

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF DECEMBER 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.5698 OF 2019

C/W

CRIMINAL PETITION NO.5556 OF 2016

CRIMINAL PETITION NO.5329 OF 2016

CRIMINAL PETITION NO.5030 OF 2016

CRIMINAL PETITION NO.6060 OF 2019

WRIT PETITION NO.57604 OF 2015 (GM-RES)

CRIMINAL PETITION NO.2540 OF 2016

CRIMINAL PETITION NO.7836 OF 2016

CRIMINAL PETITION NO.7837 OF 2016

WRIT PETITION NO.52348 OF 2015 (GM-ML/PB)

WRIT PETITION NO.24502 OF 2017(GM-RES)

IN CRIMINAL PETITION NO.5698 OF 2019

BETWEEN

SHRI KATTA SUBRAMANIAM NAIDU

S/O LATE SRINIVASULU NAIDU

AGED ABOUT 64 YEARS

R/A NO.9, 6TH 'A' CROSS

8TH MAIN, SADASHIVNAGAR

BANGALORE-560082

...PETITIONER

(BY SRI: KIRAN S JAVALI, ADVOCATE A/W
SRI: CHANDRASHEKARA.K., ADVOCATE)

AND

DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
III FLOOR, BMTC-TTMC BUILDING
SHANTHINAGAR, K H ROAD
BANGALORE-560027

...RESPONDENT

(BY SRI: M.B. NARGUND, ASG A/W
SRI: P PRASANNA KUMAR, SPL.PP)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C
PRAYING TO QUASH THE PROCEEDINGS INITIATED IN
SPL.C.C.NO.124/2014 ON THE FILE OF THE PRINCIPAL CITY
CIVIL AND SESSIONS JUDGE AND JUDGE SPECIAL COURT FOR
PREVENTION OF MONEY LAUNDERING ACT, BENGALURU NOW
BEFORE THE HON'BLE LXXXI ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE, BENGALURU CITY (CCH.82)(SPECIAL COURT
EXCLUSIVELY TO DEAL WITH CRIMINAL CASES RELATED TO
ELECTED MPs/MLAs IN THE STATE OF KARNATAKA) AS NOT
MAINTAINABLE ON LAW AND FACTS.

IN CRIMINAL PETITION NO.5556 OF 2016

BETWEEN

- 1 . J B NARASSANAVAR
S/O LATE BALAGOWDA NARASANNAVAR
AGED 48 YEARS
- 2 . SMT. KAVERI J NARASSANAVAR
W/O J B NARASANNAVAR
AGED 40 YEARS,

BOTH R/AT PLOT NO. 731, CTS NO. 3728
SCHEME NO. 40, NEAR GANESH TEMPLE

HINDALAGA ROAD, HANUMAN NAGAR
BELAGAVI - 590 001

...PETITIONERS

(BY SRI: KIRAN S. JAVALI, ADVOCATE A/W
SRI: CHANDRASHEKARA K, ADVOCATE)

AND

DIRECTORATE OF ENFORCEMENT
REP BY THE ASSISTANT DIRECTOR
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
BANGALORE ZONAL OFFICE
3RD FLOOR, 'B' BLOCK
BMT-C-TTMC BUILDING, K H ROAD
SHANTHINAGAR
BANGALORE - 560 027

...RESPONDENT

(BY SRI: M.B. NARGUND, ASG A/W
SRI: P PRASANNA KUMAR, SPL.PP)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C
PRAYING TO SET ASIDE THE ORDER DATED 15.04.2016 IN
SPL.C.C.NO.59/2016 PASSED BY THE III ADDL. SESSIONS AND
SPL. JUDGE, D.K., MANGALORE (ANNEXURE-A) AND
CONSEQUENTLY QUASH THE COMPLAINT (ANNEXURE-B) AS
NOT SUSTAINABLE IN LAW.

IN CRIMINAL PETITION NO.5329 OF 2016

BETWEEN

1. SHRI OLI ESHAPPA
S/O LATE SANNA REVAPPA
AGED ABOUT 65 YEARS

ASST. AGRICULTURAL OFFICER(RTD)
WATERSHED DEVELOPMENT DEPARTMENT
RESIDING AT KOILARAGATTE VILLAGE
TALUK:HADAGALI
DISTRICT BELLARY-583219

2 . SMT OLI NIRMALA @ NINGAMMA ESHAPPA
W/O OLI ESHAPPA
MAJOR
RESIDING AT KOILARAGATTE VILLAGE
TALUK:HADAGALI
DISTRICT BELLARY-583219

3 . SHRI DODDASIDDAPPA
S/O LATE SANNA REVAPPA,
(ELDER BROTHER OF SHRI OLI ESHAPPA)
AGED ABOUT 71 YEARS
OCC: AGRICULTURE
RESIDING AT KOILARAGATTE VILLAGE
TALUK:HADAGALI
DISTRICT BELLARY-583219

4 . SHRI OLI JAGADEESHA
S/O OLI ESHAPPA
AGED ABOUT 26 YEARS
RESIDING AT KOILARAGATTE VILLAGE
TALUK:HADAGALI
DISTRICT BELLARY-583219

...PETITIONERS

(BY SRI: KIRAN S. JAVALI, ADVOCATE A/W
SRI: CHANDRASHEKARA K, ADVOCATE)

AND

THE ASSISTANT DIRECTOR
DIRECTORATE OF ENFORCEMENT
BANGALORE ZONAL OFFICE
3RD FLOOR, 'B' BLOCK

BMTC-TTMC BUILDING
K.H ROAD, SHANTHINAGAR
BANGALORE-560027

...RESPONDENT

(BY SRI: M.B. NARGUND, ASG A/W
SRI: P PRASANNA KUMAR, SPL.PP)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C
PRAYING TO SET ASIDE THE ORDER DATED 27.03.2015 IN
SPL.C.NO.119/2016 PASSED BY THE III ADDL. SESSIONS AND
SPL. JUDGE, D.K., MANGALORE BY ORDER DATED 27.03.2015
(ANNEXURE-A).

IN CRIMINAL PETITION NO.5030 OF 2016

BETWEEN

- 1 . SHRI RAJASHEKARA KASANAPPA NAYAK
AGED 59 YEARS
S/O LATE KASNAPPA KAMALAPPA NAIK
RESIDING AT NO.64
"BASAVA NILAYA"
GACHCHINKATTI COLONY
VIJAYAPURA-586103 - KARNATAKA
- 2 . SMT JAYASHREE NAYAK
W/O SHRI RAJASHEKARA KASANAPPA NAYAK
AGED 50 YEARS,
RESIDING AT 64, "BASAVA NILAYA"
GACHCHINKATTI COLONY
VIJAYAPURA-586103 - KARNATAKA

...PETITIONERS

(BY SRI: KIRAN S. JAVALI, ADVOCATE A/W
SRI: CHANDRASHEKARA K, ADVOCATE)

AND

DIRECTORATE OF ENFORCEMENT
BANGALORE ZONAL OFFICE
REP BY THE ASSISTANT DIRECTOR
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
3RD FLOOR, 'B' BLOCK
BMTc, TTMC BUILDING
K.H.ROAD
SHANTHINAGAR
BANGALORE-560 027
KARNATAKA

...RESPONDENT

(BY SRI: M.B. NARGUND, ASG A/W
SRI: P PRASANNA KUMAR, SPL.PP)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C
PRAYING TO SET ASIDE THE ORDER DATED 13.06.2016 IN
SPL.C.NO.127/2016 PASSED BY THE III ADDL. DIST. AND
SESSIONS AND SPL. JUDGE, D.K., MANGALORE BY ORDER
DATED 13.06.2016 (ANNEXURE-A).

IN CRIMINAL PETITION NO.6060 OF 2019

BETWEEN

1. SMT. K. SOWBAGHYA
W/O SRI KATTA SUBRAMANYA NAIDU
AGE 61 YEARS
R/O NO.9, 6TH 'A' CROSS
SADHASHIVANAGARA
BANGALORE-560094
2. SMT K S JALAJA
W/O SRI G JAGADISH CHANDRA PRAKASH
AGE 35 YEARS,

R/O 252, ROAD NO.12, MLA COLONY
BANJARA HILLS,
HYDERABAD-500034

- 3 . SRI G JAGADISH CHANDRA PRAKASH
S/O SRI G MUDDU KRISHNAMA NAIDU,
AGE 37 YEARS,
R/O 252, ROAD NO.12, MLA COLONY
BANJARA HILLS,
HYDERABAD-500034
- 4 . SMT K S INDRAJA
W/O DR V SURIRAJU
AGED 37 YEARS,
NO.67, SERPENTINE ROAD
KUMARAPARK WEST
BANGALORE-560020
- 5 . DR V SURI RAJU
S/O V SATHYANARAYANA
AGED 46 YEARS
NO.67, SERPENTINE ROAD
KUMARAKAPARK WEST
BANGALORE-560020
- 6 . SMT M SOWMYA
W/O K S JAGADISH
AGED 34 YEARS
NO.9, 6TH 'A' CROSS,
8TH MAIN,
UPPER PALACE ORCHARDS
SADASHIVANAGAR
BANGALORE-560080
- 7 . SRI C BANU PRAKASH
S/O SRI G MUDDU KRISHNAMA NAIDU
AGE 41 YEARS,
R/O 8-2-405/1/3, B-402,
TRENDSET VALLEY VIEW, ROAD NO.6

BANJARA HILLS
HYDERABAD-500034.

