Bank of India v. Satyawati Tondon*, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260 at page 123**

The Supreme Court held that :

> ***Para 43 .*** the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

- ***Para* 45 : I**t is true that the rule of exhaustion of alternative remedy is a ruleof discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

- Para **46 :** It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (*sic*will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.

- **Para 55 : I**t is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and theSARFAESAct and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future

the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

4. **Kanaiyalal Lalchand Sachdev v. State of Maharashtra, (2011) 2 SCC 782 : (2011) 1 SCC (Civ) 570at page 789**

The Supreme Court held in para 23 that the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the SARFAESI Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person.

5. **G. Srinivasan Vs. The Chairperson, Adjudicating Authority Under PMLA, 2002 and others MANU (2012)1MLJ419**

The Madras High Court held that it is only the petitioner instead of approaching the first respondent Adjudicating Authority who had initiated proceedings underSection 8(1), had rushed to this court. Even if the attachment is made final, underSection 26, an appeal lies to the Appellate Tribunal. Therefore, the petitioner must submit his explanation to the Adjudicating Authority and convince it that the amount sought to be attached was not obtained due to any money laundering and that it was the legally earned income. Even if he fails before the first respondent, there is time enough for challenging the same before the judicial appellate Tribunal constituted under Section 26 of the POMA.When the Actitself provides for an inbuilt remedy, it is

not open to the petitioner to rush to this Court at the stage of provisional attachment, which is yet to be confirmed by the Adjudicating Authority.

6.**The Management of Alpha Instruments Vs. The Enforcement Officer and another**

07/06/2011 MANU/TN /2008/2011 **Not available on SCC**

7. Dr. P. Vijayan v. Union of India and Ors. 2016 SCC OnLine Mad 22040

The Issue arose before the Madras High Court in this case is thatwhether the impugned suspension could be allowed to continue beyond the period of three months without there being a review or revision. The Hon'ble Madras High Court held under para 7 that as per the decision of the Honourable Supreme Court reported in (2015) 7 SCC 291, even the pendency of a criminal case is not a bar to review the suspension when there is prolonged delay. In the case on hand, the Petitioner has been suspended from 2014. Therefore, the 3rd Respondent is directed to convene a meeting and pass appropriate orders, within 30 days from the date of receipt of a copy of this order, in the light of the above decision of the Honourable Supreme Court reported in (2015) 7 SCC 291 and taking into consideration the fact that he has been under prolonged suspension from 2014 and the preposition that mere pendency of a criminal proceedings, departmental proceedings cannot be held in abeyance.

8.**Rai Foundation thr. its Trustee Suresh Sachdev v. The Director Directorate of Enforcement & Ors. 2015 SCC OnLine Del 7625**

The Hon'ble Delhi High Court states as follows : "**Para 9** : In view of the availability of alternative remedies available to the petitioner under the this Act, this Court is not inclined to entertain this writ petition under Article 226 of the Constitution of India at this nascent stage, more so when complete mechanism has been provided under the Act to safeguard the interest of aggrieved person. The petitioner has effective and efficacious statutory remedies to prove the nature of acquisition of assets and to ventilate their grievances. Furthermore, at the stage of provisional attachment, the person concerned is not divested of the property, but is only prevented from dealing with the same till orders are passed by the adjudicating authority under Section 8(2). Against order of adjudicating authority appeal shall lie to the Appellate Tribunal under Section 26 and further appeal to High Court under Section 42, the statute has provided enough safeguards and redressal mechanism. The writ court cannot go into the merits of the issue at this stage even before attachment order has become final, investigation is completed, trial concluded and issue of attachment is considered by Adjudicating Authority, Appellate Authority and second Appellate Authority.

Para 11 : Further, a perusal of Section 5 of the Act makes it clear that the order passed under sub-section (1) is a provisional measure and valid for maximum period of 180 days. The provisional attachment has to be approved by the Adjudicating Authority after proper adjudication within 180 days. The act envisages three layers of the grievance redressal in addition to safeguards incorporated in Section 5(1) of the Act. The Adjudicating Authority may confirm or set aside the provisional attachment order on the basis of material produced by the parties before it. If Adjudicating Authority confirms the order of provisional attachment, the Act envisages appeal before the Appellate Tribunal. S. 42 of the Act provides further appeal to the High

Court. Thus, it is clear that petitioner has an effective alternative remedy upto the High Court by way of adjudicating proceedings, appeal to the Appellate Tribunal and finally, appeal to the High Court. Petitioner can raise all the pleas including that of the jurisdiction before the Adjudicating Authority.

Para 12 : It is trite law that Article 226 of the Constitution of India vests wide discretion in the writ court to entertain the writ petition on any grievance and to grant appropriate relief. It is an extraordinary jurisdiction vested in the writ Court. The writ courts observe self-imposed restraint in exercising the jurisdiction under Article 226. Availability of alternative remedy is not a bar to entertain a writ petition. However, ordinarily, the writ petition is not entertained under Article 226 if the aggrieved person has an efficacious and effective remedy provided by concerned statute whereunder an adverse decision is taken against the person, which he seeks to assail in the writ petition. Notwithstanding, availability of alternative remedy in a case of exceptional nature or a case of glaring injustice, writ court can entertain a writ petition. However, that would not mean that writ jurisdiction can be exercised in every case, where alternative remedies are available to safeguard the interest of the aggrieved person. It is one thing to say that in exercise of power vested in it under Article 226 of the Constitution, this High Court entertain a writ petition against any order passed by or action taken by the State and/or its agency or any public authority or order passed by quasi-judicial authority and it is altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

9. **Sri P. Trivikrama Prasad v. Enforcement Directorate, Hyderabad 2014 SCC OnLine Hyd 819 : (2015) 1 ALD 513 : (2016) 1 RCR (Cri) 499 : (2015) 2 ALT 602**

The Andhra Pradesh High Court held that " Para 37. The petitioners have effective and efficacious statutory remedies to prove the nature of acquisition of assets and to ventilate their grievances. Furthermore, at the stage of provisional attachment the person concerned is not dispossessed of the property, but is only prevented from dealing with the property till orders are passed by the adjudicating authority under Section 8(2). Against order of the adjudicating authority under Section 8(2), appeal shall lie to the Appellate Tribunal under Section 26 and further appeal to the High Court under Section 42. The statute has provided enough safeguards and layers of redress mechanism. The writ Court cannot go into the merits of the issue at this stage even before the attachment order has become final, investigation is completed and trial concluded and issue of attachment is considered by Adjudicating Authority, first Appellate Authority and second Appellate Authority. It is premature to go into the validity of attachment order at the threshold and even before the Adjudicating Authority considers the issue. It is also to be born in mind that any observations made by the Court would have bearing on the pending investigation and trial.

