

(2022) 03 DEL CK 0064

In the Delhi High Court

Case No : Criminal Writ Petition No. 1808 Of 2021, Criminal Miscellaneous Case No. 2442 Of 2021, Criminal Miscellaneous Application No. 14972-14773, 16069 Of 2021

Abhishek Banerjee & Anr.

APPELLANT

Vs

Directorate Of Enforcement

RESPONDENT

Date of Decision : 11-03-2022

Acts Referred:

(ix) Nalini Chidambaram vs. ED 116-134 (W.A.Nos.1168 and 1169 of 2018) [2018 SCC Online Mad 5924]

Citation : (2022) 03 DEL CK 0064

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Kapil Sibbal, Tushar Mehta, S.V. Raju, Amit Mahajan, Kanu Agarwal, Kritigya Kumar Kait, Ajay Dignpaul, Kamal R. Dignpaul

Final Decision : (viii) Directorate of Enforcement vs. Deepak Mahajan (1994) 3 SCC 440.

Judgement

Rajnish Bhatnagar, J

1. The brief facts of the case are as follows :

a. On 27.11.2020, an FIR/RC was registered by the CBI ACB, Kolkata bearing No. RC0102020A0022 ("RC") under Sections 120B and 409 of the Indian Penal Code, 1980 ("IPC") and Sections 13(2) read with Section 13(1)(a) of the Prevention of Corruption Act, 1988 ("PC Act"). The primary allegations in the RC were that illegal excavation and theft of coal was taking place in the leasehold areas of Eastern Coalfield Ltd. (hereinafter referred to as "ECL") by one Anup Majee @ Lala with active connivance of certain ECL employees.

b. On 28.11.2020, ECIR bearing No. 17/HIU/2020 ("ECIR") was registered. Various Summons(es) were issued to Petitioners No. 1 and 2 by the Respondent in relation to the ECIR on several occasions seeking their appearance in New

Delhi along with voluminous documents. Replies were furnished by the Petitioners to the said Summons(es) which have been annexed with the Writ Petition.

c. Summons dated 18.08.2021 was issued seeking personal appearance of Petitioner No. 1 on 06.09.2021. The Petitioner No. 1 in compliance of the Summons, joined investigation on 06.09.2021. After Petitioner No. 1 was examined by the respondent, summon dated 06.09.2021 was issued seeking his personal appearance on 08.09.2021. Reply dated 08.09.2021 was sent by Petitioner No. 1 stating that he had cooperated with the investigation conducted by the respondent and would continue to do so. Petitioner No. 1 further stated that he appeared before the respondent on 06.09.2021 and sought for four (4) weeks' time for the documents sought in the concerned summon. Petitioner No. 1 also requested that the investigation qua him be conducted in Kolkata or via video-conferencing as he is a permanent resident of Kolkata and the Respondent has a functional Zonal Office at Kolkata.

d. Summon dated 10.09.2021 (hereinafter referred to as the "Impugned Summons") were issued seeking personal appearance of Petitioner No. 1. The Impugned Summons was served on Petitioner No. 1 on 11.09.2021. However, Petitioner submits that the news about the Summons having been issued to Petitioner No. 1 was put in public domain prior to the same being served to him. This, according to the Petitioner, shows the mala-fide intentions of the Respondent.

2. The Respondent, on the other hand, countered the factual assertions as under:

a. Upon receipt of reliable information about theft of coal and illegal excavation being done by criminal elements from the lease hold area of Eastern Coal Field Ltd. (ECL) in connivance with officials of ECL, CISF, Indian Railways and other concerned departments, joint inspection was carried by Vigilance Department and Task Force Officials on several lease hold areas of ECL from May, 2020 onwards. During this inspection, several evidences of extensive illegal mining and its transportation were found. A large number of vehicles/equipments used in illegal coal mining and its transportation were seized during these inspections. Seizure of stolen coal was made from several locations during these raids. Pursuant to these raids and seizure of stolen material etc., an FIR bearing no. RC0102020 A 0022 dated 27.11.2020 was registered by CBI, Kolkatta against Sh. Amit Kumar Dhar, the then General Manager, ECL and others for the offence under Section 120B/409 IPC and Sec 13 (2) r/w Sec 13 (1) (d) of PC Act, 1988. Based on the said FIR and to probe the money laundering in India as well as internationally (since the ill gotten money/proceeds of crime have been routed to various places through non banking channels), the present ECIR was recorded by answering Respondent/ED.

b. Upon detailed investigation by ED, it was found out that the present case involves money laundering to the tune of Rs. 1300 Crores. One of the accused

persons Vikas Mishra was arrested on 16.03.2021 and another accused Inspector Ashok Mishra of Bankura Police Station was arrested on 03.04.2021, who had become part of illegal coal mafia and helped coal mafia in laundering several hundreds of crores of rupees. During investigation, specific evidences were seized and statements of the witness and other accused persons were recorded and it was found out that Inspector Ashok Kumar Mishra has received Rs 168 crores in just 109 days from co-accused Anoop Majee, to be delivered to his political bosses including Vinay Mishra (co-accused) etc.

c. It was pointed out that Rs 168 crores were transferred through vouchers to Delhi and overseas. After investigation, complaint u/s 44/45 PMLA was filed against these two accused persons before Special Court, PMLA, Rouse Avenue Courts, New Delhi. The Ld Trial Court took cognizance in that complaint vide order dated 28.06.2021. It was pointed out that during the investigation of the above mentioned accused persons, names of present Petitioners surfaced and thereafter investigation proceeded accordingly.

d. That the Petitioners while alleging mala fides have neither named any officer or person against whom mala fides are alleged nor have they made any officer or person a party to the proceedings. It is just a tactic to evade/hamper the investigation being carried out by the officers of the Respondent.