8 . SRI K KRISHNA KISHORE
S/O SHRI K VENKATESHWARA RAO
AGE 57 YEARS
R/O 3RD FLOOR, NORTH BLOCK
RAGHAVA RATNA TOWERS
MEDWIN TOWERS, CHIRAG ALI LANE, ABIDS
HYDERABAD-34

9 . SMT K VANAJA
W/O SRI K KRISHNA KISHORE
AGE 51 YEARS
R/O FLAT NO.101
PADMAJA COURTS-II
SRINAGAR COLONY
HYDERABAD-34

...PETITIONERS

(BY SRI: KIRAN S. JAVALI, ADVOCATE A/W
SRI: CHANDRASHEKARA K, ADVOCATE)

AND

DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA
III FLOOR, BMTC-TTMC BUILDING
SHANTHINAGAR, K H ROAD
BANGALORE-560027

...RESPONDENT

(BY SRI: M.B. NARGUND, ASG A/W
SRI: P PRASANNA KUMAR, SPL.PP)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C
PRAYING TO QUASH THE PROCEEDINGS INITIATED IN

SPL.C.C.NO.124/2014 ON THE FILE OF THE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE AND JUDGE SPECIAL COURT FOR PREVENTION OF MONEY LAUNDERING ACT, BENGALURU NOW BEFORE THE HON'BLE LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY CCH-82 (SPECIAL COURT EXCLUSIVELY TO DEAL WITH CRIMINAL CASES RELATED TO ELECTED MPs/MLAs IN THE STATE OF KARNATAKA) AS NOT MAINTAINABLE ON LAW AND FACTS.

IN WRIT PETITION NO.57604 OF 2015

BETWEEN

SRI SIVARAMU
AGED ABOUT 54 YEARS
S/O LATE HALAVE GOWDA
ASST. ENGINEER
R/O NO.632, 'NIDHI KRUPA'
1ST FLOOR, 8TH MAIN
A-1, BLOCK, EXTENSION
VIJAYANAGAR, 3RD STAGE
MYSORE-570 017

...PETITIONER

(BY SRI: D SADASHIVA, ADVOCATE)

AND

1. UNION OF INDIA
DEPT. OF REVENUE
BY DEPUTY DIRECTOR
OFFICE OF THE DIRECTORATE OF ENFORCEMENT
BANGALORE ZONAL OFFICE
3RD FLOOR, B BLOCK
BMTC BUILDING
SHANTHINAGAR, K.H.ROAD
BANGALORE-560 027

2 . STATE OF KARNATAKA
BY KARNATAKA LOKAYUKTA POLICE
MYSORE DIVISION
MYSORE-570017
REP BY ITS POLICE SUPERINDENT

...RESPONDENTS

(BY SRI: M.B. NARGUND, ASG A/W
SRI: P PRASANNA KUMAR, SPL.PP FOR R1)
SRI: VENKATESH S.ARBATTI, STANDING COUNSEL FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN SPL.CC.NO.133/2015, ANNEX-A AGAINST THE PETITIONER INITIATED BY THE R-1 AS PER PCR NO.18/2015 DATED 17.3.2015 ANNEX-B ON THE FILE OF THE PRINCIPAL CITY CIVIL SESSIONS JUDGE AND SPECIAL JUDGE, AT BANGALORE CITY IN SO FAR AS IT RELATES AGAINST THE PETITIONER FOR THE OFFENCE PUNISHABLE UNDER SECTION 4 AND 8(5) OF PMLA-2002 AS ILLEGAL AND CONTRARY TO THE CONSTITUTION OF INDIA AND QUASH ALL FURTHER PROCEEDINGS PURSUANT THERETO.

IN CRIMINAL PETITION NO.2540 OF 2016

BETWEEN

1 . SMT J R PUSHPA
W/O.SIVARAMU,
AGED ABOUT 43 YEARS,

2 . S RAJE GOWDA
S/O.LATE SIDDURE GOWDA,
AGED ABOUT 67 YEARS,

BOTH R/O.NO.632, "NIDHI KRUPA",
1ST FLOOR, 8TH MAIN,

A-1 BLOCK EXTENSION,
VIJAYANAGAR, 3RD STAGE,
MYSORE-570017.

...PETITIONERS

(BY SRI:D. SADASHIVA, ADVOCATE)

AND

UNION OF INDIA
DEPARTMENT OF REVENUE
BY DEPUTY DIRECTOR
OFFICE OF THE DIRECTORATE OF ENFORCEMENT
BANGALORE ZONAL OFFICE
3RD FLOOR, "B" BLOCK
BMTc BUILDING
SHANTHINAGAR, K.H.ROAD
BANGALORE-560027.

...RESPONDENT

(BY SRI: M.B. NARGUND, ASG A/W
SRI: P PRASANNA KUMAR, SPL.PP)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C
PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN
SPL.C.C.NO.133/2015, ANNEXURE-A INITIATED BY THE R-1 AS
PER PCR NO.18/2015 DATED 17.03.2015 ANNEXURE-B ON THE
FILE OF THE PRL. CITY CIVIL S.J., AND SPL. JUDGE, AT
BANGALORE CITY (CCH-1) IN SO FAR AS IT RELATES AGAINST
THE PETITIONERS NO.1 AND 2 FOR THE OFFENCES PUNISHABLE
UNDER SECTION 3 R/W 4 AND 8(5) OF PMLA-2002 AS ILLEGAL
AND CONTRARY TO LAW AND QUASH ALL FURTHER
PROCEEDINGS PURSUANT THERETO.

IN CRIMINAL PETITION NO.7836 OF 2016

BETWEEN

SRI. RAGHAVA PATALI

S/O. LATE ITHA PATALI
AGED ABOUT 63 YEARS
R/O. H.NO.2-70/5, "SANNIDHI"
NAGAKANNIKA TEMPLE
DEREBAIL, KONCHADI
MANGALORE

...PETITIONER

(BY SRI:D. SADASHIVA, ADVOCATE)

AND

UNION OF INDIA
DEPT. OF REVENUE
BY ASSISTANT DIRECTOR
OFFICE OF THE DIRECTORATE OF ENFORCEMENT
MINISTRY OF FINANCE
3RD FLOOR, "B" BLOCK
BMTc BUILDING
SHANTHINAGAR, K.H. ROAD
BENGALURU-560 027

...RESPONDENT

(BY SRI: M.B. NARGUND, ASG A/W
SRI: P KARUNAKAR, STANDING COUNSEL)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C
PRAYING TO ISSUE ORDER OR DIRECTION QUASHING THE
ENTIRE PROCEEDINGS IN SPL.C.NO.128/2016 ANNEXURE-A
INITIATED BY THE RESPONDENT AS PER ECIR
NO.10/BG20/2014 DATED 08.06.2016 ANNEXURE-B, ON THE
FILE OF III ADDL. DIST. AND SPL. JUDGE UNDER THE
PREVENTION OF MONEY LAUNDERING ACT, 2002 AT
MANGALORE IN SO FAR AS IT RELATES AGAINST THE PETRS.
FOR THE OFFENCE PUNISHABLE UNDER SECTION 200 OF
CR.P.C. R/W SEC.45(1), 3 AND 4 OF PREVENTION OF MONEY
LAUNDERING ACT, 2002 AS ILLEGAL AND CONTRARY TO LAW
AND QUASH ALL FURTHER PROCEEDINGS PURSUANT THERETO.

IN CRIMINAL PETITION NO.7837 OF 2016

BETWEEN

- 1 . SMT. SHARADA PATALI
W/O. RAGHAVA PATALI
AGED ABOUT 57 YEARS
R/O. H.NO.2-70/5, "SANNIDHI"
NAGAKANNIKA TEMPLE
DEREBAIL, KONCHADI
MANGALORE
- 2 . SMT. GEETHA LAKSHMI
W/O. HARISH
AGED ABOUT 33 YEARS
R/O. NO.33-283, "PRATHAM"
PRASHANTH NAGAR, 8TH CROSS
MANGALORE-575 006

...PETITIONERS

(BY SRI:D. SADASHIVA, ADVOCATE)

AND

UNION OF INDIA
DEPT. OF REVENUE
BY ASSISTANT DIRECTOR
OFFICE OF THE DIRECTORATE OF ENFORCEMENT
MINISTRY OF FINANCE
3RD FLOOR, "B" BLOCK
BMTc BUILDING
SHANTHINAGAR, K.H. ROAD
BENGALURU-560 027

...RESPONDENT

(BY SRI: M.B. NARGUND, ASG A/W
SRI: P KARUNAKAR, STANDING COUNSEL)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN SPL.C.NO.128/2016, ANNEXURE-A, INITIATED BY THE RESPONDENT AS PER ECIR NO.10/BG20/2014 DATED 08.06.2016 ANNEXURE-B ON THE FILE OF III ADDL. DIST. AND S.J., UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002 AT D.K., MANGALORE IN SO FAR AS IT RELATES AGAINST THE PETITIONER NO.1 AND 2 FOR THE OFFENCES PUNISHABLE UNDER SECTION 45(1),3 AND 4 OF PREVENTION OF MONEY LAUNDERING ACT, 2002 AS ILLEGAL AND CONTRARY TO LAW AND QUASH ALL FURTHER PROCEEDINGS

IN WRIT PETITION NO.52348 OF 2015

BETWEEN

SRI SIDDARAM NINGAPPA KOGANNOOR
AGED ABOUT 57 YEARS
S/O NINGAPPA KOGANNOOR
ASST. EXECUTIVE ENGINEER
KRISHNA BHAGYA JALA
NIGAM LTD. (KBJNL)
R/O PLOT NO.21
BASAVESHWARANAGAR
OPP. BLDE HOSPITAL
VIJAYAPURA-583101.

...PETITIONER

(BY SRI:D. SADASHIVA, ADVOCATE)

AND

1 . UNION OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
BY DEPUTY DIRECTOR
OFFICE OF THE DIRECTORATE OF ENFORCEMENT
BANGALORE ZONAL OFFICE

3RD FLOOR, B BLOCK
BMTc BUILDING
SHANTHINAGAR , K.H. ROAD
BANGALORE-27

2 . STATE OF KARNATAKA
BY KARNATAKA LOKAYUKTHA POLICE
VIJAYAPURA DIVISION
VIJAYAPURA-583101

...RESPONDENTS

(BY SRI: M.B. NARGUND, ASG A/W
SRI: P PRASANNA KUMAR, SPL.PP FOR R1;
SRI: B.S.PRASAD, STANDING COUNSEL FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 OF CR.P.C. PRAYING TO QUASH THE IMPUGNED ORDER OF SUMMONS DATED 13.3.2015 ANNEX-A AND SUMMONS ANNEX-B DATED 12.10.2015 ISSUED UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002 BY THE R-1 AS ILLEGAL AND CONTRARY TO THE CONSTITUTION OF INDIA AND QUASH ALL FURTHER PROCEEDINGS PURSUANT THERETO.