Para 38. The Joint Director is competent to pass orders of attachment. It is not a case of lack of jurisdiction to Enforcement Directorate. Violation of principles of natural justice at the provisional attachment stage does not arise as statute has not made provision of opportunity of hearing prior to provisional attachment.

Decision to attach is based on the assessment by Enforcement Directorate as per material in its possession. It is a tentative decision. Such decision is to be placed before the Adjudicating Authority. Right of hearing is provided before adjudicating authority. Sections 5(1) and 8 are in the statute book and have stood the test of judicial scrutiny. It is not a case of exceptional nature warranting interference by writ Court at the threshold. Not a case of glaring injustice demanding affirmative action notwithstanding an effective statutorily engrafted layers of remedies."

10. Nabla Begum v. Union of India 2012 SCC OnLine J&K 52 : 2013 Cri LJ (NOC 16) 7

The J & K High Court held under para 10 that to entertain writ petition would amount to scuttling the entire process as is validly to be undertaken under the Act. Petitioner has every right to appear before the adjudicatory authority under Section 8 of the Act and to project her innocence and the authority, after considering the cause as shall be projected, has to pass appropriate orders in-keeping with the cannons of justice and in case of any dissatisfaction with the order, party aggrieved has a right of appeal before the Appellate Tribunal and then again a right of appeal before the High Court against the order of Appellate Tribunal. When such efficacious remedy is available, petitioner has been ill advised to file the instant petition.

11. Karampal Goyal Vs. Assistant Director, Directorate of Enforcement 2012 SCC OnLine P&H 621

- **The P & H High Court held that this case is** rested upon a principle of public policy enunciated in the maxim '*actus curiae neminem gravabit***"**. This maxim is founded upon justice and good sense and also

affords safe and certain guide for the administration of law. By virtue of the intervention of a Court, which intended to examine the veracity of the claim made in the case, no party can be construed to have been prejudice by the delay that occasioned in testing the question by the Court. The Court further deliberated that The delay caused on account of the proceedings having been stalled on the statement made by the learned counsel for the respondent before this Court which he later on sought to rectify by moving an application for preponing of the date of hearing, cannot be used to prejudice the respondents. Thus, the period from the date when the learned counsel for the respondent gave an undertaking before this Court *i.e.* 07.06.2011 till the passing of the order shall have to be excluded from the stipulated time period of 150 days as provided under the Act, 2002 for the purpose of sub Section (3) of Section 5 of the Act, 2002.

12.**Nirmala Devi Vs.Assistant Director, Directorate of Enforcement**

- The P & H High Court relying upon the The Hon'ble Supreme Court in*Board of Directors H.P. Transport Corporation*v.*K.C. Rahi,*(2008) 11 SCC 502,held that ignorance of law is not an excuse and it cannot, therefore, be a ground to rely upon the said plea for not filing the appeal within the time prescribed.

13. **The Management of Reynolds Pens India Pvt Ltd. & others Vs. The Regional Provident Fund Commissioner, Chennai 2011 SCC OnLine Mad 693 : (2011) 5 CTC 172 : (2011) 131 FLR 690 : (2012) 1 LLJ 381 : 2011 LLR 876 : (2011) 2 CLR 1033**

- The Madras High Court under para 5 held that this Court exercising powers under Article 226 of the Constitution of India cannot clutch on to a jurisdiction which it does not have. The limited power of the judicial review can be exercised only when Statutory Authorities make an order and still it required an appropriate correction by way of judicial review. The Petitioners cannot construe the High Court exercising power under Article 226 as an advance ruling authority as provided in some taxing statutes. In fact, by the exercise of power under Article 226, the Court cannot give ruling based on apprehension or on academic issues. It is preciously for this reason, the authorities have been created under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and also a Judicial Appellate Tribunal has been constituted.

14. **Areva T & AMP D India ltd. Vs. Assistant commissioner of Central Excise, Chennai 2011 SCC OnLine Mad 2637 : (2011) 271 ELT 21**

- The issue arose in this case was that whether the petitioner is entitled to have the benefit of an interim order before this court pending hearing of his stay application as well as an application to waive predeposit pending before the Customs, Excise and Service Tax Appellate Tribunal (for short CESTAT)?. The Madras High Court held that the petitioner cannot use this court as stopgap arrangement for securing an illegal order from this court to postpone the payment. What they could not achieve before the CESTAT, they cannot achieve before this court in an ingenious manner. The power of this court to judicially review the impugned order is extremely limited. This court by the issuance of a direction to the respondent cannot forbear them from exercising their statutory power. Since the petitioner had

availed the option of appeal remedy before the CESTAT, they cannot institute parallel proceedings before this court on any grounds. The petitioner themselves had invoked the discretion before the Tribunal to grant an interim order.

17. N. Devaraj v. The Joint Director Directorate of Enforcement, Chennai and Ors. 2015 SCC OnLine Mad 10560

- The Madras High Court under Para 11 held that Chapter VI of the Money-Laundering Act deals with Appellate Tribunal and Section 26 provides for appeal to such Tribunal. A perusal of the same would disclose that though there is no specific provision for moving an application for stay, in the considered opinion of the Court, the Statutory Appellate Authority is having an inherent power to decide the application for stay pending disposal of the appeal, also, or he can take the appeal itself and dispose of the same finally, within six months from the date of filing of the appeal, in terms of Sub-Section (6) of Section 26 of the said Act.

19.Dr. P. Vijayan Vs. The Adjudicating Authority & JD. (Not available on SCC)

WP Nos. 15305 and 15306/2015 28/05/2015

- The Madras High Court held that the writ petitions are not maintainable on the ground of availability of alternate remedy. However, the petitioners are at liberty to move the Appellate Authority underSection 26of PMLA and if they are belatedly filing the appeals, they are also entitled to invoke proviso toSection 26(3)of PMLA. If the appeals are entertained, they are at liberty to move applications for stay and in that event, the Appellate Authority shall take into consideration the same and dispose of the same on merits and in accordance with law.

22. **Devas Multimedia Private Limited vs The Joint Director (Not available on SCC)**

High Court of Karnataka W.P.No.11544/2017 Dated : 04.10.2017

- The Karnataka High Court held under para 30 held that It is necessary to notice that at the stage of provisional attachment under Section 5(1) of PML Act, a person interested in the enjoyment of the suspect immovable property is not deprived of its enjoyment. Taking over possession of the attached property would arise upon confirmation of the provisional attachment. On an analysis of several provisions of the Act in particularSection 5,Section 8andSection 26, it becomes clear that the legislative intent underlying the sequential provisions for provisional attachment, confirmation of such attachment and eventual confiscation or for retention of a seized property and also providing remedy of appeal to the appellate authority, is to balance public interest with the individual interest of the person against whom allegations are made and action is initiated. A mechanism is provided under the Act for redressal of the grievance at different stages that is to say before the Adjudicating Authority atthe first instance and latter before the Appellate Tribunal. It is only when a person is aggrieved by the order of the Appellate Tribunal that he may file an appeal to the High Court as per Section 42 of PML Act. When such is the mechanism provided for the effective redressal of the grievance within the four corners of the provisions of the PML Act, petitioner is not justified in rushing to this Court at the stage of show-cause notice and the provisional order of attachment. Therefore, it is not appropriate for this Court to enter into various contentions urged by petitioner.