3. In light of the above, the Petitioners in WP(CRL) No.1808 of 2021 have sought for the following relief:

"a. Allow the instant petition and pass an appropriate writ in the nature of certiorari or any other writ, order or direction setting aside and quashing the Impugned Summons dated 10.09.2021 under Section 50 of the Prevention of Money Laundering Act, 2002 issued by the Respondent in case arising out of ECIR No. 17/HIU/2020 registered by the Respondent and further directing the Respondent to not summon the Petitioner no. 1 and 2 in New Delhi and carry out any further examination of the Petitioner no. 1 and 2 in Kolkata, West Bengal; and

b. Pass any other Order(s) this Hon'ble Court may deem fit and necessary in the interest of justice."

4. In CRL.M.C. No. 2442 of 2021, filed by the Petitioner No. 2 in WP(CRL) No.1808 of 2021, the following facts have been highlighted by the Petitioner:

a. Two (2) Summons(es) were issued under Section 50(2) of the Prevention of Money Laundering Act, 2002 ("PMLA") to the Petitioner by the Respondent under the ECIR seeking her personal appearance in New Delhi along with voluminous documents. Replies were furnished by the Petitioner to the said Summons(es).

b. Summons dated 04.08.2021 was issued to the Petitioner seeking her personal appearance at the New Delhi office of the respondent on 13.08.2021 along with documents. The Petitioner received the aforesaid Summons on 11.08.2021 and furnished a reply on 12.08.2021 through her counsel. It was stated that it was

too short a notice for the Petitioner to produce the documents and sought for three (3) weeks' time. It further stated that she is ready and willing to render all her assistance in the ongoing investigation, in accordance with law.

c. Summons dated 18.08.2021 was issued to the Petitioner seeking her personal appearance on 01.09.2021 along with documents as sought in the previous Summons. The Petitioner furnished a reply to the aforesaid Summons on 31.08.2021 wherein she stated that travelling to New Delhi in the midst of the pandemic along with her two (2) young children could put their lives at great risk. Further, she requested for her examination to be conducted at her residence at Kolkata since the Respondent had a functional office there.

d. The Petitioner further sent an email on 16.09.2021 in reference to the Summons dated 18.08.2021 clearly stating that she intended to fully cooperate with the investigation, and her only request was to be examined at her residence at Kolkata. She also stated that it has come to her knowledge that the entire cause of action arose in West Bengal, and that other women in the ECIR have been examined at their residences in Kolkata. She further stated that a woman cannot be summoned to appear before an investigating authority, that too in a different state and reiterated her intention to fully co-operate and assist with the ongoing investigation.

e. On 13.09.2021, the Respondent filed a complaint under Section 63 PMLA read with Section 174 IPC against the Petitioner, bearing CC No. 1186 of 2021, before the Ld. CMM, Patiala House Courts, New Delhi. The Ld. CMM, Patiala House Courts took cognizance of the aforesaid complaint vide Order dated 18.09.2021 (hereinafter referred to as "First Impugned Order"). Thereafter, the Ld. CMM, Patiala House Courts summoned the Petitioner physically for furnishing surety vide Order dated 30.09.2021 (hereinafter referred to as the "Second Impugned Order")

f. The Petitioner, along with her husband, filed a Writ Petition bearing W.P. (Crl.) No. 1808/2021 titled 'Abhishek Banerjee and Anr. v. Directorate of Enforcement' before this Hon'ble Court on 17.09.2021, challenging the legality of the Summons issued inter alia to the Petitioner.

5. The Petitioner in CRL.M.C. No. 2442 of 2021, has sought the following relief in the nature of quashing :

"a. Allow the instant Petition and pass an appropriate order or direction setting aside and quashing the Impugned Complaint dated 13.09.2021, Impugned Orders dated 18.09.2021 and 30.09.2021 passed by the Ld. Chief Metropolitan Magistrate, Patiala House District Court, New Delhi in CC no. 1186 of 2021 and all proceedings emanating therefrom; and

b. Pass any other Order(s) this Hon'ble Court may deem fit and necessary in the interest of justice."

6. The subject matter of both the petitions being the same but considering that

the substantial legal issues have been raised in WP(CRL) No.1808 of 2021, the said petition is taken up first for disposal.

W.P.(CRL.) 1808/2021 AND CRL.M.As. 14972-73/2021

7. I have heard the Ld. Sr. counsel for the petitioners and the Ld. SG for the respondent and perused the records of the case carefully.

8. The Ld. Sr. counsel for Petitioner No.1 and Petitioner No.2, in order to seek the relief mentioned above, has made the following submissions:

(a) Since the Petitioners are residents of Kolkata they can be examined by officer of the Respondent under Section 50 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the PMLA) only at Kolkata.

(b) Petitioner No.2 being a woman can be examined only at her residence in light of the proviso to Section 160 the Code of Criminal Procedure [hereinafter referred to as "CrPC"].

(c) The Ld. Sr. counsel for the Petitioners strenuously urged that Section 160 of the CrPC in its totality falling in Chapter 12 of the CrPC would be applicable to investigations conducted under the PMLA.

(d) The Ld. Sr. counsel for the Petitioners urges that by virtue of Section 4 (2) of the CrPC and Section 65 of the PMLA, the procedure with respect to arrest, search and seizure, attachment, confiscation, investigation would apply to all investigations carried out under the PMLA.

(e) The Ld. Sr. counsel for the Petitioners further submitted that a conjoint reading of Section 50 of the PMLA and Section 160 of the CrPC shows that Section 160 is not in any manner inconsistent with Section 50 of the PMLA. In order to buttress the same, reliance is being placed on the judgment of the Hon'ble Supreme Court in *Ashok Munilal Jain & Anr. Vs. Directorate of Enforcement*, (2018) 16 SCC 158, para 3 & 4.