IN WRIT PETITION NO.24502 OF 2017

BETWEEN

DR MANJULA RAU
W/O.DR.DILIP RAU,
AGED ABOUT 65 YEARS,
RESIDING AT
NO.13, 5TH "C" CROSS,
MCHS LAYOUT,
BTM 2ND STAGE,
BANGALORE-76.

...PETITIONER

(BY SRI: NAGENDRA NAIK R, ADVOCATE)

AND

- 1 . THE DIRECTOR
ENFORCEMENT DIRECTORATE
6TH FLOOR, LOK NAYAK BHAWAN
KHAN MARKET, NEW DELHI-110003.
- 2 . THE DEPUTY DIRECTOR OF ENFORCEMENT
GOVERNMENT OF INDIA
BANGALORE ZONAL OFFICE
3RD FLOOR, BMTC BUS TERMINUS
SANTHINAGAR, K.H.ROAD
BANGALORE-27.

...RESPONDENTS

(BY SRI: M.B. NARGUND, ASG A/W
SRI: P KARUNAKAR, STANDING COUNSEL)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 CR.P.C. PRAYING TO QUASH THE PROCEEDINGS IN SPL.CC.NO.156/2017 ON THE FILE OF THE XLVI ADDL. CITY CIVIL AND SESSIONS JUDGE AT BANGALORE AT ANNEX-A.

THESE CRIMINAL PETITIONS CONNECTED WITH WRIT PETITIONS COMING ON FOR DICTATING ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

In this batch of petitions, petitioners have questioned the correctness and legality of the proceedings initiated against them under sections 3, 4 and 8(5) of the Prevention of Money Laundering Act, 2002 (for short 'PML Act').

2. The common grievance of the petitioners is that they are sought to be prosecuted and the properties belonging to them are sought to be attached / confiscated on the basis of amended law which came into force on 01.06.2009 in respect of the offences which are alleged to have been committed prior to 01.06.2009.

3. For better understanding of the controversy raised in the petitions, narration of the basic facts involved in each case may be necessary. They are recapitulated hereunder:

Criminal Petition No.5698 of 2019

The petitioner in this case was a Minister in the Government of Karnataka at the relevant time. FIR was registered against him in Crime No.57/2010 alleging commission of offences punishable under Sections 7, 8, 12, 13(1)(d) of Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act") and sections 419, 420, 465, 468 and 471 r/w. 120B of IPC. After investigation, charge sheet was filed against the petitioner (accused No.1) and 8 other accused persons in charge sheet No.4/2011 dated 07.07.2011 by the Karnataka Lokayuktha. The offences alleged against the petitioner were punishable under sections 7, 13(1)(d) read with 13(2) of PC Act and sections 465, 471 r/w. 120-B of IPC. He was summoned before the XXIII Addl. City Civil & Sessions Judge and Special Judge under Prevention of Corruption Act, Bengaluru City, in Spl.C.C.No.135/2011. The application filed by him under section 227 Cr.P.C. seeking discharge having been rejected, the petitioner challenged the said order before this court in Criminal Revision Petition No.432/2013. By order dated 03.11.2016, the revision petition was allowed and the order dated 29.04.2013 passed by the court below in Spl.C.C.No.135/2011 rejecting the

application filed by the petitioner under section 227 Cr.P.C. was set-aside and the petitioner (accused No.1) was discharged. In the same order, Criminal Petition No.2313/2016 filed by accused No.9 Sri.M.Gopi was allowed and the proceedings pending against him in Spl.C.C.No.135/2011 were quashed. The FIR registered against accused No.3 S.V.Srinivas and the charge sheet filed against him were also quashed by orders of this Court dated 10.03.2016 in Criminal Petition No.5102/2015.

4. That being the facts, a complaint (ECIR.No.07/BZ/2011) was filed by the Deputy Director, Directorate of Enforcement under section 45(1) of the PML Act, 2002 on 24.03.2014 against the petitioner and 23 other accused persons seeking their prosecution under sections 3 and 4 of the PML Act and also for confiscation of all the attached properties (provisionally attached vide Provisional Attachment Order No.07/2012 dated 25.09.2012 and Provisional Attachment Order No.01/2014 dated 24.01.2014) under section 8(5) of PML Act. This was registered in Spl.C.C.No.124/2014. In the said complaint, it was alleged that the report filed by the Lokayuktha

under section 173 of Cr.P.C. (Charge sheet No.04/2011 dated 07.07.2011) disclosed that the petitioner directly as well as indirectly indulged, knowingly assisted, knowingly was a party and was actually involved in process and activities connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property. The amounts involved in the offence of money laundering were quantified as:-

i. Rs.5,09,27,700/- [as mentioned at para 6(x)] directly withdrawn from ITACA account and

ii. Rs.21,95,80,000/- [as mentioned at para 6(x)] obtained through Mr. K.S. Jagadish (his son), withdrawn from ITACA account.

Total amount : Rs.27,05,07,700/-

Crl.P.No.6060/2019

5. Accused Nos.6 to 11 and 19 to 21 in Spl.C.C.No.124/2014 are the petitioners in this case. Accused No.6 is the wife of accused No.1. Accused No.7 is the sister of

accused No.2 and daughter of accused Nos.1 and 6. Accused No.8 is the brother-in-law of accused No.2 and son-in-law of accused Nos.1 and 2 and husband of accused No.7. Accused No.9 is the sister of accused No.32 and daughter of accused Nos.1 and 6. Accused No.10 is the brother-in-law of accused No.2 and son-in-law of accused Nos.1 and 6 and husband of accused No.9. Accused No.11 is the wife of accused No.2 and daughter-in-law of accused Nos.1 and 6.

6. In the complaint, it is alleged that accused No.6 was involved in the process and activities connected with the proceeds of crime to the extent of over Rs.1.00 Crore; accused No.7 was in possession of the property to the extent of Rs.83,42,255/-; accused Nos.8, 9, 10 and 11 were involved in the process and activities connected with the proceeds of the crime to an extent of Rs.7,24,81,000/-, Rs.5,56,00,000/-, Rs.10,19,00,000/- and Rs.19,80,00,000/- respectively. The details of the properties acquired by them out of the proceeds of the crime are detailed in the complaint.

7. Insofar as accused No.19, 20 and 21 are concerned, it is alleged that they directly as well as indirectly indulged, knowingly assisted, knowingly were parties and were actually involved in the process and activities connected with the proceeds of crime to an extent of Rs.90,96,000/- and Rs.1,39,09,000/- respectively.

Crl.P.No.5030/2016

8. Petitioners are the husband and wife. Crime No.5/2009 was registered against petitioner No.1 by the Lokayukta police under section 13(1) (e) r/w 13(2) of Prevention of Corruption Act, 1988 alleging disproportionate assets to the extent of Rs.3751641/-(10.593%) during the check period 7.9.1981 and 22.09.2009. After investigation, charge sheet was laid against petitioner No.1 and the trial was in progress before the Sessions Court, Bagalkot in Spl.C.No.27/2013. At that stage, the Directorate of Enforcement filed a complaint against petitioner Nos.1 and 2 under sections 45(1), 3 and 4 of PML Act (ECIR No.19/BGZ0/2009) in Spl.C.No.127/2016 alleging that petitioner No.1/accused No.1 was involved in the process

connected with proceeds of crime to the extent of Rs.37,51,641/- and from out of the proceeds, he acquired immovable properties as mentioned in para 10 of the complaint in the name of his wife and thereby committed the offence of money laundering as defined under section 3 punishable under section 4 of the PML Act. Accused No.2 being the wife of accused No.1, it is alleged, assisted accused No.1 in the process connected with the proceeds of crime by colluding with accused No.1 to conceal the proceeds of crime and to project it as untainted.

Crl.P.No.5329/2016.

9. Accused Nos.1 to 4 in Crime.No.6/2009 are the petitioners in this case. Accused No.2 is the wife of accused No.1. Accused No.3 is the elder brother of accused No.1 and accused No.4 is the son of accused Nos.1 and 2. Crime No.6/2009 was registered against petitioner No.1 by the Lokayukta police under section 13(1) (e) r/w 13(2) of Prevention of Corruption Act, 1988 alleging disproportionate assets to the tune of Rs.83,68,152/- during the check period 15.03.1975 to

23.09.2009 and the matter was pending consideration of learned III Addl. District and Sessions Judge and Special Judge, Belary, sitting at Hospet. Enforcement Directorate filed a case in Spl.Case No.119/2016 (ECIR No.16/BZ/2009 dated 26.10.2009) alleging that during the check period between 15.3.1975 and 23.09.2009, accused No.1 was actively involved in the process connected with the proceeds of crime to an extent of Rs.34,98,500/- and accused No.2 being the wife of accused No.1 actively assisted accused No.1 in the process connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property to the extent of Rs.22,00,500/-It is further alleged that accused No.3-elder brother of accused No.1 and accused No.4, son of accused Nos.1 and 2 actively assisted accused No.1 in the activity connected with the proceeds of the crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property to the extent of Rs.12,83,000/-, Rs.15,000/- respectively and thereby committed the offence of money laundering as defined under sections 3 and 4 of PML Act.

Crl.P.No.5556/2016

10. Petitioner was the sole accused in Crime No.20/2009 registered by the Lokayuktha Police, Belagavi, for the offence punishable under Sections 13(1)(e) r/w 13(2) of the Prevention of Corruption Act. After investigation, charge sheet was laid against him in Spl.C.No.55/2013 and after trial, he was acquitted by order dated 13.01.2016.