23. Gautam Khaitan & anr Vs.Union of India and Anr. 2015 SCC OnLine Del 7071 : (2015) 218 DLT 183 : 2015 Cri LJ 2112

- The Delhi High Court held that at the stage of issuance of an order of provisional attachment, no recourse could have been taken to a writ petition under Article 226, merely, on the ground that no notice was issued or, no opportunity of hearing was given before passing the order of provisional attachment. The reason for the same, as indicated above, is, that a post facto hearing is provided in the aftermath of a provisional attachment being ordered. Section 8 of the PMLA, provides for a full dress hearing and for grant of complete opportunity to the aggrieved party in that behalf. The legislature's intention, in the manner in which, Sections 5 and 8 of the PMLA are structured, makes that amply clear.

(25)

WRIT PETITION SHOULD NOT BE ENTERTAINED DURING SCN STAGE-SECTION 8(1) OF THE PMLA, 2002

1. M/s. Kibs Hosiery Mills Private Limited v. Special Director Directorate of Enforcement Foreign Exchange Management Act 2014 SCC OnLine Mad 11912

The Madras High Court under para 18 held that " On a bare reading of the show cause notice it is seen that a complaint was made under section 16(3) of FEMA for contravention of the provisions of FEMA. The

adjudicating authority on a perusal of the complaint and after considering the cause assigned by the complainant in the said complaint, stated that it appears that there is contravention in the said complaint against the petitioners of the provisions of section 3(c) read with section 42(1) of FEMA, as mentioned in the complaint. Therefore, the petitioner was required to submit reply to the show cause notice in writing within thirty days from the date of notice as to why the adjudicating proceedings as contemplated under section 13 of FEMA should not be held against them for contravention of the provisions of section 3(c) of FEMA as mentioned in the complaint, which was enclosed along with the show cause notice. The attention of the petitioners was invited to Rule 4 of the Rules. Further, the petitioners were directed to appear either in person or through their Legal Practitioners/Chartered Accountants duly authorised by them to explain and produce such documents as may be useful or relevant to the subject matter of enquiry. There is nothing to indicate that the adjudicating authority has straight away proceeded to the stage contemplated under sub rule (4) of Rule 4. The show cause notice does not indicate any such conclusion nor it may be stated that the respondent has violated the procedure under Rule 4 of the Rules. In fact, the attention of the petitioners has been drawn to Rule 4 of the Rules. Therefore, the plea raised by the petitioner that the show cause notice is vitiated for having not following the procedure under Rule 4 of the Rules, deserves to be rejected."

3. *State of U.P. v. Brahm Datt Sharma*, (1987) 2 SCC 179 : (1987) 3 ATC 319 at page 187

- The Supreme Court held that When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere

with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the m2atter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice.

7. Arun Kumar Mishra v. Union of India & Anr 2014 SCC OnLine Del 493 : (2014) 137 AIC 518 : (2014) 208 DLT 56

- The Delhi High Court held under para 23 that " We are unable to agree. The Adjudicating Authority is currently seized of and in seisin of the complaints. We, at this stage, do not know as to which way the order of the Adjudicating Authority will go. It cannot also be said at this stage whether the Adjudicating Authority even if deciding against the appellants will rely upon the material before it qua which the appellants claim a right of cross-examination. All this can be known only when the Adjudicating Authority passes an order and qua which if the appellants are aggrieved, the appellants shall have their statutory remedy. Any interference by us at this stage in the proceedings of which the Adjudicating Authority is seized is thus uncalled for and would result in a situation which the Supreme Court has warned the High Courts to avoid. Reference may also be made to *Union of India* v. *Kunisetty Satyanarayana* AIR 2007 SC 906 reiterating that the reason why ordinarily a writ petition should not

be entertained against a mere show cause notice is that at that stage the writ petition may be held to be premature—a mere show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so and it is quite possible that after considering the reply to the show cause notice or after holding an enquiry, the authority concerned may drop the proceedings. It was further held that a writ lies only when some right is infringed and a mere show cause notice does not infringe the right of any one and it is only when a final order adversely affecting the party is passed, that the said party can be said to be having any grievance. The Supreme Court held that the writ jurisdiction being discretionary, should not ordinarily be exercised by quashing a show cause notice."

(26)

RECORDING REASON TO BELIEF NEED NOT BE COMMUNICATED

1 Bishwanath Bhattacharya v Union of India & Others (Supreme Court) [(2014) 4 SCC 392]

The notice issued under Section 6(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 ("**Act**") was assailed on the ground that the same is not issued in accordance with the law as it did not contain the reasons which constituted the basis for the belief of the competent authority that the Appellant illegally acquired the scheduled properties.

The SC held that firstly, there is no express statutory requirement to communicate the reasons which led to the issuance of notice under Section 6 of the Act. Secondly, the reasons, though not initially supplied alongwith the said notice, were subsequently supplied thereby enabling the Appellant to effectively meet the case of the Respondents. Also, an order of forfeiture is an appealable order where the correctness of the decision under Section 7 to forfeit the properties could be examined.

2. Brizo Reality Company Pvt Ltd Vs Aditya Birla Finance Ltd (Bombay High Court) (2014 SCC OnLine Bom 804)

The Bombay HC while upholding the show cause notice issued under section 8 of the Prevention of Money Laundering Act, 2002 ("Act") held that the notice in question has, for all practical purposes, adopted, incorporated the complaint in toto. The notice, fairly read, indicates that the Adjudicating Authority, on the basis of the material in the complaint had reason to believe that the ingredients necessary for the attachment order existed. The court further observed that it is apparent that the notice has been issued based on the reasons to be found in the complaint and the documents which have been expressly referred to in the contention. The complaint itself expressly sets out the reason to believe. If, on the basis of the facts disclosed in the enclosures, the Adjudicating Authority had formed the opinion that there was no reason to believe the existence of the factors mentioned in section 8, he would not have issued the show cause notice.

ONE MEMBER CAN ALSO ADJUDICATE UNDER PMLA, 2002

1 Pareena Swarup Vs. Union of India (UOI) [(2008)14SCC107]

A writ petition under Article 32 of the Constitution of India is filed by way of Public Interest Litigation seeking to declare various sections of the Prevention of Money Laundering Act, 2002 such as Section 6 which deals with adjudicating authorities, composition, powers etc., Section 25 which deals with the establishment of Appellate Tribunal, Section 27 which deals with composition etc. of the Appellate Tribunal, Section 28 which deals with qualifications for appointment of Chairperson and Members of the Appellate Tribunal, Section 32 which deals with resignation and removal, Section 40 which deals with members etc. as ultra vires of Articles 14, 19(1)(g), 21, 50, 323B of the Constitution of India.