(f) The Ld. Sr. counsel for the Petitioners have also sought to draw a parallel with a judgment of the Division Bench of this Hon'ble Court in *Asmita Aggarwal vs. Enforcement Directorate & Others*, 2002 (61) DRJ 339 (para 7, 8) which, in the context of Section 40 of the Foreign Exchange Regulation Act held that Section 160 of the CrPC, specifically the proviso, would apply to a woman being summoned in pursuance to any investigation under the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as "FERA"). The Ld. Sr. counsel for the Petitioners have submitted that Section 40 of FERA and Section 50 of the PMLA are similar provisions and are silent as to the manner and place where a person can be summoned for their examination.

(g) The Ld. Sr. counsel for the Petitioners further relied on a judgment of Hon'ble High Court of Gujarat in *Foziya Samir Godil v. Union of India*, 2014 SCC Online Guj 3417 (Para 42 – 43). The Ld. Sr. counsel for the Petitioners further submitted that the said judgment was delivered in the context of Section 50 of the PMLA

and has held that a woman can be examined only at her residence by virtue of Section 160 of the CrPC.

(h) The Ld. Sr. counsel for the Petitioners specifically referring to the territorial limitation under Section 160 of the CrPC submits that police officer can summon only such person residing within the limits of his/her own or adjoining police station and, therefore, Section 50 of the PMLA would also have to be read in a manner where an officer of the respondent in any jurisdiction can summon only such persons who are residing within the limits of his own or adjoining jurisdiction. The Ld. Sr. counsel for the Petitioners submits that the respondent has a functional office at his place of residence and such examination of the Petitioners must take place, if at all within the territorial jurisdiction of such office. Reliance in this regard is placed on *Washeskar Nath Chadha v. State*, 1993 Cri LJ 3214 (Para 17), *Mathews Peter v. Asst. Police Inspector, Crime Branch – II, Pune and Ors.*, 2001 SCC Online AP 739 (Paras 8 – 9), *Krishan Bans Bahadur v. State of Himachal Pradesh* (Para 4), *Tar Balbir Singh v. Union of India and Anr.*, 1992 SCC Online P&H 81 (Para 5 – 6), *Pusma Investment (P.) Ltd. v. State of Meghalaya*, 2009 SCC Online Gau 107 (Para 5).

(i) The Ld. Sr. counsel for the Petitioners have further placed reliance on the order dated 07.12.2021 passed in WP(Crl) 1768/2021 titled *Directorate of Enforcement vs. State of West Bengal & Others* wherein this Hon'ble Court had stayed the operation of notices issued by the West Bengal Police under Section 160 of the CrPC. The Ld. Sr. counsel for the Petitioners have further placed reliance on interim order passed by the Hon'ble High Court of Calcutta in WPA 17576/2021 titled *Sumit Roy v. Union of India and Anr.* dated 09.11.2021 and 22.12.2021 whereby directing the Respondent to examine the Petitioners therein either in Kolkata or through video conferencing.

9. In response to the same, the Ld. SG for the respondent submitted as under :

(a) The mode, manner and method of investigation is the sole prerogative of the investigating agency and cannot be interfered on the exigencies shown by the Petitioners or as per the wisdom of the Court. Reliance in this regard is placed on the judgment in *King-Emperor Vs. Khwaja Nazir Ahmad*, 1944 SCC OnLine PC 29. The Ld. SG further urged that it is within their investigative domain as to who is to be summoned and where such person is to be summoned.

(b) Placing reliance on the order of the Hon'ble Supreme Court in *Kirit Shrimankar v. Union of India & Ors.* in WP (Crl.) No. 109/2013, the Ld. SG urged that the writ petition is premature, the Petitioners cannot be said to be persons aggrieved and, therefore, no violation of fundamental rights or statutory rights can be urged at the issuance of summons. In light of the above, it is urged that the present writ petition is not maintainable. Reliance in this regard is also placed on *Union of India & Anr. Vs. Kunisetty Satyanarayanan* (2006) 12 SCC 28, *Commissioner of Customs, Kolkata & Anr. Vs. M/s M.M. Exports & Anr.* (2010) 15 SCC 647.

(c) The Ld. SG submitted that the Respondent agency is a national agency which has Pan India jurisdiction and is not limited by the territorial limitations present in the CrPC. The Ld. SG pointed out that the scheme of the CrPC imposes a territorial restriction on the power of the investigation by a police officer wherein such restriction is limited to the local area which is in turn connected to the concerned local Magistrate. Reliance in this regard was placed on various provisions of the CrPC including Section 2 (j), 2(k), 2(o), 2(s), 2(u) and other provisions in order to show that there is a territorial link between the police officer, the police station, the Magistrate and the local area.

(d) The Ld. SG pointed out that in contra distinction to the scheme of the CrPC, the respondent agency being a national investigative agency, the scheme of the PMLA is designedly different and no such territorial limitations are placed on the powers of the relevant authorities under the PMLA. The Ld. SG highlighted that due to the unique nature of the offence of the PMLA, the legislature has not sought to impose such territorial limitation considering the speed at which the situs of the offence can shift from one jurisdiction to another. The Ld. SG also highlighted that the scheme of the PMLA also provides for offences dealing with cross border implications, which fall outside the territory of India, thereby indicating that a wider expanse of jurisdiction has been vested with authorities under the Act. Reliance in this regard has been placed on Sections 2(ra), 2(na), 2(rc), 2(u), Section 55, Section 56, Section 57, Section 58, Section 58(B), Section 59, Section 60, Section 61 of the PMLA.

(e) The Ld. SG submitted that the impugned summons have been issued by the relevant empowered officer under Section 40 of the PMLA and the power has been duly exercised.

(f) With regard to the applicability of Section 160 of the CrPC, the Ld. SG submitted that considering the absence of any territorial limitation under the PMLA and due to specific provisions dealing with the power of issuance of summons under Section 50 of the PMLA, Section 160 of the CrPC would not apply.