11. The instant proceedings are initiated by the Directorate of Enforcement based on the above crime, against the original accused as well as against his wife, who is petitioner No.2 in Crl.P.No.5556/2016. The acquisition of disproportionate assets pertain to the check period from 31.05.1993 to 02.12.2009. The Directorate of Enforcement filed a complaint under section 45, 3, 4 and 8(5) of the PML Act, 2002 in Spl.Case No.59/2016 alleging that petitioner No.1 i.e., accused No.1 amassed wealth by illicit means and received amount totalling to Rs.55,28,592/- disproportionate to his known source of income and utilized the same by projecting the same as untainted

money for acquiring immovable property in the name of his wife Smt. Kaveri. J Narasannavar –accused No.2/petitioner No.2 during the check period 31.05.1993 to 02.12.2009.

W.P.No.57604/2015 C/w CrI.P.No.2540/2016:

12. Petitioner in W.P.No.57604/2015 was the sole accused in Crime No.2/2009 registered by the Lokayuktha Police, Mysuru, under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act. After investigation, charge sheet was filed against him on 24.10.2013. While the matter was pending before the III Addl. District & Sessions Judge (Special Court for cases under Prevention of Corruption Act), Mysuru, in Spl.C.No.115/2013, the instant proceedings have been initiated against the sole accused as well as other persons namely, petitioner in CrI.P.No.2540/2016 i.e., the wife and father-in-law of the petitioner herein.

CrI.P.No.7836/2016 C/w CrI.P.No.7837/2016:

13. The petitioner in CrI.P.No.7836/2016 was the sole accused in Crime No.11/2011 registered by the Lokayuktha

Police, Mangaluru. After investigation, charge sheet was laid before the III Addl. District & Sessions Judge (Special Court for cases under Prevention of Corruption Act), Mangaluru in Spl.C.No.32/2013. During the pendency of this proceeding, action has been initiated under the provisions of PML Act not only against the sole accused but also against his wife and daughter, who are the petitioners in Cri.P.No.7837/2016.

W.P.No.52348/2015:

14. The petitioner in W.P.No.52348/2015 was the sole accused in Crime No.11/2010 registered by the Lokayuktha Police, Bagalkote, Vijayapura, for the offences under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act. After investigation, charge sheet was laid for the above offences, alleging disproportionate of assets during the check period from 11.01.1983 to 16.11.2010. The matter was pending on the file of the Prl. District & Sessions Judge (Special Court for cases under Prevention of Corruption Act), Vijayapura in Spl.C.No.3/2014. During pendency of this proceedings, the

Enforcement Directorate initiated attachment proceedings under Section 5 of the P.M.L.A. Act.

W.P.No.24502/2017

15. Petitioner is the accused in Special CC.No.156/2017 on the file of XLVI Additional City Civil and Sessions Judge at Bengaluru. He is aggrieved by the initiation of the prosecution against him for the alleged offences punishable under Sections 3, 4 and 8(5) of the Prevention of Money Laundering Act, 2002 (PMLA Act for short).

16. ECIR/84/BZ/2010 was filed against the petitioner on 1.4.2017. As per the complaint, the alleged offences were committed during the year 2003-2009, to be precise during the check period 1.3.2003 to 31.3.2009. It is not in dispute that the prosecution was initiated against the petitioner/accused under Section 13(2) of the PC Act, 1988 r/w 13(1)(e) of PC Act, 1988. During the pendency of this proceedings, the instant proceedings have been launched against the petitioner.

17. The contention of the petitioners is that going by the allegations made in the complaint the acquisition of assets were made between 1.3.2003 and 31.3.2009, whereas the schedule was amended only on 1.6.2009. Referring to the definition of the offence of 'money laundering', the learned counsel for the petitioner emphasized that without there being any *mens rea* to indulge or to be a party to the alleged process or activities connected with the proceeds of crime, the petitioner cannot be prosecuted under Section 3 of the PML Act. It is argued that without there being a scheduled offence, there cannot be proceeds of crime. That apart, without determination of the properties acquired by the petitioner by committing the scheduled offence, there cannot be any determination of the proceeds of crime. Referring to Section 16 of the P.C Act, the learned counsel would submit that even in a prosecution for the offence under Section 13(1)(e) of the PC Act, only the properties which are considered as disproportionate to the known source of the income could be confiscated or subjected to fine, which indicates that merely by lodging a complaint, the Director/Deputy Director cannot decide that the quantum of

properties held by the petitioner as the proceeds of crime and that the said properties were acquired by process or activity connected with the proceeds of crime.

18. In support of his submission, Sri.Nagendra Naik.R., learned counsel appearing for petitioner has placed reliance on the decision of the Hon'ble Supreme Court in P.CHIDAMBARAM VS. DIRECTORATE ENFORCEMENT, 2019 SCC Online SC 1143, with reference to paragraph 14 thereof and emphasized that the 'proceeds of crime' having been made punishable only subsequent to the amendment that came into force with effect from 01.06.2009, prosecution of the petitioners is patently illegal and violative of Article 20(1) of the Constitution of India. Learned counsel has also placed reliance on the decision in *MAHIPAL SINGH vs. CBI*, 2014(11) SCC 282 and *UNION OF INDIA & Others vs. DILEEP KUMAR SINGH*, (2015) 4 SCC 421.

19. As could be seen from the above narration of facts, the respondent has initiated action against the petitioners for the offence under section 3 of PML Act and also for attachment and

confiscation of the proceeds of the crime under sections 5 and 8 of PML Act.

20. Reading of the respective complaints filed under section 45 of the PML Act clearly reveal that the basis for launching the prosecution and initiating attachment proceedings against the petitioners are the final reports /charge sheets filed by the Lokayukta police under section 173 of Cr.P.C. for the alleged offences punishable under Sections 7, 8, 12, 13(1)(d) of Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act") and/or sections 419, 420, 465, 468 and 471 r/w. 120B of IPC. Undeniably these offences termed as "predicate offences" came to be included in the Schedule to the PML Act by Act 21 of 2009 w.e.f. 1.06.2009.

- i) The first and serious question raised by the petitioners is that going by the allegations made in the respective complaints, the acts constituting the alleged offences are stated to have been committed prior to the amendment of sections 3, 2(1) (u) and 2(1) (y) of the PML Act. In view of the

constitutional protection under Article 20(1) of the Constitution of India, the prosecution of the petitioners based on ex post facto laws that created the offences after the commission of the acts charged against them is violative of Article 20(1) of the Constitution of India and bad in law as being highly inequitable and unjust.

- ii) A statute affecting substantive right cannot be made operational retrospectively unlike a procedural statute. The vested right created in favour of the accused by way of their discharge/acquittal/quashment of the predicate offences cannot be taken away by retrospective operation of the provisions of the statute.
- iii) When the predicate offences were not in the statute book as "scheduled offence" as on the date of acquiring the properties or the assets by the petitioners, the question of prosecuting the petitioners for the "proceeds of crime" which is

essentially and intricately linked to the “schedule offence” does not arise at all. In other words, the contentions of the petitioners is that the assets acquired prior to the amendment Act of 21/2009 could never fall within the ambit of “proceeds of crime” as defined in Section 2(1)(u) of the Act.

- iv) The existence of “scheduled offence” and the consequent generation of proceeds of crime are condition precedent or sine qua non for invocation of section 3, section 5 or section 8 of PML Act. In view of the discharge / acquittal / quashment of the proceedings arising out of predicate crime, the “schedule offence” itself being not in existence, the prosecution of the petitioners and attachment of their properties / assets are legally untenable and amount to abuse of process of court.
- v) Petitioners who were not a party to the predicate offences cannot be prosecuted for the offence of “money laundering” and the properties or assets

standing in their name cannot be attached in the absence of their involvement in the predicate offence and without there being any mens rea on their part to commit either the predicate offence or the offence charged against them under section 3 of the PML Act.

- vi) In cases where the charge sheet in respect of the predicate offences were filed prior to the Amendment Act 21 of 2009, the amendment to section 8(5) will not apply in view of the prohibition against retrospective lawmaking, since confiscation also amount to 'punishment' and not a mere procedural law.

21. In support of the above contentions, Sri.Kiran S.Javali and Sri. D. Sadashiva, learned counsels appearing for petitioners have placed reliance on large number of authorities of various High Courts which lay down the following principles:

22. The Delhi High Court in *M/s Mahanivesh Oils and Foods Pvt Ltd. v/s. Directorate of Enforcement*, (W.P.(C)1925/2014 & CM.No.4017/2014 dated 25.01.2016) has ruled as under:-

32. ... *There is no indication from the express language of the Act, that the Legislature intended the Act to be retroactive or operative with retrospective effect.*

34. ... *Thus, unless such acts have been committed after the Act came into force, an offence of money-laundering punishable under Section 4 would not be made out. The 2013 Amendment to Section 3 of the Act by virtue of which the words 'process or activity connected with proceeds of crime and projecting it as untainted property' were substituted by the words 'any process or activity connected with proceeds of crime including concealment, possession, acquisition or use and projecting or claiming it as untainted property'. The words 'concealment, possession, acquisition or use' 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 the 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 01.07.2005 or prior to the related crime being included as a scheduled offence under the Act.

(Underlining supplied)

23. The High Court of Allahabad in *SUSHIL KUMAR KATIYAR VS. UNION OF INDIA, Thru Dir. & Another, 2016 SCC Online All 2632*, in para 18, has held thus:

18. The definition of proceeds of crime reveals that proceeds of crime means any property derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence or the value of any such property. Thus, the proceeds of crime is any property obtained as a result of criminal activity relating to a scheduled offence. Thus, unless there is criminal activity relating to a scheduled offence, there can be no proceeds of crime.

36. In this regard, I have examined the various case laws cited by the petitioner as well as the opposite parties and the legal position which emerges out after study of the various case laws, is that a person can be prosecuted for the offence of money laundering even if he is not guilty of scheduled offences and his property can also be provisionally attached

irrespective of the fact as to whether he has been found guilty of the scheduled offences. The prosecution is not required to wait for the result of the conviction for the scheduled offences in order to initiate proceedings under section 3 of the PML Act. However, the person against whom there is an allegation of the offence of money laundering, can approach appropriate forum in order to show his bonafide and innocence that he is not guilty of the offence of money laundering and has not acquired any proceeds of crime or any property out of the proceeds of crime.