The UOI informed the Apex court that the suggested actions have been completed by amending the Rules. The Apex Court while disposing the writ petition held that the amended/proposed provisions, are in tune with the scheme of the Constitution as well as the principles laid down by this Court and therfore approved the same and directed the respondent-Union of India to implement the above provisions, if not so far amended as suggested, as expeditiously as possible but not later than six months.

2. S. Ramesh Pothy and Ors. vs. The Adjudicating Authority and Ors. (2016 SCC OnLine Mad 33104)

One of the contentions in the present case was that the Appellate Tribunal should be manned by a Bench of two members as required u/s. 27 of the PMLA, whereas, the show cause notice in the present case has been issued by the Chairman, Adjudicating Authority, and therefore, the same is vitiated.

The HC however held that section 27 applies to the Appellate Tribunal and not to the Adjudicating Authority. Also, the Court categorically held that the Appellate Tribunal must be manned by a Bench of two members is a clear misreading of the provision.

3. J.Sekar & Others Vs. ED (Delhi High Court) (2018 SCC OnLine Del 6523)

While upholding the constitutional validity of second proviso to Section 5(1) PMLA, the Hon'ble Supreme court held that there can be single-member benches of the AA and the AT under the PMLA. Such single-member benches need not mandatorily have to be JMs and can be AMs as well.

(28)

DELAY OF FILING CANNOT BE ACCEPTED AFTER STIPULATED PERIOD

1. M/s. Singh Enterprises Vs Commissioner of Central Excise, Jamshedpur & Others [(2008) 3 SCC 70]

The power to condone the delay in preferring appeal before the Commissioners under Central Excise Act, 1944 was subject matter of the present case.

The Apex Court held that an appeal has to be filed within 60 days but in terms of the proviso to Sub-section (1) of Section 35, a further period of 30 days time can be granted by the Appellate Authority to entertain the appeal. The proviso to Sub-section (1) of Section 35 makes the position crystal clear that the Appellate Authority has no power to allow the appeal to be presented beyond the period of 30 days. Therefore, there is a complete exclusion of Section 5 of the Limitation Act.

(29)

ED CAN ADVISE/REQUEST BANK/SRO-NOT TO TRANSFER PROPERTY DURING INVESTIGATION

1. Rose Valley Real Estate and Constructions Ltd & Another Vs Union Of India & Another (2015 SCC OnLine Cal 539)

The PMLA empowers Authorities to initiate all proceedings under Act for collection of evidence. The notice by ED to Banks to freeze withdrawal from accounts maintained is neither unlawful invasion of right to property nor was same bereft of statutory sanction. The impugned notice was issued in exercise of powers of investigation as defined under Section 2(na) of Act, 2002 and had been done for purpose of enforcement of Act, 2002.

2:- Alive Hospitality and Food Pvt Ltd Vs Union Of India (2013 SCC Online Guj 3909)

The attachment order by the competent authority under the PMLA against property taking the property as the "proceeds of crime" is challanged. The High Court held that S. 8(4), which enjoins deprivation of possession of immovable property pursuant to an order confirming the provisional attachment and before conviction of the accused for an offence of money-laundering, is valid . The attachment of the property other than a person charged of having committed a scheduled offence is the liable to be proceeded as "proceeds of crime".

(30)

MONEY LAUNDERING OFFENDER U/S 3 NEED NOT BE A OFFENDER OF SCHEDULED OFFENCE

1. Amit Banrjee vs Shri Manoj Kumar (017 SCC OnLine Cal 6146)

The main issue before the High Court was that whether Section 45 of the PMLA Act which restricts the discretion of the Court to grant bail to an accused applies to the petitioner who is accused of an offence under PMLA but is not accused of any scheduled offence.

The Caicutta High Court held that Section 45 of the PMLA Act shall not restrict the discretion of the Court while considering the prayer for bail of the petitioner in the instant case as he is not accused of commission of offence enumerated in Part-A of the schedule of PMLA which is punishable for a term of imprisonment more than 3 years.

2. Nandani Ramchandani and Ors. Vs. State of U.P. and Ors. (MANU/UP/2489/2015)

The main contention in the present case was that no police report under Section 173 of Cr.P.C. has been filed against the petitioners and, therefore, the offences under Section 3 of P.M.L. Act cannot be made out.

The HC observed that when a person commits a scheduled offence within the meaning of P.M.L. Act and acquired money being proceeds of crime and against whom a report under Section 173 of Cr.P.C. has been filed for such scheduled offence would be sufficient for constituting one of the essential ingredients of Section 3 of P.M.L. Act and if anybody other than that who acquired the proceeds of crime helped such person directly or indirectly in processing the proceeds of crime claiming it to be untainted will fall within the ambit of Section 3 of P.M.L. Act but for those it is not necessary that they should also be charge-sheeted under Section 173 of Cr.P.C. for committing scheduled offence under P.M.L. Act. The scope of inquiry contemplated under P.M.L. Act and under the common criminal law is entirely different.

(31)

AFTER FILING PROSECUTION COMPLAINT U/S 45(1) R/W 3 & 4, ACCUSED CANNOT BE ARRESTED U/S 19(1)

(32)

LANDMARK INTERIM ORDERS OBTAINED BY ED

4. M/S.Indian Bank vs Writ Petition Filed Under Article ... on 11 July, 2012

Writ Petition Nos.4696 and 12854 of 2012 And M.P.Nos.1, 1 and 2 of 2012

While the Indian Bank has come up with the first writ petition challenging a provisional order of attachment passed by the Joint Director of Enforcement, the Company whose property was so attached has come up with the second writ petition challenging the provisional attachment well as a consequent complaint lodged with the Adjudicating Authority. The High Court of Madras has held in para 43 of the judgment as under:-

43. But unfortunately the Adjudicating Authority has confirmed the attachment by the order dated 26.6.2012 passed during the pendency of the writ petition and during the operation of a stay order, without even impleading the Bank. In paragraph 11 of its order dated 26.6.2012, a copy of which was produced by the learned counsel for the respondents, the Adjudicating Authority has found fault with the Director for filing the complaint. The Adjudicating Authority has pointed therein that though the conduct of the Officer who filed the complaint was wrong, the complaint does not become ab initio void or non-est. But it is actually the other way about. The officer was under a statutory constraint to file a complaint within 30 days, but, the Adjudicating Authority had a time limit of 150 days (in terms of section 5) to pass a final order. The Authority had the leverage and obligation to wait till the disposal of the writ petition or at least till the stay order was vacated. The Courts have repeatedly held that any proceeding initiated, conducted or concluded in violation of an order of interim stay or injunction is non-est in the eye of law. The Adjudicating Authority should have at least waited for this Court to dispose of the writ petition filed by the Bank or in the alternative, directed the impleadment of the Bank as a party. By virtue of the interim order dated 28.2.2012, this Court has permitted the Bank to proceed with the auction sale of the property under the SARFAESI Act, 2002. The action of the Adjudicating Authority in proceeding with the hearing of the original complaint despite being aware of the interim stay order and also proceeding to pronounce a final order on 26.6.2012, is clearly in defiance of the interim stay order of this Court. Therefore, the whole proceedings are vitiated and even the order dated 26.6.2012 passed during the pendency of these writ petitions is illegal and are liable to be set aside as null and void.