(g) The Ld. SG further submitted that the ratio of the judgment in *Asmita Aggarwal* (supra) would not apply to an investigation under PMLA due to the difference in the provisions of FERA and the PMLA, specifically highlighting the overriding provision in Section 71 of the PMLA.

(j) With regard to issuance of notice to a woman, the Ld. SG placed reliance on the judgment of the Division Bench of the Hon'ble High Court of Judicature at Madras in *Nalini Chidambaram vs. ED* 116-134 (W.A.Nos.1168 and 1169 of 2018) [2018 SCC Online Mad 5924] wherein it was held that the protection under the proviso to Section 160 CrPC would not apply to investigations under PMLA. It was submitted that in appeal from the said order, the Hon'ble Supreme Court vide order dated 03.08.2018 passed in SLP(Civil) No.19275 of 2018 granted interim relief to the Petitioner therein, however, the Hon'ble Apex Court has not stayed the order of the Hon'ble Division Bench mentioned above.

(k) The Ld. SG further submits that as per the judgment in *Nandini Satpathy vs. Dani (P.L.) And Anr (1978) DAN*, the rationale behind the proviso to Section 160 CrPC was to keep women and children away from police station due to various factors and specifically due to the nature of police stations in general. In order to distinguish the same, the Ld. SG submitted that PMLA deals with white collar crimes committed with cool calculations and have seen an increased participation by persons from all walks of life including women. The Ld. SG submitted that therefore, with regard to special nature of the offence under the PMLA, the legislature thought it fit to do away with the distinction provided for under Section 160 of the CrPC contained in Chapter XII of the Code and proceeded made it gender neutral under Section 50 of PMLA.

(l) The Ld. SG submitted that the judgment in *Ashok Munilal Jain (supra)* would have no application to the facts of the present case as the said judgment was limited to deciding the issue of the applicability of Section 167 of the CrPC to an arrest made under the PMLA.

(m) The Ld. SG further pointed out that Section 167 of the CrPC is undoubtedly applicable to arrests made under the PMLA due to the judgment in *Directorate of Enforcement vs. Deepak Mahajan (1994) 3 SCC 440*. However, it was argued that the rationale of the said decision cannot be extended to include the applicability of Section 160 CrPC to investigations under the PMLA.

(n) With regard to the larger issue of the extent of the applicability of CrPC to investigations under the PMLA and specifically with regard to applicability of Chapter 12 of the CrPC (which includes Section 167 CrPC), the Ld. SG submitted that the said issues are pending before a Special 3-Bench of the Hon'ble Supreme Court in a batch of matters titled "*Vijay Madanlal Choudhary Vs. Union Of India*" - SLP(Crl) No. 004634 / 2014.

(o) The Ld. SG further submitted that the Petitioners are even otherwise estopped from raising the plea of territorial jurisdiction when they themselves had submitted to the jurisdiction of the authority vide letter dated 08.09.2021. The Ld. SG further pointed out that the Petitioners are not permanent residents of the State of West Bengal as the foot note of the said letter shows that the Petitioners also have an address in New Delhi. Therefore, even assuming that the provisions of Section 160 CrPC apply to investigations under the PMLA, the Petitioners would qualify to be a person within the limits of the territory of Delhi so as to abide by the notices issued.

(p) The Ld. SG further urged that since part of money laundering took place in Delhi and part outside the territory of the country, it is appropriate that the headquarters Investigation Unit (HIU) of the Respondent investigate the same.

10. In response to the same, the Ld. Sr. counsel for the Petitioners in Rejoinder, submitted as under :

(a) that Section 71 of the PMLA has an overriding effect only if an inconsistency

arises and considering the submission that there exists no inconsistency between Section 160 of the CrPC and Section 50 of the PMLA, the overriding effect clause of the PMLA does not come in play.

(b) The Ld. Sr. counsel for the Petitioner further highlighted that there are various territorial limitations even in the PMLA. The Ld. Sr. counsel for the Petitioners highlighted Section 6 (5), Section 16, Section 44, Section 51.

(c) The Ld. Sr. counsel for the Petitioners further highlighted the annual report of the Department of Revenue showing an organizational chart of zonal officers. On the basis of the same, the Ld. Sr. counsel for the Petitioners urged that the concept of territorial limitation is also present under the PMLA.

(d) The Ld. Sr. counsel for the Petitioners further submitted that the validity of the notice issued under Section 50 of PMLA can be challenged by way of a writ petition which is maintainable considering the statutory infractions pleaded by the Petitioners.

(e) The Ld. Sr. counsel for the Petitioners further urged that the Petitioners had been repeatedly summoned to join the investigation by having to appear in New Delhi and when they joined the investigation, the Petitioners were subjected to a roving and fishing enquiry. In light of the same, the Ld. Sr. counsel for the Petitioners submitted that there is reasonable apprehension that the investigation conducted qua them is motivated and mala fide.

(f) The Ld. Sr. counsel for the Petitioners clarified that the residence of the Petitioners is at Kolkata and the allotted residence at New Delhi is only for the purpose of attending the sessions of Parliament. In light of the same, the Ld. SG urged that for the purpose of Section 160 CrPC, the Petitioners would be residents of Kolkata, West Bengal.

(g) The Ld. Sr. counsel for the Petitioners further contended that while other provisions of Chapter XII of the CrPC may be directly inconsistent with the process of investigation and the procedure provided for under the PMLA but Section 160 of the CrPC is not inconsistent with Section 50 of the PMLA and, therefore, would apply to investigation under PMLA.