(Underlining supplied)

24. The High Court of Judicature at Hyderabad while deciding *M/S SATYAM COMPUTER SERVICES LTD., vs. DIRECTORATE OF ENFORCEMENT, (W.P.No.37487/2012 and connected cases dated 31.12.2018)* has taken the view that,

68. ... Since the charge sheets were filed prior to the amendment and since the petitioner was not one of the accused, the amendment to Section 8 (5) will not apply to the case of the petitioner. That vested rights cannot be taken away by retrospective application of the law (especially quasi criminal) is too well settled. A useful reference may be made in this regard to the judgments of the Supreme Court in *STO v. Oriental Coal Corporation* and in *K.S. Paripoornan v. State of Kerala*. In *Oriental Coal Corporation* the Supreme Court pointed out that where there is no hint of retrospectivity, in the statute itself, it is not possible to read retrospectivity. Similarly, in *K.S. Paripoornan*, the Supreme Court indicated the distinction between a statute dealing with substantive rights and a statute, which relates to procedure

or evidence or is declaratory in nature. A statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect. On the contrary, a statute concerned mainly with matters of procedure, or evidence or which is declaratory in nature has to be construed as retrospective, unless there is clear indication to the contrary.

69. The PMLA is not a statute dealing merely with matters of procedure or evidence or which is declaratory in nature. It is a statute which affects substantive rights of parties. Therefore, by the test indicated in K.S. Parpoornan, it cannot have retrospective effect.

(Underlining supplied)

25. In *TECH MAHINDRA LIMITED and another vs. JOINT DIRECTOR and Others*, 2014 SCC OnLine Hyd 1575, another Bench of the High Court of Hyderabad, has interpreted the Act in following manner:

*69. In *Tej Prakash Pathak and others vs. Rajasthan High Court and others*, Supreme Court held that "Under the scheme of our Constitution an absolute and non-negotiable prohibition against retrospective law-making is made only with reference to the creation of crimes. Any other legal right or obligation could be created, altered, extinguished retrospectively by the sovereign law-making bodies."*

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.

(Underlining supplied)

26. The Division Bench of this court in *M/s.OBULAPURAM MINING COMPANY PVT. LTD., vs. JOINT DIRECTOR* in *W.P.No.5962/2016* and connected matter, observed thus,

12. The petitioner cannot be tried and punished for the offences under the PML Act when the offence were not inserted in the schedule of offences under the PML Act. This would deny the writ petitioner the protection provided under clause (1) of Article 20 of the Constitution of India. Article 20(1) of the Constitution of India prohibits the conviction of a person or his being subjected to penalty for ex-post facto laws. Consequently, the order of attachment is also, liable to be set aside.

27. The High Court of Delhi in *M/s Ajanta Merchants Pvt. Ltd., vs. Directorate of Enforcement* in *Crl.M.C.No.5581/2014*

dt.09.04.2015, has interpreted the provisions of PML Act as follows:

22. 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 on the allegations which occur earlier by applying the provisions of law, which has come into force after the alleged incident.

28. In *Abdullah Ali Balsharaf and another vs. Directorate of Enforcement*, 2019 SCC OnLine Del 6428, another Bench of the Delhi High Court has held as under:

106. The expression "proceeds of crime" has been defined under Section 2(1) (u) of PMLA as under:

"Section 2(1) (u) - "proceeds of crime" means any property derived or obtained, directly, or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];"

107. A plain reading of the aforesaid definition indicates that the definition / expression of proceeds of crime is in two parts. The first part relates to proceeds of crime derived or obtained by crime and the second relates to property of an equivalent value. The expression "proceeds of crime" means any property derived or obtained directly or indirectly as a result of

criminal activity relating to a scheduled offence. Clearly the shares in question do not fall within this part of the definition. This is so because shares were subscribed by remittances paid through banking channels much prior to commission of any alleged crime and much prior to the PMLA coming into force.

108. The second part of the definition of the expression "proceeds of crime" includes within its ambit, a property equivalent to the value of the property, which is derived from any criminal activity and is held outside the country. In other words, if any property that is derived or obtained from any criminal activity relating to a scheduled offence is held outside India, then a property of an equivalent value held in India, would also fall within the scope of expression of "proceeds of crime". Thus, if it is established that the petitioners hold any property overseas, which is derived or obtained by a scheduled offence, then the Enforcement Directorate would be well within its right to initiate proceedings against any property held by the petitioners in India to the extent of the value of the proceeds of crime held overseas. In such a case, it would be irrelevant whether the assets acquired in India were acquired prior to or after the PMLA came into force.

109. In the aforesaid view, the contention that assets acquired prior to enactment of the PMLA could never fall under the scope of the definition of the expression "proceeds of crime" and consequently are immune from the provisions of the PMLA, is erroneous and is accordingly rejected.

29. Sri.M.B.Nargund, learned Additional Solicitor General of India for Karnataka, by referring to the Lok Sabha Debates, has pointed out that the amendments brought to the PML Act were declaratory and clarificatory in nature; by the said amendments, no new offence has been created nor the accrued right of the petitioners / accused have been taken away. In support of this submission, learned ASG referred to the following portions of the Lok Sabha Debates:

"The other amendments are into the PMLA, the Act relating to black money. On that, I would like to assure the Members regarding the kind of amendments. In fact, I would like to mention, well before that, the number of amendments, which are coming through for the PMLA, which is of 2002 vintage. Eight are being proposed by us. Of the eight, six are only explanations to the existing clause. The clause itself is not being changed. We are only coming with explanations. These explanations are being brought into the Act because of pleading in the courts by some of those who are accused and because of some kind of a confusion or a grey area or an ambiguity which might exist. Therefore, the amendment is not amendment of the clause itself. It is more explaining the clause. So, of the eight amendments proposed under the PMLA, six of them are amendments only for additional explanations to be added.

xxx

But of those eight points on which the amendments are being brought in, as I said, six are only explanation. One is deletion of a proviso, a proviso which has no purpose to be

there, which was not being invoked but of course, being invoked by people who intend differently, and, therefore, that proviso is being removed.

A new proviso, which is being added, is only to make sure that where a case exists in one court and the hearings are going on there and where in a different court there could be proceedings happening, these two cannot be clubbed or brought together as one and treated as one. Therefore, that is a set of proceedings which is different. The case otherwise is going on in a different court. We have treated them separately. To that extent, the proviso is being added. Therefore, as regards PMLA, I want to be clear that the explanations which are going in, are explanations to the existing clauses, and no new clauses are being added, except for one where we are bringing a proviso."

30. Further, referring to the statements regarding the amendment / background / justification for amendments to PML Act, learned ASG referred to the following para of the deliberations dated July 18, 2019 as extracted herebelow:

"The present amendments have been proposed in order to achieve the object and intent of the Legislature while enacting the Act of 2002. As a member of globally constituted Financial Action Task Force and otherwise also being a State committed to eliminate money laundering, the clarifications and provisions proposed are necessary so as to ensure that no provisions are misconstrued contrary to the legislative intent while enacting the Act of 2002. It has been found expedient and necessary to bring

clarificatory amendments for effective implementation of provisions of the Act, regulation and operational measures for combating money laundering, terror financing and other related threats to the integrity of financial system of the country and to achieve the related threats to the integrity of financial system of the country and to achieve the object of the Act of 2002. I would enumerate salient features of the clarificatory amendments and brief reasons for the same. It is also observed that by misconstruing the provisions of this Act, accused being investigated for serious offences, attempt to thwart proceedings under the Act.

3. It has been experienced that certain doubts have been expressed as regard the definition of "Proceeds of Crime" included in clause (u) to sub-section (1) of section 2 of the Act of 2002. It is observed that the object and intention of the legislature while enacting Act of 2002 is wrongly understood to mean that only the property which is derived or obtained as a result of commission of scheduled offence would fall within the definition of "proceeds of crime" and the Act of 2002 would apply only to such property. The intention of the legislature had always been that the property derived or obtained, directly or indirectly by any person as a result of not only the commission of the scheduled offence but also any criminal activity relatable to the scheduled offence would also fall within the definition of "proceeds of crime". Accordingly, a clarification is proposed to be inserted in clause (u) to sub-section (1) of section 2 to clarify that "proceeds of crime" shall include property not only derived or obtained from the commission of the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

4. ... The intention of the legislature had always been that a person will be held to be guilty of offence of money-laundering and will be punished as long as person is enjoying the 'proceeds of crime' by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property."

31. On the question of the effect of declaratory statute, learned ASG made a reference to the decision of the Hon'ble Supreme Court in *SHYAM SUNDER & Others vs. RAM KUMAR & Another*, (2001) 8 SCC 24, with emphasis to paras 39 and 44 whereof, which is extracted hereinbelow:

39. Lastly, it was contended on behalf of the appellants that the amending Act whereby new Section 15 of the Act has been substituted is declaratory and, therefore, has retroactive operation. Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or explain previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of word 'declaration' in an Act explaining what was the law before may not appear to be a declaratory Act but if the Court finds an Act as declaratory or explanatory, it has to be construed as retrospective. Conversely where a

statute uses the word 'declaratory', the words so used may not be sufficient to hold that the statute is a declaratory Act as words may be used in order to bring into effect new law.

44. From the aforesaid decisions, the legal principle that emerges is that the function of a declaratory or explanatory Act is to supply an obvious omission or to clear up doubts as to meaning of the previous Act and such an Act comes into effect from the date of passing of the previous Act. Learned counsel for the appellants strongly relied upon a decision of two-Judges Bench of this Court in *Mithilesh Kumari & anr. vs. Prem Behari Khare* [1989 (2) SCC 95] in support of his argument. In the said decision, it was held by this Court that The Benami Transactions (Prohibition) Act 1988 being a declaratory Act, the provisions of Section 4 of the Act has retroactive operation. The reliance of this decision by the appellants' counsel is totally misplaced as this decision was overruled in *R. Raja Gopal Reddy vs. Padmini Chandrasekharan* (supra) wherein it was held that, the Act was not passed to clear any doubt existed as to the common law or the meaning of effect of any statute and it was, therefore, not a declaratory Act."