5. A.Kamarunnisa Ghori Vs The Deputy Director, Directorate of Enforcement, Prevention of Money Laundering, Government of India, Writ Petition Nos.1912, 2870, 13421 and 22062 of 2011

Petitioners in these writ petitions, challenge the provisional orders of attachment passed by the Director of Enforcement, which later got confirmed by the Adjudicating Authority, under the Prevention of Money Laundering Act, 2002.

High Court of Madras has held in para 73 of its order as "73. A careful scrutiny of Sections 5 and 8 would show that the object of attachment is to ensure that the proceedings for confiscation of proceeds of crime, are not frustrated. By retaining symbolic, legal and constructive possession of the property, the Government can always ensure that the proceedings for confiscation are not frustrated. Once a property is attached and necessary encumbrances are entered in the records of the Sub Registrar and once a prohibitive order is also passed, no alienation can take place. Even if any alienations take place, they would be null and void. Therefore, merely because physical possession is retained by a person accused of the scheduled offences under the Prevention of Money Laundering Act, 2002, it does not mean that the proceedings for confiscation may get frustrated. Section 5(4) of the Act, in fact, makes it clear that nothing in Section 5 shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment. It must be noted that Section 5(4) uses the expression "enjoyment of the immovable property". Therefore, without depriving persons interested, from enjoying the immovable property, the respondents can always take symbolic possession under Section 8(4)."
2010 scconline bom 1116

LANDMARK JUDICIAL PRONOUNCEMENTS OF HON'BLE DIVISION BENCH OF VARIOUS HIGH COURTS STRENGTHENING THE PROVISIONS OF THE PMLA, 2002

1. **2014 SCC OnLine Cal 21108**

Radha Mohan Lakhotia, v. Deputy Director, PMLA, Directorate of Enforcement, Ministry of Finance, Department of Revenue

The Bombay High Court in this case relied to the para 29 of the case of Aslam Mohd.Merchant v. Competent Authority & ors. reported in JT in 2008(7) SC 446: 2008 (14) SCC 186, which has expounded that whenever a statute provides for reason to believe, either the reasons should appear on the face of the notice or they must be available on the material, which was placed before him. It is also open to the Authority to disclose the reason when called upon to do so. The question is whether the reasons recorded by the Authority in the provisional attachment order were sufficient to

initiate action under section 5 of the Act.

2. **2011 SCC OnLine AP 152**

B. RAMA RAJU, s/o B. RAMALINGA RAJU vs. UNION OF INDIA [2011] 108 SCL 491 (AP)

In this case, a writ petition was filed challenging certain provisions of the Prevention of Money Laundering Act, 2002 including its amendments.

The provision of attachment and confiscation under Section 2(1) of the PMLA 2002 was challenged. The issue was whether property owned by or in possession of person, other than person charged of having committed a scheduled offence is liable to attachment and confiscation proceedings and if so whether Section 2(1)(u) was invalid. It was held that object of Act is to prevent money laundering and connected activities and confiscation of "proceeds of crime" and preventing legitimizing of money earned through illegal and criminal activities by investments in moveable and immovable properties often involving layering of money generated through illegal activities. Therefore, the Act defines expression "proceeds of crime" expansively to sub-serve broad objectives of Act. Thus property

owned or in possession of a person, other than a person charged of having committed scheduled offence was equally liable to attachment and confiscation proceedings under Chapter III.

Retrospective operation of section 5 of PMLA 2002 was also challenged. The issue was whether provisions of second proviso of Section 5 were applicable to property acquired prior to enforcement of this provision and if so, whether provision is invalid for retrospective penalization. It was held that huge quanta of illegally acquired wealth corrodes vitals of rule of law; fragile patina of integrity of some of our public officials and State actors; and consequently threatens sovereignty and integrity of Nation. Parliament has authority to legislate and provide for forfeiture of proceeds of crime which is a produce of specified criminality acquired prior to enactment of Act as well. It has also authority to recognise degrees of harm such conduct has on fabric of society and to determine appropriate remedy. Thus provisions of second proviso to Section 5 were applicable to property acquired even prior to coming into force of this provision and even so were not invalid for retrospective penalization.

Procedure to acquisition u/s 8 of PMLA 2002 was also challenged. The issue was whether provisions of Section 8 were invalid for procedural vagueness and for exclusion of mens rea of criminality in acquisition of such property and for enjoining deprivation of possession of immovable property even before conclusion of guilt/conviction in prosecution for an offence of money laundering? It was held that considering object and scheme of Act, provisions of Section 8 could not be held invalid for vagueness; incoherence as to onus and standard of proof; ambiguity as regards criteria for determination of nexus between property targeted for attachment/confirmation and offence of money-laundering; or for exclusion of mens rea/ knowledge of criminality in acquisition of such property. Section 8(4) which enjoined deprivation of possession of immovable property pursuant to order confirming provisional attachment and before conviction of accused for offence of money-laundering, was valid.

Presumption in respect of inter-connected transactions u/s 23 of PMLA 2002 was also challenged. The issue was whether presumption enjoined by Section 23 was unreasonably restrictive, excessively disproportionate? It was held that Section 23 enjoins a rule of evidence and rebuttable presumption considered essential and integral to effectuation of purposes of Act in legislative wisdom. Thus, validity of provision was upheld.

Shifting of burden of proof under Sections 3 and 24 of PMLA 2002 was also challenged. The issue was whether shifting/imposition of the burden of proof, by Section 24 is arbitrary and invalid and was applicable only to trial of offence under Section 3? It was held that where property is in ownership, control or possession of person not accused of having committed a offence under Section 3 and where such property is part of inter-connected transactions involved in money laundering, then and in such event presumption enjoined in Section 23 comes into operation and not inherence of burden of proof under Section 24 of Act. Therefore person other than one accused of having committed offence under Section 3 is not imposed the burden of proof enjoined by S 24. On person accused of offence under Section 3 however burden applies, also for attachment and confiscation proceedings.