11. The core issue raised in the present petition is whether Section 160 of the CrPC would be applicable to an investigation conducted under the PMLA. Before analyzing the various aspects highlighted by the Petitioners, it is necessary to take note of the fact that larger issues considering the applicability of CrPC to investigation under the PMLA including Chapter XII of the CrPC, which includes Section 160 of the CrPC, are pending before the Hon'ble Supreme Court in Vijay Mandal Chaudhary (supra). In light of the same, while arguments have been made, to a limited extent touching upon other issues involving applicability of Chapter XII of the CrPC, this Court would restrict its exercise only to the issue of Section 160 of the CrPC.

12. While the Respondent has sought to question maintainability of the present

petition on the basis of placing reliance on the judgment in Kirit Shrimankar v. Union of India & Ors. in WP (Crl.) No. 109/2013, this Court is not inclined to apply the said ratio to the facts of the present case, as admittedly, the Petitioners have raised a question with regard to the breach of their respective legal right in light of the statutory interpretation provided for by the Petitioners while the validity of the 2017 order is a subject matter of the final decision of this Hon'ble Court it cannot be denied that a writ petition in view of the alleged breach of legal rights would be maintainable under Section 226 of the Constitution of India.

13. In order to appreciate the controversy at hand, it is necessary to analyze the respective scheme of the PMLA and the CrPC. A bare perusal of the Definition Clause of the CrPC would be relevant :

"2. Definitions.—In this Code, unless the context otherwise requires,—

(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

(j) "local jurisdiction", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify;

(k) "metropolitan area" means the area declared, or deemed to be declared, under section 8, to be a metropolitan area;

(o) "officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;

(s) "police station" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf; (v) "sub-division" means a sub-division of a district;"

14. The CrPC being the primary generic law for investigation of penal offences in the country mostly falling under the Indian Penal Code which are investigated by police officers stationed at a police station investigating the offences committed within its local jurisdiction. Section 7 of the Code, provides as under :

"7. Territorial divisions.—

(1) Every State shall be a sessions division or shall consist of sessions divisions; and every sessions divisions shall, for the purposes of this Code, be a district or consist of districts: Provided that every metropolitan area shall, for the said purposes, be a separate sessions division and district.

(2) The State Government may, after consultation with the High Court, alter the limits or the number of such divisions and districts.

(3) The State Government may, after consultation with the High Court, divide any district into subdivisions and may alter the limits or the number of such subdivisions.

(4) The sessions divisions, districts and sub-divisions existing in a State at the commencement of this Code, shall be deemed to have been formed under this section."

15. Further, it would be relevant to cursorily examine some portions of Chapter XII of the CrPC in order to ascertain the territorial link between police officer, "an officer in charge of a police station", "police station" and "jurisdictional magistrate". The same are quoted as under:

"154. Information in cognizable cases.—

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

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155. Information as to non-cognizable cases and investigation of such cases.—

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

156. Police officer's power to investigate cognizable case.—

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction

over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

157. Procedure for investigation.—

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

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161. Examination of witnesses by police.—

(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

164. Recording of confessions and statements.—

(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

173. Report of police officer on completion of investigation.—

(1) Every investigation under this Chapter shall be completed without unnecessary delay”

16. A bare perusal of Section 2 of the CrPC read with Section 7 and other provisions of Chapter XII clearly points towards the territorial limitations imposed on police officers in terms of the exercise of their jurisdiction. Such jurisdiction appears to be limited to their respective local areas [except in certain situations] falling under their respective police stations.

17. As opposed to the same, a perusal of the PMLA would provide that the authorities under Section 48 of the PMLA, in the exercise of their powers under the PMLA are not territorially restricted in the manner envisaged under the CrPC. The relevant provisions may be noted as under :

“Section 2 – Definitions

(ra) “offence of cross border implications”, means—

(i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person transfers in any manner the proceeds of such conduct or part thereof to India; or

(ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation.—Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money laundering (Amendment) Act, 2009 (21 of 2009);

(na)“investigation” includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence;

(rc) “payment system operator” means a person who operates a payment system and such person includes his overseas principal.

Explanation.—For the purposes of this clause, “overseas principal” means,—

(A) in the case of a person, being an individual, such individual residing outside India, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

(B) in the case of a Hindu undivided family, Karta of such Hindu undivided family residing outside India who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

(C) in the case of a company, a firm, an association of persons, a body of individuals, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, body of individuals, artificial juridical person incorporated or registered outside India or existing as such and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

(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.

54. Certain officers to assist in inquiry, etc.—

The following officers and others are hereby empowered and required to assist the authorities in the enforcement of this Act, namely:—

- (a) officers of the Customs and Central Excise Departments;
- (b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- (c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961 (43 of 1961); 2
- (d) members of the recognised stock exchange referred to in clause
- (f) of section 2 and the officers of the stock exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (f) officers of Police;
- (g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1999 (40 of 1999);
- (h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992); 3
- (ha) officers of the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);
- (hb) officers of the Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);
- (hc) officers and members of the recognised association recognised under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);

- (hd) officers of the Pension Fund Regulatory and Development Authority;
- (he) officers of the Department of Posts in the Government of India;
- (hf) Registrars or Sub-Registrars appointed by the State Governments under section 6 of the Registration Act, 1908 (16 of 1908);
- (hg) registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988);
- (hh) officers and members of the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949 (38 of 1949);
- (hi) officers and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959 (23 of 1959);
- (hj) officers and members of the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980);]
- (i) officers of any other body corporate constituted or established under a Central Act or a State Act;
- (j) such other officers of the Central Government, State Government, local authorities or reporting entities as the Central Government may, by notification, specify, in this behalf.

CHAPTER IX RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

55. Definitions.—

In this Chapter, unless the context otherwise requires,—

- (a) “contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;
- (b) “identifying” includes establishment of a proof that the property was derived from, or used in the commission of an offence under section 3;
- (c) “tracing” means determining the nature, source, disposition, movement, title or ownership of property.