32. Next he referred to the decision in *ZILE SINGH vs. STATE OF HARYANA & Others*, (2004) 8 SCC 1. In paras 14 and 15 whereof, it is laid down thus:

"14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act

is 'to explain' an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect. (ibid, pp.468-469).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, Seventh Edition), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the Statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated (p.388). The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right (p.392)."

33. Reliance is also placed on para 32 of the decision in *COMMISSIONER OF INCOME TAX (Central)-I, New Delhi vs. VATIKA TOWNSHIP PVT. LTD., (2015) 1 SCC 1*, which reads as under:-

"32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as 'declaratory statutes'. The circumstances under which provisions can be termed as 'declaratory statutes' are explained by Justice G.P. Singh in the following manner:

'Declaratory statutes'

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court : "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word 'enacted'. But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather

than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."

The above summing up is factually based on the judgments of this Court as well as English decisions."

34. Further he made reference to the observation of Hon'ble Supreme Court in *SHANKER RAJU VS. UNION OF INDIA*, (2011) 2 SCC 132, as to the manner in which declaratory legislation should be construed by courts:

35. *We may also add that where the Legislature clearly declares its intent in the scheme of a language of Statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy and*

without engrafting, adding or implying anything which is not congenial to or consistent with such express intent of legislature. Hardship or inconvenience cannot alter the meaning employed by the Legislature if such meaning is clear on the face of the Statute. If the Statutory provisions do not go far enough to relieve the hardship of the member, the remedy lies with the Legislature and not in the hands of the Court.

35. Coming to the interpretation of the relevant provisions of the PML Act, learned ASG referred to decision of the High Court of Delhi in *GAUTAM KHAITAN AND ORS. VS. UNION OF INDIA* in *W.P.(C) No.8970/2014 dated 04.20.2015*, wherein it is held that:

9. In so far as Section 5 is concerned, the provision contained in the original clause (b) of Sub-section (1) was deleted. Clause (b) of Section 5(1) prior to amendment read as follows :-

"..such a person has been charged of committing a scheduled offence.."

9.1 Furthermore, the period for which provisional attachment would remain valid was enhanced from 150 days to 180 days from the date of the order.

9.2 In so far as Section 8 is concerned, amendments were carried out in Sub-Sections (1), (3) and (4); besides, substitution of Sub-

Sections (5) and (6) with new Sub-Sections (5), (6) and (7) were mandated.

9.3 The consequent effect of insertion of new Sub-Sections (5) and (6), is that, even if conviction for the scheduled offence does not take place, the attachment and pursuant thereto, confiscation of proceeds of crime can take place if, upon conclusion of trial for an offence under PMLA, the special court finds, that the, offence of money laundering has been committed. In other words, the special court, on coming to a conclusion that the offence of money laundering stood committed, can order confiscation of property in favour of the Central Government, in respect of a property, involved in money laundering or, that which was used for commission of offence of money laundering.

10. Having regard to the above and a perusal of the PMLA as amended by Act 2 of 2013, it is clear that the scheme of Act, as it now operates, is directed not only against persons and juridical entities which are prosecuted for scheduled offences by various agencies, such as the CBI, Customs, SEBI etc., but also operates qua persons who conceal, possess, acquire, use and project or claim proceeds of crime. The scope and ambit of the Act is best defined by the amended Sections 2(u) and 3 which reads, respectively, as follows:-

"..2(u). "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.

3. Offence of money-laundering - Whosoever directly or indirectly attempts to indulge or knowingly is a party or is actually involved in any process or activity connected [proceeds of

crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering..."

36. The Madras High Court in *V.M. GANESAN and ors vs. THE JOINT DIRECTOR, DIRECTORATE OF ENFORCEMENT, and ors*, (2015)1 Madras Law Journal 870, has taken the view that a person who is in possession of a property that represents the proceeds of crime, is liable to answer the charge under section 3 and 5 of the PML Act, by interpreting the provisions as under:

20. As a matter of fact, the case of the petitioner in the second writ petition is squarely covered by the second proviso to Section 5(1) of the Act. The petitioner in the second writ petition is not an accused in any of the criminal complaints. None of the three contingencies indicated in the first proviso has arisen in the case of the petitioner in the second writ petition. His case falls under the category of "any property of any person" under the second proviso to Section 5(1) of the Act. This is on the basis that today, he is in possession of a property which represents the proceeds of a crime allegedly committed by the petitioner in the first writ petition.

21. Keeping in mind the scheme of the second proviso to Section 5(1) of the Act, if we have a look at the first proviso, the construction to be given to the first proviso would be very clear. A person who is in possession of a property that

allegedly represents the proceeds of crime, may come under any of the three categories namely:-

(i) person who is not accused of any offence, but who has merely come to possess, under fortunate or unfortunate circumstances, a property that represents the proceeds of a crime;

(ii) person against whom a complaint is lodged, but the investigation is not yet complete and a final report under Section 173 of the Code of Criminal Procedure not yet filed; or

(iii) a person who is accused of committing an offence and against whom a final report has been filed under Section 173 of the Code of Criminal Procedure before the competent Court.

22. There is no dispute about the fact that out of the above three categories of persons, the case of a person coming under the first category is covered by the second proviso. Similarly, the case of a person coming under the third category is covered by the first proviso. Both these persons represent individuals standing at two extremes of a spectrum. An interpretation to Section 5(1) of the Act that would make persons standing at two extremes of the spectrum liable to suffer an order of attachment, but would leave out persons standing in between, as not liable to suffer an order of attachment, would tantamount to reading the two provisos under Section 5(1) of the Act in complete disregard to the object sought to be achieved.

37. In *GOKAK PATEL vs. DUNDAYYA GURUSHIDDAIAH HIREMATH*, (1991) 2 SCC 141, the term "continuing offence" has been explained as under:

7. What then is a continuing offence? According to the Blacks' Law Dictionary, Fifth Edition (Special Deluxe), 'Continuing means "enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences." Continuing offence means "type of crime which is committed over a span of time." As to period of statute of limitation in a continuing offence, the last act of the offence controls for commencement of the period. "A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse." So also a 'Continuous Crime' means "one consisting of a continuous series of acts, which endures after the period of consummation, as, the offence of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act.

25. 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 the offence, the nature of the offence

and the purpose intended to be achieved by constituting the particular act as an offence.

38. In *ADVANTAGE STRATEGIC CONSULTING PVT. LTD vs. THE ASSISTANT DIRECTOR* in W.P.Nos.26889/2018 and connected matters, decided on 07.06.2019, it is observed by the High Court of Madras as under: ,

17. Though the expression 'continuing offence' is not defined in the PMLA, whether a particular offence is a continuing one or not depends upon the nature of offence and the purpose intended to be achieved. The concept of continuing offence is keeping the offence alive day by day without wiping the original guilt. Thus, there is an ingredient of continuance of the offence in continuing offence. Therefore, the contention of the petitioner that the second proviso to Section 5(1) is only prospective and not retrospective is without substance or force. The second proviso is applicable to property acquired even prior to the coming into force of this provision. Hence, retrospective penalization is permissible.

39. In *S.RAMESH POTHY and Ors. vs. THE ADJUDICATING AUTHORITY and Ors.*, in W.P.No.34694/2016 dated 20.12.2016, the High court of Madras has elucidated the terms "any person" and "any property" found in section 2(u) in the following words:

11. In Section 2(u), the words "any property and any person" are used. The Section does not say that at the relevant point of time, the property in question must be in the hands of the alleged offender. This can be elucidated with an example. A professional assassin would quote a price for an elimination from his hirer. The price will mostly be in terms of "money". He would successfully complete his assignment and take his price in money. That is one proceeds of crime. The money will not be in the same avatar indefinitely. It would be converted to an immovable property either in the name of the offender or in the name of anyone else. Now, the character of proceeds of crime has changed from "money" to "immovable property". When the same immovable property is sold, it cannot lose the characteristics of a proceeds of crime, though the purchaser may claim that he had legally purchased it through lawful sources. Of course, it is open for the purchaser to take a plea of lawful acquisition before the adjudicating authority and it is now too preposterous to hazard a guess on the outcome of such a plea.

40. In SACHIN NARAYAN VS. THE INCOME TAX DEPARTMENT, in W.P.No.5408/2019 and connected cases, decided on 29.08.2019, this Court has observed thus:

25. The PML Act being a special enactment contemplates a distinct procedure at the initial stage and thereafter provide for initiation of prosecution in order to achieve the special purpose envisaged under the Act and as such, it cannot be construed that proceedings under the PML Act is to be equated with prosecution initiated under the criminal proceedings for the offence punishable under the Indian Penal Code. Thus, initiation of action under the PML Act

cannot have any implication or impact in respect of registration of other cases either under the Indian Penal Code or any other penal laws.

26. The offence of money laundering under Section 3 of the Act is an independent offence. A reference to criminal activity relating to a schedule offence has wider connotation and it may extend to a person, who is connected with criminal activity relating to schedule offence, but may not be the offender of schedule offence. It is in this background, it has to be necessarily held that money laundering is a stand alone offence under the PML Act. In this background, when Section 44 of the PML Act is perused, it would clearly indicate that special court may take cognizance of the offence upon a complaint by authorized signatory, which means cognizance will be taken of an offence which is separate and independent. The object of issuance of summons is to trace or ascertain the proceeds of crime if any and to take steps in that regard like attaching the proceeds of crime if proved in a given case.

27. Even in case of a person who is not booked for a scheduled offence but is later booked and subsequently acquitted for the offence punishable under different enactments, prescribed under Part 'A' to Part 'C' of the Schedule, still such person can be proceeded under PML Act. In other words, proceedings can be against person who are accused of a schedule offence or against persons who are accused of having committed an offence of money laundering and also persons who are found to be in possession of the "proceeds of crime". It is not necessary that a person has to be prosecuted under the PML Act only in the event of such person having committed schedule offence. The prosecution can be independently initiated only for the offence of

money laundering as defined under Section 3 read with Section 2(p) which provides that "money laundering" having the meaning assigned to it under Section 3 of the Act.