3. Om Prakash Daulat Ram Nogaja Vs. ED

Prevention of Money-Laundering Act, 2002 - Held that:- If the appellants were eventually entitled for return of the deposit on the conclusion of the trial against the accused persons concerning the Scheduled Offence. The fact that the appellants are likely to suffer financial loss because of the difference of rate of interest cannot be the basis to hold that the Appropriate Authority could not have proceeded to provisionally attach the subject property, which, it had reason to believe, that the properties were derived from proceeds of crime.

4. Brizo Reality Company Pvt. Ltd. Vs. Aditya Birla Finance Ltd.

11. The Hon'ble High Court Of Bombay was not inclined to set aside the order of attachment under section 5 passed by the Deputy Director on the ground that he has not recorded in writing, his reason to believe the existence of the factors mentioned in section 5. The said order dated 31.01.2014, was addressed to Aastha and the said Mohit Agarwal. That order clearly contained the reasons that satisfied all the ingredients of section 5. The attachment over the property, therefore, was levied in accordance with the provisions of the Act.

12. The above show cause notice was served upon the petitioner on its name as the said property is reflected in the complaint and attachment order. The final order on the show cause notice will determine the rights in the property qua the various persons concerned, including Aastha, the said Mohit Agarwal and the petitioner. The hearing on the show cause notice has proceeded. The petitioner has been heard. There is, any event, no warrant for exercising our extraordinary jurisdiction in setting aside the attachment order before the final orders which are due to be passed shortly.

14. In the circumstances, we are not inclined to exercise our extra ordinary jurisdiction to quash the show cause notice or the provisional attachment order on the ground that show cause notice itself does not set out the reasons. In the circumstances, the writ petition is disposed of.

5. ED Vs. Rajiv Channa

The writ petition came up before the learned Single Judge on 19 th September, 2014, the learned Single Judge inspite of holding the continued attachment of properties to be unsustainable, has still qualified the said finding as prima facie, would it not be appropriate for the appellant to, in compliance with the direction of the learned Single Judge, pass an order on the representation made by the respondent / writ petitioner. It is contended that the interpretation adopted by the learned Single Judge of the provisions of the Act, is

erroneous and that though the learned Single Judge has taken note of the contention of the appellant of the amendment of the year 2013 to Section 8 thereof but has not adjudicated on the said aspect.

6. Dr. V. M. Ganesan Vs. ED 2016 SCC OnLine Mad 4826

46. In case the provisional order of attachment passed by an Adjudicating Authority passes through the

first check post and the Adjudicating Authority issues a show cause notice under Section 8(1), it is not as if he has powers only to pass an order one way. The power conferred by Sub-section (2) of Section (8) is to record a finding "whether all or any of the properties" referred to in the notice are involved in money laundering or not. Section 8(2) uses the words "whether all or any of the properties". It does not uses the words "that the properties". If the Adjudicating Authority records a finding under Section 8(2) that all the properties are involved in money laundering, he is obliged under Sub-section (3) of Section 8 to confirm the order of attachment. But, if he records a finding under Section 8(2) that some of the properties or all the properties are not involved in money laundering, he cannot and he will not confirm the attachment under Section 8(3). The finding recorded under Section 8(2) will terminate the proceedings, in case the Adjudicating Authority comes to the conclusion that none of the properties was involved in money laundering. The proceeding will move over to Sub-section (3) of Section 8 only if a finding is recorded under Section 8(2) at least in respect of one property that it is involved in money laundering. Therefore, the contention of the learned senior counsel for the petitioner in the second writ petition that the Adjudicating Authority does not have the power to set aside an order of attachment is not correct. The Adjudicating Authority is empowered to record a finding, in view of the express language of Section 8(2) that all or any of the properties are not involved in money laundering. Once such a finding is recorded, the provisional order of attachment passed under Section 5(1) will automatically lapse without the Adjudicating Authority doing anything further.

7. **2014 SCC OnLine Cal 21108**

Rose Valley Real Estate and Construction Ltd & Another Vs. Union of India & Another

It is true that the provisions of Section 5 or Section 17 of the 2002 Act has not been invoked by the Directorate but to say that the Directorate while conducting investigation is powerless to request freezing of account especially when in the course of investigation it is evident from the balance sheets that sums are being depleted, then the request made cannot be faulted. More so, in the light of the decision reported in (2003) 6 SCC 545 wherein it has been categorically stated that while exercising discretion under Article 226 of the Constitution of India the High Court may not strike down an illegal order although it will be lawful to do so. One instance of denying such relief is where quashing of an illegal order would revive another illegal one.

8. R. Subramanian Vs. ED

15. The matter involves a core question as to whether the relevant date is the date of acquisition of illicit money or the date on which such money is being processed for projecting it untainted. The question cannot be decided merely on the basis of the affidavit filed by the appellant. The respondent should be permitted to conduct investigation to arrive at a definite finding. The jurisdiction in a case of this nature is a mixed question of law and fact and the same cannot be decided on the basis of half baked materials produced by the appellant. We are, therefore, of the view that the learned Single Judge was correct in dismissing the writ petition.

10. Rammohan Rao Mynampati vs. ED

By issuing show cause notice, it cannot be said that a finding was recorded against the appellant. It was only on account of prima facie materials, show cause notice was issued to the appellant. It is for the appellant to plead and prove that he was not involved in the affairs of the company. It is not as if the Directorate of Enforcement would not consider such submissions before passing final orders in the matter.

11. Chhagan Chandrakant Bhujbai & Others Vs. ED 2016 SCC OnLine Bom 9938

200. In view thereof, having regard to the gravity of the offence, the very object of the PML Act would be frustrated, if the Petitioner projects some loophole or infirmity in the implementation of the provisions of the PML Act, in order to get his release from detention, that too by invoking such extra-ordinary remedy,circumventing the very specific provisions of bail, as laid down under Section 45 of the PML Act. After all, the provisions of PML Act or any Statute are to be interpreted in order to advance the substantial cause of justice and not to curtail the same in any way or to create an hindrance in achieving the said cause.

12. Dehati Stapana Nyas Vs. ED 2016 SCC OnLine Jhar 2374

14. The plea taken by the appellant is not that the procedure for preferring appeal under the Act is onerous or not efficacious. The only plea, as noticed above, raised by the appellant is breach of rules of natural justice and more so, when the statute itself provides notice to a person before an order is passed under Section 6. The contention of the appellant is founded on the provisions under Sections 6(15) and 8(1) of the Prevention of Money-Laundering Act, 2002, which are extracted below: 6(15) “The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by

the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure."

8(1) "On receipt of a complaint under subsection (5) of Section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to reason to believe that any person has committed an [offence under section 3 or is in possession of proceeds of crime], it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized [or frozen]under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government: Provided that where a notice under this subsection specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property."