56. Agreements with foreign countries.—

(1) The Central Government may enter into an agreement with the Government of any country outside India for—

- (a) enforcing the provisions of this Act;
- (b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases

relating to any offence under this Act, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

57. Letter of request to a contracting State in certain cases.—

(1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 (2 of 1974) if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to— (

i) examine facts and circumstances of the case,

(ii) take such steps as the Special Court may specify in such letter of request, and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation.

58. Assistance to a contracting State in certain cases.—Where a letter of request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or, as the case may be, any other law for the time being in force.

58A. Special Court to release the property.—

Where on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds

that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court may, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it.

58B. Letter of request of a contracting State or authority for confiscation or release the property.—

Where the trial under the corresponding law of any other country cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of money-laundering.

59. Reciprocal arrangements for processes and assistance for transfer of accused persons.—

(1) Where a Special Court, in relation to an offence punishable under section 4, desires that—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing or to produce it, or
- (d) a search warrant, issued by it shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such Court, Judge or Magistrate through such authorities, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

(2) Where a Special Court, in relation to an offence punishable under section 4 has received for service or execution—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or
- (d) a search warrant, issued by a Court, Judge or Magistrate in a contracting State, it shall, cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

(i) a warrant of arrest has been executed, the person arrested shall be dealt with in accordance with the procedure specified under section 19;

(ii) a search warrant has been executed, the things found in this search shall, so far as possible, be dealt with in accordance with the procedure specified under sections 17 and 18: Provided that in a case where a summon or search warrant received from a contracting State has been executed, the documents or other things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by notification, specify in this behalf.

(3) Where a person transferred to a contracting State pursuant to sub-section (2) is a prisoner in India, the Special Court or the Central Government may impose such conditions as that Court or Government deems fit.

(4) Where the person transferred to India pursuant to sub-section (1) is a prisoner in a contracting State, the Special Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

60. Attachment, seizure and confiscation, etc., of property in a contracting State or India.—

(1) Where the Director has made an order for attachment of any property under section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub section (6) of section 8 and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed under sub-section (1) of section 10, as the case may be , may issue a letter of request to a court or an authority in the contracting State for execution of such order.

(2) Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment, seizure, freezing or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under a corresponding law committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act.

(2A) Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Special Court shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected persons, that such property involved in money-

laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.

(3) The Director shall, on receipt of a letter of request under section 58 or section 59, direct any authority under this Act to take all steps necessary for tracing and identifying such property.

(4) The steps referred to in sub-section (3) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.

(5) Any inquiry, investigation or survey referred to in sub-section (4) shall be carried out by an authority mentioned in sub-section (3) in accordance with such directions issued in accordance with the provisions of this Act.

(6) The provisions of this Act relating to attachment, adjudication, confiscation and vesting of property in the Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property.

(7) When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property.

61. Procedure in respect of letter of request.—

Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.”

18. From a perusal of the same, it is clear that the legislature has created a separate machinery in order to deal with a specific offence and, despite being aware of the territorial limitations in the CrPC, the legislature chose not to incorporate those limitations in the PMLA. Admittedly, certain sections of the PMLA like Section 6, Section 16 and Section 44 refer to territorial jurisdiction in specific circumstances, no other provision of the PMLA, especially the provisions concerning the investigative powers of the authorities under the Act provide for any such territorial limitation.

19. This again shall have to be considered in light of Section 4 and 5 of the CrPC read with Section 65 and 71 of the PMLA. It was open for the Legislature, to

enact a scheme in the nature of the CrPC and carry the same limitations in the PMLA however, the same clearly appears to be omitted consciously. Therefore, it is clear that the authorities under the PMLA are not restricted as per the territorial caskets envisaged under the CrPC and would naturally exercise jurisdiction depending upon the exigencies of special investigation. This is so in view of the nature of the offence being dealt with by "the authorities" under the PMLA which may not be localized like IPC offences.

20. The annual report of the Department of Revenue or the organizational chart of zonal officers of the Respondent would not come to the aid of the Petitioners as the same cannot be considered to be statutory limitations. In the absence of any express statutory limitations, it would not be possible to circumscribe the power of authorities under the PMLA by way of judicial interpretation of administrative documents, which at most, are for internal administrative convenience.

Therefore, while CrPC provide for a procedure to deal with offences under the IPC and imposes territorial limitations on police officer, the PMLA while establishing a national investigative agency, does not incorporate any such territorial limitations.

21. At this juncture, it is necessary to examine Section 160 CrPC in light of Section 50 of the PMLA to ascertain if there are any inconsistencies between the two. Section 160 CrPC is quoted hereunder:

"160. Police officer's power to require attendance of witnesses.—

(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required: Provided that no male person under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence."

22. Section 50 of the PMLA is quoted hereunder :

"50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—

(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) discovery and inspection;

- (b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director.”

23. Section 160 of the CrPC provides for the power of a police officer to require attendance of witnesses. At the same time, Section 50 of the PMLA deals with power of the authorities under the PMLA regarding summons, production of documents and to give evidence. Section 50 provides that the authorities shall have the power to enforce attendance of ‘any person’ and shall also have the power to summon ‘any person’ whose attendance is considered necessary for the purpose of investigation. The proceedings under Section 50 are statutorily considered to be civil in nature and the persons so summoned are bound to attend and bound to state the truth before the authorities. Therefore, while Section 160 of CrPC is limited to witnesses (who may become accused in the future), Section 50 operates on a larger/broader level and includes the power not only to summon witnesses but to summon and enforce the attendance of any person (which would necessarily women). On a plain reading of Section 160 of the CrPC, it is clear that it empowers only a “police officer” which has a specific