41. This decision is followed by this Court in *SRI. VINOD RAMNANI VS. STATION HOUSE OFFICER*, (W.P.No.244 of 2020(GM-RES) c/w W.P.No.8031/2020) decided on 13.08.2020.

42. This Court in *K.SOWBAGHYA VS. UNION OF INDIA, MINISTRY OF FINANCE, NORTH BLOCK, DEPARTMENT OF REVENUE AND OTHERS* in W.P.Nos.14649 and 19732 of 2014 decided on 28.01.2016, has gone into the constitutional validity of sections 2(1)(u), 3, 5, 8, 9, 17, 18, 19, 23, 24 and 44 of the PML Act and after elaborately considering the object of the Act as well as various amendments brought to the provisions of PML Act, in para 36 has observed thus:

36. Proceeds of crime is defined to include not merely property derived or obtained as a result of criminal activity relating to a scheduled offence but the value of any such property as well. The bogey of apprehensions propounded on behalf of the petitioners is that where proceeds of crime are sequentially transferred through several transactions, in favour of a series of individuals having no knowledge or information as to the criminality antecedent to

the property; the authorities may proceed against each and all of such sequential transaction, thus bringing within the vortex of Chapter-III of the Act, all the properties involved in several transactions. The above reasoning is sound and is endorsed by this Court.

xxx

However, it is to be seen that proceeds of crime is "property" of all kinds as defined under clause (v) of Section 2(1). The "Explanation" inserted to the said clause reads thus:

"Explanation.--For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;"

Hence, it is possible to extend the definition of 'proceeds of crime' to property used in the commission of an offence under the Act or any of the Scheduled offences. It is therefore possible to reconcile the amendments made elsewhere in the Act proceeding on the basis that money laundering is also treated as a 'stand alone' offence, de hors, a scheduled offence, if circumstances warrant.

43. In the backdrop of the analysis made by the various High Courts in the country and the interpretation placed on the crucial terms and expressions found in the PML Act, let me now proceed to deal with the issues raised by the learned counsel

appearing for petitioners. The first and foremost question that need to be answered is, *whether in the context of the provisions of the PML Act, prosecution initiated against the petitioners under section 3 of the PML Act and the confiscation proceedings resorted by the respondent under sections 5 and 3 of the PML Act are based on ex post facto law and hit by the prohibition contained under Article 20(1) of the Constitution of India?*

44. Petitioners appear to have put forward the plea of post facto law on the premise that the acts constituting the offences alleged against them were perpetrated prior to the amendment of the schedule to the PML Act and therefore, the action initiated against them falls within the mischief of Article 20(1) of the Constitution of India. This contention, in my view, in the factual setting of the case, is totally misplaced and misconceived and appears to have been canvassed by misconstruing the provisions of sections 3, 2(1)(u) and the Schedule appended to the PML Act. No-doubt, it is true that the Schedule to the PML Act was amended by Act 21 of 2009 and the various offences specified therein came to be included

therein with effect from 1.06.2009. Nonetheless, in the instant cases, as on the date of initiation of action against petitioners, be it under section 3 or under section 5 of the PML Act, these provisions were very much there in the statute book. As already stated above, in all the cases, the prosecution under section 3 of the PML Act and adjudication proceedings under section 5 of the PML Act have been initiated against the petitioners subsequent to 1.06.2009. Therefore, the contention urged by learned counsel appearing for the petitioners that the petitioners are sought to be prosecuted on the basis of ex post facto laws is factually incorrect.

45. In order to answer the contentions urged by the petitioners, it may be necessary to refer to section 3 of the PML Act as it existed on 01.06.2009. The section as on that date read as under:-

3. Offence of money-Laundering.-*Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.*

46. The unamended section 2(1) (u) of the PML Act, as on 1.06.2009, read as under:-

2(1)(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property."

47. The Schedule to the PML Act of 2002 was amended by Act 21 of 2009 and section 13 of the Prevention of Corruption Act namely 'criminal misconduct by a public servant' and sections 419, 420, 465, 468, 471, 120B of IPC came to be inserted in the schedule with effect from 01.06.2009. As a result, as on the date of initiation of the proceedings against the petitioners, the above offences were already included in the Schedule. But the thrust of the arguments of the learned Counsel for the petitioners is that the 'proceeds of crime' as defined under section 2(1)(u) of the PML Act is referable to the offences specified in the Schedule and since section 13 of the PC Act and the offences under IPC (predicate offences) came to be inserted in the Schedule by way of amendment only on 01.06.2009, the petitioners cannot be prosecuted for the acts

and events that had taken place earlier to the insertion of those offences as it would take away the protection granted to the petitioners under Article 20(1) of the Constitution of India. This argument, in my view, proceeds on the misconception of the substantive provisions of the PML Act and on the supposition that without the existence of a predicate offence, there cannot be an offence of money laundering. This argument in my view is fallacious and cannot be accepted for the reason Article 20(1) of the Constitution of India gets attracted only when penal law penalises with retrospective effect. When no penal action is initiated against the petitioners based on the newly inserted offences under the Schedule i.e., section 13 of the PC Act or IPC sections, question of Article 20(1) of the Constitution of India getting attracted does not arise at all.

48. From the plain reading of section 3 read with section 2(1)(u) of the PML Act, it is clear that what is made punishable under section 3 is the activity connected with the proceeds of crime either by getting oneself involved in the process or activity connected thereto or directly or indirectly attempting to indulge

or knowingly assist or knowingly be a party to the alleged activities and projecting it as untainted property, whereas the components of the offences under section 13 of the PC Act and Sections 120B, 419, 420 and other IPC offences are entirely different. The prosecution under section 3 of the PML Act, by no stretch of imagination, could be equated with the prosecution under section 13 of the PC Act or other offences specified in the Schedule namely IPC or other laws. They are distinct and separate offences. Prosecution under section 3 of PML Act is not based on the outcome of the trial of the offenders under section 13 of the PC Act. A reading of section 3 of PML Act in unamended form would clearly indicate that even without there being any conviction of the accused in a predicate offence and even if the offender under section 3 of the PML Act is not a party to the predicate offence, still the prosecution could be launched against him if the offender is found involved in any process or activity connected with the 'proceeds of crime'. What is necessary to constitute the offence of money laundering is the existence of proceeds of crime and not the pendency of predicate offence as vehemently contended by the learned counsel

appearing for the petitioners. This Court as well as various other Courts have analysed this provision and have consistently held that the offences under section 3 of the PML Act is an independent and stand alone offence. Therefore, the argument of learned counsel for petitioners that without the existence of predicate offence and without there being any conviction of the petitioners for the predicate offence, their prosecution for the offence of money-laundering cannot be sustained being contrary to the language of section 3 of the PML Act and the intendment of the Legislature in enacting section 3 of the PML Act and the allied provisions is liable to be rejected and is accordingly rejected.

49. This Court in *K.SOWBAGHYA vs. UNION OF INDIA, MINISTRY OF FINANCE, NORTH BLOCK, DEPARTMENT OF REVENUE AND OTHERS*, 2016 SCC OnLine KAR 282, had an opportunity to examine the various provisions of PML Act while deciding the constitutionality or validity of the sections 2(1)(u), 3, 5, 8, 9, 17, 18, 19, 23, 24 and 44 of the PML Act 2002(as amended from time to time) and held that:-

“Money laundering is a stand alone offence. A person who has not committed a scheduled offence could be prosecuted for an offence of money laundering. In such a situation, the prosecution need not wait for the scheduled offence to be established. It can independently prosecute and lay material to show that he had knowingly assisted or was responsible for laundering of the illicit wealth. In such a situation, the property would then stand attached and the person who is being prosecuted for money laundering has to show the Court that he is not guilty of money laundering. The same would work to his advantage as to whether a scheduled offence has been committed or not. He could show that the property in question has not come in his possession and that he has not knowingly appropriated the same. In such a situation, if the offence is not established, the property would revert back to him.

The changes that were brought about to Sections 5 and 8 synchronize with other provisions contained in the Act. Section 44, which now stands amended contemplates trial of both, the scheduled offence and the offence of money laundering by the same Special Court. In these circumstances, there is no likelihood of conflict of orders relating to the said offences.”

50. This judgment is not under challenge from any quarters.

The view taken in this judgment is consistently followed by various other High courts and the position of law is now well established that the offence under section 3 is independent of the predicate offence listed in the Schedule appended to the PML Act. Therefore, the prosecution of the offender for his involvement in

the process or activity connected with the proceeds obtained through the commission of a predicate offence cannot be said to be a prosecution based on ex post facto legislation. The allegations made against the petitioners prima facie indicate that the properties and assets found in their possession as on 1.6.2009 were acquired by commission of the predicate offence. As a result, I hold that the prosecution of the petitioners does not offend Article 20(1) of the Constitution of India.

51. The correlation between possession and acquisition of the subject matter of a crime which is made an offence post facto has been considered by the Hon'ble Apex Court in *MOHAN LAL v. STATE OF RAJASTHAN*, (2015) 6 SCC 222, in the context of possession of contraband substance under NDPS Act. In the said case, the appellant/accused therein was convicted and punished under section 18 of the NDPS Act when admittedly the theft of contraband substance was committed prior to coming into force of NDPS Act. The FIR was registered against the appellant/accused therein prior to coming into force of NDPS Act and therefore a contention was taken before the Court that the

possession of contraband substance having commenced prior to coming into force of the NDPS Act i.e., when the theft was committed on the intervening night of 12/13-11-1985 whereas the NDPS Act came into force on 14.11.1985, the accused cannot be subjected to an offence under a new Act which was not in force on the date of theft and possession of the contraband articles. Analyzing the concept of possession in the context of section 18 of the NDPS Act, the Hon'ble Supreme Court considered the aspect of conscious possession as well as mens rea and animus to possess contraband substance and came to the conclusion that the animus and mental intent which is the primary and significant element to show and establish possession could be established from the personal knowledge as to the existence of the 'chattel', that is the illegal substance at a particular location of site, at a relevant time and the intention based upon the knowledge, would constitute the unique relationship and manifest possession. The Hon'ble Supreme Court further went on to hold that "*in such a situation, presence and existence of possession could be justified for the intention is*

to exercise right over the substance of chattel and to act as the owner to the exclusion of others."