17. Another aspect of the matter, which takes the case of the appellant out of the writ jurisdiction, is the nature of claim of the appellant over the property. The appellant-Nyas has claimed rightful ownership over the properties dealt under para 7(b) of the order passed by the Adjudicating Authority. The Act provides for confiscation of the property derived from or involved in money-laundering. Offence of money-laundering has been defined in Section 3 which covers acts such as, involvement, directly or indirectly or to assist knowingly or to become a party knowingly or involvement in any process or activities connected with the proceeds of

crime including its concealment, possession, acquisition or use of projecting or claiming it as untainted property. In a writ proceeding the right claimed by the appellant over the aforesaid properties cannot be adjudicated, and considering the amplitude of the Prevention of Money-Laundering Act, 2002 the writ petition under Article 226 involving a claim over the property was not maintainable.

13. Kavitha G. Pillai Vs. ED 2017 SCC OnLine Ker 10118

52. Under Section 5 of the Act, "reason to believe" serves two purposes: that (a) any person is in possession of any proceeds of crime; and (b) such proceeds of crime are likely to be concealed,transferred, or dealt with in any manner that may frustrate any proceedings to confiscate such proceeds of crime.

115. To reiterate, we hold that all the proceedings under Sections 5 & 8 of the Act are preparatory to preserve the property, a likely product of the ill-gotten proceeds, until the predicate offences are tried. So,the burden discharged by the property holder is evidentiary, serving a limited purpose, and does not incriminate him or her.

14. **J. Sekar & Others Vs. ED 2018 SCC OnLine Del 6523**

87. The Hon'b;e Delhi Court summarized its conclusions on the case as under:

(i) The second proviso to Section 5(1) PMLA is not violative of Article 14 of the Constitution of India; the challenge in that regard in these petitions is hereby negatived.

(ii) The expression 'reasons to believe' has to meet the safeguards inbuilt in the second proviso to Section 5(1) PMLA read with Section 5(1) PMLA.

(iii) The expression 'reasons to believe' in Section 8(1) PMLA again has to satisfy the requirement of law as explained in this decision.

(iv) There has to be a communication of the 'reasons to believe' at every stage to the noticee under Section 8(1) PMLA.

(v) The noticee under Section 8(1) PMLA is entitled access to the materials on record that constituted the basis for 'reasons to believe' subject to redaction in the manner explained hereinbefore, for reasons to be recorded in writing.

(vi) If there is a violation of the legal requirements outlined hereinbefore, the order of the provisional attachment would be rendered illegal.

(vii) There can be single-member benches of the AA and the AT under the PMLA. Such single-member benches need not mandatorily have to be JMs and can be AMs as well.

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CERTAIN PROVISIONS INCLUDING SECTION 23 & 24 OF PMLA, 2002 HAVE CONSTITUTIONAL VALIDITY

2. Usha Agarwal Vs Union Of India MANU/SI/0040/2017

IN This case The constitutional validity of the provisions of Sections 2(u), 3, 4, 5, 8, 13, 24, 45 and 50 of the Act ultra vires Articles 14, 19, 20, 21 and 22 of the Constitution, have been called in question herein

a Bench of nine Judges observed that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding a provision procedurally or substantively unreasonable. In

fact by shifting the onus to the accused, it affords him an opportunity of establishing his innocence and clarifying to the prosecution the source of his property and therefore, contains a safeguard for the accused. Consequently, it cannot be said that the provisionis unconstitutional.

Thus, when considering the Acts the object has to be given primary importance and the provision thereof cannot be said to be ultra vires when the end goal is to be achieved. Section 24 unequivocally extends an opportunity to the offender to establish the source of his property, which illegitimate can be fully justified by the Petitioner.

Section 45 of the Act has next been challenged, inter alia, on the ground that, imposing limitations on bail is violative of Articles 14 and 21 of the Constitution of India, as the grant of bail is subjected to specifications,,

it is clear that under Section 45(ii) of the Act discretion vests with the Court to enlarge the Petitioner on bail or to refuse such bail. It is only subject to the satisfaction of the Court that the bail is to be granted or declined. There is evidently no infirmity in the provision and cannot be said to offend Articles 14 and 21 of the Constitution of India.

3. Smt. K.Sowbaghya vs Union Of India on 28 January, 2016) .

In this case the petitioner challenges the vires and validity of certain provisions of the PML Act.The petitioners have challenged the validity of Sections 17, 18 and 19 , of the Act, which provide for Search and

seizure, Search of persons and Arrest, respectively, and court held them valid. Merely because the provisions contemplate measures relating to search, seizure and arrest, the same cannot be considered draconian.

In our considered view, the provisions of the Act which clearly and unambiguously enable initiation of proceedings for attachment and eventual confiscation of property in possession of a person not accused of having committed an offence under Section 3 as well, do not violate the provisions of the Constitution including Articles 14, 21 and 300-A and are operative proprio vigore. Section 24 as amended by the Amendment Act of 2013 is held to be constitutionally valid. And so far as Section 44 of the Act is concerned it is sought to be contended that Section 44 mandates that the offence under this Act shall be triable by a Special Court. The entire scheme of this section is vague, violates the right to speedy trial and also is ambiguous, vague oppressive, arbitrary, discriminatory, unconstitutional and offending Articles, 14, 20, 21 and Article 300 of the Constitution of India and is ultra-vires. .

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STATEMENTS RECORDED U/S 50(2) & (3) OF PMLA, 2002 ARE ADMISSIBLE EVIDENCE

1. Ram Singh Vs. Central Bureau of Narcotics

In this case sec.67 & 53 of N.D.P.S. Act,and sec. 24 to 27 of the Indian evidence Act has been discussed and it has been held as follows:-

> 45. Considering the provisions of Section 67 of the NDPS Act and the views expressed by this Court in Raj Kumar Karwal case with which we agree, that an officer vested with the powers of an officer in

charge of a police station under Section 53 of the above Act is not a "police officer" within the meaning of Section 25 of the Evidence Act, it is clear that a statement made under Section 67 of the NDPS Act is not the same as a statement made under Section 161 of the Code, unless made under threat or coercion. It is this vital difference, which allows a statement made under Section 67 of the NDPS Act to be used as a confession against the person making it and excludes it from the operation of Sections 24 to 27 of the Evidence Act."

2. ROHIT TONDON versus DIRECTORATE OF ENFORCEMENT.

In this case the petitioner seeks to challenge the vires of sec. 45,24,23,3,4 of the money laundring act. And challenge the The two threshold conditions for stipulated u/s 45 mandatory and must be complied with even in respect of bail application u/s 439 of cr.p.c. as sec. 45 overrides general provisions of cr.p.c.with respect to bail.