meaning in criminal jurisprudence who is making an investigation under Chapter XII of the CrPC and has specific responsibilities under the CrPC as noticed above. Further, Section 160 of CrPC, in line with the overall scheme of the CrPC of territorial limitations, provides for a limitation on only such persons who are within the limits of territorial jurisdiction of such police officers, police station or any adjoining station, can be required for attendance under the said provision. The PMLA while providing for a similar power of requiring attendance of any person - including witnesses, has not imposed any such territorial limitation as the scheme of the PMLA does not permit the same. Further, Section 160 of the CrPC provides for exception by way of a proviso which is applicable to women and children. On the other hand, Section 50 of the PMLA while providing for a similar power of requiring attendance of any persons including witnesses, does not provide for such exception despite providing for powers of compulsory attendance. In light of the above, it is amply clear that Section 50 of the PMLA and Section 160 of the CrPC cannot operate together and there appears to be a clear inconsistency between the two. It is also clear that there would be a difference in the evidentiary value of the evidence collected under Section 50 of the PMLA as opposed to the evidence collected in Section 160 of the CrPC. To apply both the provisions together would be statutorily and logically not possible and may lead to absurdity.

24. The Petitioners have placed considerable reliance on the judgment in *Asmita Aggarwal* (supra) which was examining the question as to the summoning of a woman under Section 40 of FERA. The relevant paragraphs of the said judgment are as under:-

"7. Bare reading of the proviso makes it clear that if the attendance of the woman is required it shall be at her residence. Admittedly the petitioner was summoned to produce documents. Reading of the summon dated 8th May, 1997 under Section 40 of the FERA shows she was only to produce documents. It appears she was summoned in connection with some on going investigation. She was to answer certain queries.

8. Contention of Mr. K.K. Sud, Addl. Solicitor General, that by directing to investigate her at her residence there has been a violation of the provision of FERA. We find no substance in this contention. Section 4 of the Code of Criminal Procedure deals with the trial of offence under the Penal Code, 1860 and other laws. Perusal of sub-section (2) of Section 4 show that all offences shall be investigated, inquired into, tried, and otherwise dealt with under the same provision and the Code subject to the condition that if there is any enactment or a special Code regulating the manner or place of investigating, inquiring, into, trying or otherwise then the Code will not apply. But as already pointed out above, FERA even though a special Code or enactment, nowhere provides as to where the investigation of woman is to be carried. Therefore, in the absence of any provision available in the special enactment, the provision of Code would apply as laid down under Section 4(2) of the Code. In this respect reference can

be made to the decision of the Supreme Court in the case of Directorate of Enforcement v. Deepak Mahajan and another (Supra). In this case Apex Court held that the operation of Section 4(2) of the Code is straightaway attributed to the areas of investigation, enquiry and trial of offences under the special laws including the FERA and the customs. Section 4 is comprehensive and that Section 5 is not in derogation of Section 4(2) of the Code. It only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4 (2) of the Code. It has further been observed that the provision of the Code would be applicable to the extent in the absence of any contrary provision in the special Act or any other special provisions excluding the jurisdiction or applicability of the Code. That reading of Section 2 of the Code r/w Section 26 (B) which governs any criminal proceeding as regards the course of which an offence is to be tried and as to the procedure to be followed renders the provision of the Code applicable in the field not covered by the provision of FERA or Customs Act. Admittedly, Apex Court in Deepak Mahajan's case (Supra) was not dealing with the proviso of Section 160 Cr.P.C. but was dealing with the applicability of Section 167 of the Code to a case to be filed under FERA, It is not denied that Section 160 and Section 167 of the Code fall under the same Chapter i.e. Chapter XII under the title "Information to the police and their power to investigate". It was while dealing with and interpreting Section 167 Cr.P.C. under Chapter XII of the Apex Court made the observation in Deepak Mahajan's case (Supra). The fact of the matter is that once the special legislation or enactment like FERA is silent with regard to certain procedure like where to investigate a woman, one cannot but have to have recourse to the code. Admittedly FERA is silent in this respect regarding investigating a woman for a minor under the FERA, therefore, we are of the view that the provisions of Section 160 of the Code would apply in the facts of this case. It may, however, be made clear that the petitioner will fully co-operate with the investigating officer."

25. The Ld. Sr. counsel for the Petitioners have further placed reliance on the judgment in Foziya Samir Godil (supra) of the Hon'ble High Court of Gujarat wherein the Court held as under:-

"42. However, so far as petitioner-Foziya Samir Godil is concerned being a woman, it is rightly contended by the learned counsel for the petitioners that she is entitled to benefits of all the procedures applicable to the woman under the relevant law and to that extent. the respondents at the threshold shall have to comply with the provisions of law.

43. The contention that exclusive procedure for summoning a person under Section 50 not providing the safeguards to a woman as under various provisions of Cr.P.C and therefore, no benefit as is available to the woman under Or.P.C can be conferred upon her, is devoid of merits and suffers from misconception of law inasmuch as concededly by virtue of Section 65 of P.M.L Act, provisions of Cr.P, C as are not inconsistent with the provisions of P.M.L Act are applicable to the

proceedings under P.M.L Act and it cannot be said that the provisions providing safeguard to a woman under Cr.P.C cannot stand with the provisions of P.M.L Act and there- fore, such provisions cannot be said to be inconsistent with P.M.L Act”

26. Further, reliance has been placed on the judgment in Ashok Munilal Jain (supra) which state as under:

“3. We have gone through the orders passed by the trial court as well as by the High Court. We may state at the outset that insofar as the High Court is concerned, it has not given any reasons in support of its aforesaid view except endorsing the view of the trial court to the effect that the provisions of Section 167(2) CrPC are not applicable to the cases under the PMLA Act. This position in law stated by the trial court does not appear to be correct and even the learned Attorney General appearing for the respondent could not dispute the same. We may record that as per the provisions of Section 4(2) CrPC, the procedure contained therein applies in respect of special statutes as well unless the applicability of the provisions is expressly barred. Moreover, Sections 44 to 46 of the PMLA Act specifically incorporate the provisions of CrPC to the trials under the PMLA Act. Thus, not only that there is no provision in the PMLA Act excluding the applicability of CrPC, on the contrary, provisions of CrPC are incorporated by specific inclusion. Even Section 65 of the PMLA Act itself settles the controversy beyond any doubt in this behalf which reads as under:

“65. Code of Criminal Procedure, 1973 to apply.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.”