52. After dealing with the concept of 'possession', the Hon'ble Supreme Court considered the issue as to whether the appellant could be convicted and sentenced under the Opium Act, as that was the law in force at the time of commission of an offence and if he is convicted under section 18 of the NDPS Act, whether it would tantamount to retrospective operation of law imposing penalty which is prohibited under Article 20 (1) of the Constitution of India. The Hon'ble Supreme Court held as under:-

Article 20(1) gets attracted only when any penal law penalises with retrospective effect i.e. when an act was not an offence when it was committed and additionally the persons cannot be subjected to penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence. The Article prohibits application of ex post facto law. In Rao Shiv Bahadur Singh and Anr. v. State of Vindhya Pradesh[23], while dealing with the import under Article 20(1) of the Constitution of India, the Court stated what has been prohibited under the said Article is the conviction and sentence in a criminal proceeding under ex post facto law and not the trial thereof. The Constitution Bench has held that:-

"9.... what is prohibited under Article 20 is only conviction or sentence under an 'ex post facto' law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a Court different from that which had competence at the time cannot 'ipso facto' be held to be unconstitutional. A person accused of the commission of a particular Court or by a particular procedure, except in so far as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved."

In the instant case, Article 20(1) would have no application. The actus of possession is not punishable with retrospective affect. No offence is created under Section 18 of the NDPS Act with retrospective effect. What is punishable is possession of the prohibited article on or after a particular date when the statute was enacted, creating the offence or enhancing the punishment. Therefore, if a person is in possession of the banned substance on the date when the NDPS Act was enforced, he would commit the offence, for on the said date he would have both the 'corpus' and 'animus' necessary in law."

(underlining supplied)

53. The above principle, in my view, applies with full force to the facts of this case. As already held above, petitioners are not prosecuted for the offence which is added in the schedule subsequent to the petitioners coming in possession of the tainted property, rather the prosecution is initiated under section 3 of the PML Act which deals with an independent offence of

laundering of money or property held by the petitioners with the knowledge that it was tainted property, acquired through commission of an offence which is punishable under law. The reference to “scheduled offence” under section 2(1)(y) of the PML Act is only an indicator or a pointer that the properties laundered by the offenders had their origin or source in any of the offence or crime specified in the schedule and therefore the offenders are liable to answer the charge under section 3 punishable under section 4 of the PML Act. In the light of this legal and factual position, I am unable to accept the submission of learned counsel for petitioners that they are the victims of ex post facto laws offending the constitutional protection granted to them under Article 20(1) of the Constitution of India.

54. In this context, it needs to be reiterated that, section 3 of the PML Act would come into play only when a person is found indulging, or knowingly assisting or involved in any process or activities connected with the proceeds of crime. It is now well settled that *“If a subject acquires property by means which are not legally approved, sovereign would be perfectly*

justified to deprive such persons of the enjoyment of such ill-gotten wealth. There is a public interest in ensuring that persons who cannot establish that they have legitimate sources to acquire the assets held by them do not enjoy such wealth. (AIR 2014 SC 1003, BISWANATH BHATTACHARYA VS UNION OF INDIA & ORS).

55. The very same principle is enshrined in section 3 and Sections 5, 8 of the PML Act. As a result, it goes without saying that the properties acquired by commission of any of the offences listed in the schedule at any point of time as long as they continue to be in the possession or enjoyment of the offenders and that the offenders are found to have been involved in any of the process or activity connected with the proceeds derived by the scheduled offence, render themselves liable not only for prosecution but also for adjudication and consequent confiscation unless they establish that they have legitimate source to enjoy the assets held by them. Apparently for this reason, offence of 'money laundering' is made a continuing offence. That being the purport of section 3, 5 and 8 of the Act,

neither these provisions nor the offences included in the schedule could be construed as post facto legislation as contended by the petitioners. As a result, the contention urged by the petitioners that their prosecution is based on ex post facto law and is liable to be rejected and is accordingly rejected.

56. In view of the above conclusion, the contra view taken by the Division Bench of this court in *M/s.OBULAPURAM MINING COMPANY Pvt. Ltd., vs. JOINT DIRECTOR* in W.P.No.5962/2016 and connected matters, has not been followed for the reason that while admitting the SLP filed against this order in *Special Leave to Appeal (Crl.) No.4466/2017* vide order dated 24.07.2017, the Hon'ble Supreme Court has directed that the impugned judgment and order will not operate as a precedent. Likewise, the Division Bench of the High Court of Delhi, on consideration of the appeal preferred against the order of learned Single Judge in *M/s Mahanivesh Oils and Foods Pvt Ltd. v/s. Directorate of Enforcement, (W.P.(C)1925/2014 & CM.No.4017/2014 dated 25.01.2016)* has directed that the

findings recorded by learned Single Judge shall not be construed as conclusive and binding precedent.

57. The next contention urged by the petitioners that the “confiscation” provided under section 8(5) of the PML Act is in the nature of punishment and that the power of confiscation conferred under the act to confiscate the properties which were admittedly acquired prior to the Amendment Act 21 of 2009 came into force, also suffer from the vice of prohibition contained in Article 20(1) of the Constitution, does not merit acceptance.

58. First and foremost, confiscation is not prescribed as a ‘punishment’ either under the provisions of PML Act or under the provisions of the Code. As per Section 53 of IPC, the punishments to which the offenders are liable under the provisions of the Code are:

(First) — Death;

1[Secondly.—Imprisonment for life;]

2[***]

(Fourthly) —Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour;

(2) Simple;

(Fifthly) —Forfeiture of property;

(Sixthly) —Fine.

59. This Court while considering the scope and ambit of sections 5 and 8 of the PML Act, in the case of Vinod Ramnani and Another vs. State House Officer and Another referred supra has observed thus:-

"Going by the text & context of the provisions of PML Act and the construction placed thereon by the Co- ordinate Bench of this court coupled with a broad consensual view emerging from the aforesaid decisions of other High Courts in the country, some lone voices in variance notwithstanding, the legal position can be concised thus: the scheme of the Act envisages two parallel streams of action which are distinguishable by their nature, scope & object; one stream is the criminal proceedings before the Special Courts for the trial of offences u/s.3 r/w Sec.4, that are governed by the provisions of Chapter VII, and the other stream is the departmental proceedings apparently civil in nature, instituted by the competent authorities, that are governed by the provisions of Chapter III; the object of former is punitive, whereas that of the latter is confiscatory; obviously, the proceedings under one chapter are independent of those under the other, and therefore, the determination of proceedings under one stream does not ipso facto affect or influence those in the other; thus, even the closure of criminal proceedings would not determine the departmental proceedings, the offence of money laundering u/s.3 being completely a stand alone event; in other words, the departmental proceedings for the purpose of

confiscating the proceeds of crime and the criminal proceedings for punishing the offender, can run concurrently and that they need not converge at any point."

60. I am in respectful agreement with the view taken in the above decision. Even otherwise, Chapter III of the Provisions of the PML Act provides for a separate mechanism for attachment of properties involved in money laundering. Section 6 of the PML Act provides for the constitution of Adjudicating Authority and confers power on the Adjudicating Authority to decide the dispute relating to the attached properties. Section 8 of the PML Act deals with adjudication. The regime of attachment and forfeiture of the properties procured by commission of the offence is not a new phenomenon. The Criminal Law (Amendment) Ordinance, 1994 provided for a fullfledged mechanism for attachment of money or other properties which were believed to have been procured by means of the schedule mentioned offences. Considering the question as to whether the forfeiture provided under the said Ordinance violated Article 20 of the Constitution of India, the Constitution Bench of the

Supreme Court of India in the case of *State of West Bengal v. S.K. Ghosh*, AIR 1963 SCC 255 has held as under:-

"The word 'forfeiture' has been used in other laws without importing the idea of penalty or punishment within the meaning of Art. 20(1). Reference in this connection may be made to s. III (g) of the Transfer of Property Act (No. 4 of 1882) which talks of determination of a lease by forfeiture. We are therefore of opinion that forfeiture provided in, a. 13(3) in case of offences which involve the embezzlement etc. of government money or property is really a speedier method of realising Government money or property as compared to a suit which it is not disputed the Government could bring for realising the money or property and is not punishment or penalty within the meaning of Art. 20(1). Such a suit could ordinarily be brought without in any way affecting the right to realise the fine that may have been imposed by a criminal court in connection with the offence."

61. As observed by the Hon'ble Supreme Court in *Biswanath Bhattacharya V. Union of India and Others* referred above, penalty is a generic term which includes fine and penalty.

Fine is pecuniary penalty; forfeiture is a penalty by which one loses his right and interest over the property; whereas, confiscation is condemnation of the property to the public treasury. It is not considered as punishment either under the scheme of PML Act or under Section 8(5) of the Act. Keeping in view the object of the PML Act, a speedy mechanism has been provided under the PML Act for recovery and confiscation of the property laundered by the offenders. As already noted above, that no subject has an inviolable right to enjoy the wealth acquired by him by illegitimate means, the legitimate source of which cannot be explained by him. That being the object and purpose sought to be effectuated by section 5 and 8 of the PML Act and a well oiled machinery having been provided with all safeguards to protect the right and interest of the offender as well as those who are not parties to the predicate offence, there is absolutely no basis for the petitioners to seek quashment of the attachment and consequent confiscation proceedings initiated against them on the purported plea that the same is violative of Article 20(1) of the Constitution of India. No legal right having been accrued in favour of the petitioners to hold on

or to enjoy the proceeds of crime, the source of which cannot be explained by them, the argument of the learned counsel for the petitioners that the attachment proceedings initiated against them are unjust and bad in law is without any substance. In the light of the above discussion, none of the contentions urged by the petitioners merit acceptance. As a result, the petitions being devoid of legal basis are liable to be dismissed and are accordingly **dismissed** without costs.

**Sd/-
JUDGE**

Bss/mn/-