The condition specified under Section 45 of the PMLA are mandatory and needs to be complied with which is further strengthened by the provisions of Section 65 and also Section 71 of the PMLA. Section 65 requires that the provisions of Cr.P.C. shall apply in so far as they are not inconsistent with the provisions of this Act and Section 71 provides tha the provisions of the PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of Cr.P.C.

4. Dalmia cement Bharat Ltd.and another Vs the state of AP, Hyderabad and oth. H.C. website

In this case the petitioner challanged the validity of statement of notice u/s 171-A of the sea customs Act.

These statements are not confessions recorded by a Magistrate under Section 164 of the Code of Criminal Procedure but are statements made in answer to a notice under sec.171-A of the Sea Customs Act. As they are not made subject to the safeguards under which confessions are recorded by Magistrates they must be specially scrutinised to finding out if they were made under threat or promise from some one in authority. If after such scrutiny they are considered to be voluntary, they may be received against the maker and in the same way as confessions are received

This writ petition was also filed by the petitioners questioning the further action taken by the respondents against the petitioners under Section 63(4) of PMLA, which is punitive.

It has been held That the protection under Article 20(3) of the Constitution of India is available at the stage of investigation the court held that the provisions of Section 50 of PMLA are required to be read down so as to ensure that petitioners are not prejudiced in the CBI case as well as under PMLA

36

CAN INITIATE FURHTER INVESTIGATION UNDER PMLA, 2002 AFTER FILING PROSECUTION COMPLAINT

Narendra Mohan Singh v. Directorate of Enforcement, 2014 SCC OnLine Jhar 2861 : (2014) 2 AIR Jhar R 670 at page 676

- The Jharkhand High Court under para 22 has held that it be stated that the question has been raised over the maintainability of the supplementary complaint on the premise that the provisions as contained in Sections 44(1)(b) and 45 of the PML Act, refers to 'a complaint'. Even if such reference is there of 'a complaint', it never prevents of filing of supplementary complaint as the reference of a complaint has been made in those provisions in the context that whenever a complaint filed by an authority authorized, court may take cognizance over it. It was held that Can Initiate Further Investigation Under Pmla 2002 After Filing Prosecution Complaint.

37

PMLA, 2002 CANNOT AMOUNT TO DOUBLE JEOPARDY

1. M. Shobana and Ors. v. The Assistant Director, Directorate of Enforcement Government of India Shastri Bhavan, Chennai 2013 SCC OnLine Mad 2961,

- The Madras High Court held under para 58 that the adjudication proceedings initiated against the Petitioners under the Prevention of Money-Laundering Act by requiring them to appear on the specified dates through summons cannot attract the ambit of Article 20(2) of the Constitution viz., the plea of 'Double Jeopardy' since the object of this Prevention of Money-Laundering Act is to ascertain the trail of Evil act of money laundering.

2.***Janata Jha v. Assistant Director, Directorate of Enforcement, Govt. of India*, 2013 SCC OnLine Ori 619 : (2014) 136 AIC 365 : 2014 Cri LJ 2556 : (2014) 3 RCR (Cri) 827at page 370**

- The Odisha High Court held under para 15 of the judgment that " the P.M.L.A., being a Special Statute, it has overriding effect on the Income Tax Act and further considering the huge amounts of money, which are lying in the bank in the accounts of the petitioners as well as the nature of proceeding under the P.M.L.A., more specifically, section 24 thereof, which provides with regard to burden of proof that when a person is accused of having committed offence under section 3, the burden of proving that the proceeds of crime are untainted property shall be on the accused, this Court is of the view that even if the petitioner No. 2 has been acquitted of the charges framed against him in the sessions trial, a proceeding under the P.M.L.A. 2002 cannot amount to double jeopardy, where the procedure and nature of proof are totally different from a criminal proceeding under the Indian Penal Code.".

3. M Rajkumar v. The Assistant Director Judgment Dated 02-02-2018

The Madras High Court held that the effort of writ petition was to avoid a criminal investigation and the final order of the writ court is quashment of the registration of FIR and the subsequent investigation. In such a situation , to hold that the learned single judge , in exercise of jurisdiction under Article 226 of the Constitution has passes an order i a civil proceeding as the order that was challenged was that of the quasi-judicial authority , that is the Lok Ayukta would be conceptually fallacious. It is because what matters is the nature of the proceeding , and that is the litmus test.

1. Shital Krushna Dhake Vs. Krushna Dagdu Dhake

In several cases before various trial courts ,the learned judges insist on production of the certified copy and do not consider print out of the order.

In this case it was held that once the order is uploaded on the official website ,it is reliable document to be considered by the court before whom it is cited.

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SERVICE OF SUMMONS/NOTICE SENT BY WHATSAPP/EMAIL ACCEPTED

1. **TATA SONS LIMITED & OTHERS V. JOHN DOE(S)& ORS. CS(COMM)1601/2016 ORDER DATED 27. 04 .2017 (NOT Reported in SCC)**

   In the above case, the Delhi High court had permitted the Plaintiff to serve summons upon the Defendant by text message or WhatsApp or e-mail and to file affidavit of service.

2. **Kross Television India Pvt. Ltd. & anr V. VIKHHYAT CHITRA PRODUCTION & ORS.**

   2017 SCC Online BOM 1433, DECIDED ON 23/03/2017 in Para 6 & 7

   Rules and procedure are either so ancient or so rigid (or both) that without some antiquated formal service mode through a bailiff or even by beat of drum or pattaki, a party cannot be said to have been 'properly' served. The purpose of service is put the other party to notice and to give him a copy of the papers. The mode is surely irrelevant. We have not formally approved of email and other modes as acceptable simply because there are inherent limitation to *proving* service. Where an alternative mode is

used, however, and service is shown to be effected, and is acknowledged, then surely it cannot be suggested that the Defendants had 'no notice'. To say that is untrue; they may not have had service by registered post or through the bailiff, but they most certainly had notice.

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CHARITABLE TRUST IS AN ARTIFICIAL JUDICAIAL PERSON(STRENGTHENINGSECTION 70 OF PMLA, 2002)

1. **M/s.Abraham Memorial Educational Trust& Ors Represented through Rajiv Runcie Ebenezer & Others Vs. C.Suresh Babu V. C. SURESH BABU (2012 SCCOnlineMAD 2986) Para 12**

Every human being is a person in the eye of law. When a person is ordinarily understood to be a natural person, it only means a human being. But a person is also artificially created and recognised in lawas such. Such persons are called in different names, such as "juristic person", "juridical person","legal entity" etc., such persons could be sue or being sued.These institutions like corporations, companies etc., were given legal status of a person. By virtue of the statutory recognition, these artificial persons came to own property and enjoy various statutory rights and even some constitutional rights. As the society started growing more and more, there came more number of fictional personalities viz., juristic persons in different names enjoying different kinds of rights and liabilities as recognized under various laws.

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