4. We may also refer to the judgment of this Court in Directorate of Enforcement v. Deepak Mahajan [Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 : 1994 SCC (Cri) 785] wherein it was held as under: (SCC p. 480, para 136)

“136. In the result, we hold that sub-sections (1) and (2) of Section 167 are squarely applicable with regard to the production and detention of a person arrested under the provisions of Section 35 of FERA and Section 104 of the Customs Act and that the Magistrate has jurisdiction under Section 167(2) to authorise detention of a person arrested by any authorised officer of the Enforcement under FERA and taken to the Magistrate in compliance of Section 35(2) of FERA.”

5. We, thus, do not agree with the opinion of the High Court that the provisions of Section 167(2) CrPC would not be applicable to the proceedings under the PMLA Act. In the present case, as no complaint was filed even after the expiry of 60 days from the date when the appellant was taken into custody, he was entitled to statutory bail in view of the provisions contained in Section 167(2) CrPC.”

27. The Respondent, on the other hand, has placed reliance on the judgment in *Nalini Chidambaram (supra)* of the Hon'ble High Court of Madras. The relevant portion is quoted as under:-

"21. Section 50(2) gives sufficient ammunition to an authority to summon any person whose attendance is considered necessary. The word "shall" is to be interpreted to mean absolute power to seek attendance of course to a subjective satisfaction. Such a power can be exercised requiring a person to give evidence or to produce during the course of investigation. An investigation cannot be given a restrictive meaning since it is included in the definition clause of "proceedings". Section 50(2) also makes this position abundantly clear by suffixing the word "investigation" with the word "any".

22. Such an exercise of an authority is also reiterated under sub-section 3 which mandates a person so summoned to attend in person. Here also the discretion given to the authority is extended either to call a person or permit to represent by an authorised agent. Therefore, if an authority is of the view that the assistance rendered by an authorised agent is not sufficient enough, then certainly a person can be directed to attend physically.

23. Interestingly sub-section 4 goes one step further and makes the position clear. It starts with the words "every proceeding under sub-section (2) and (3)". Such a proceeding shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. Hence, a deeming fiction is created by giving status of the judicial proceedings to an investigation or proceedings under sub-section (2) and (3). Therefore, a person is required to furnish the facts known to him by facilitating the process of investigation or any other proceeding.

24. Section 65 provides for the application of the Code of Criminal Procedure, 1973. It arises, when there is no inconsistency with the provisions of the Act 15 of 2003. This is also with specific reference to arrest, search, seizure, attachment, confiscation, investigation etc. Therefore, this provision is introduced to help the authority in its investigation or proceedings under the Act by having recourse to the Code whenever the Act does not provide so. Hence, Section 65 has to be interpreted to mean that Code is meant to be used by an authority in discharge of his functions under Act 15 of 2003.

25. Section 71 speaks of the over riding effect. It contains a non-obstante clause dealing with any possible inconsistency in any other law. While Section 65 applies to the Code of Criminal Procedure for helping the authority, Section 71 clears any possible inconsistency with all the provisions of the Act 15 of 2003. Resultantly, even assuming if there is any inconsistency, with any other law for the time being in force, Act 15 of 2003 will have primacy. Idea is to avoid any obstacle that might arise through the operation of other enactments.

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29. Both the Code and the Act travel on their respective channels. Under the Code investigation is done by the police over a crime. On the contrary, under Act 15 of 2003, an authority has got different roles to play, in tune with the objectives. While Section 50(2) of the Act 15 of 2003 speaks of an authorised agent, the same is missing under the Code. There is no proceedings under the Code as being dealt with under the Act 15 of 2003 by an authority. Merely because trappings of police power is given, an authority cannot be compared with the policemen under all circumstances and so is his office.

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31. Coming to the issue qua a woman, certainly an authority can call a woman, who comes within the definition of a "person", since the nature of investigation or a proceeding is totally different apart from being distinct from the one under the Code. After all, a wide discretion is given to an authority even to call a person or permit his or her authorised agent. Therefore, when once a satisfaction is arrived on the need to summon a person physically, the same has to be done to facilitate a smooth progress in the investigation process. Thus, a woman can certainly be called in a given case by an authority while exercising its discretion on relevant materials. The object behind Section 160 of the Criminal Procedure Code is not to expose a woman to the environment surrounding police station which will certainly not be available in a proceeding by way of an investigation under Act 15 of 2003. The summons that were issued by the competent authority under the Act was in exercise of powers conferred on the authority under Section 50 of the Act. There is no necessity to meet the requirements of the proviso to Section 160 of the Code of Criminal Procedure since an independent power has been conferred on the authority under Section 50 of the Act. Wherever the Act itself stipulates the specific power, authority and procedure, there is no requirement to read the provisions of Code of Criminal Procedure into it. In fact, the most harmonious manner in which both the enactments can be parallelly invoked would be to ensure that the provisions of Code of Criminal Procedure are not read into or invoked wherever the Act itself specifically provides for the same.

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34. Accordingly, we find no conflict either implied or express between the Code and the enactment.

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44. As the learned single Judge has made reliance upon number of decisions, it would be appropriate to consider them. In *ASMITA AGARWAL v. THE ENFORCEMENT DIRECTORATE* ((2002) Criminal Law Journal 819), the High Court of Delhi was dealing with the proceedings in FERA Act. Having found that FERA is silent regarding the investigation of women, it was held that the provision of Section 160 of the Code will apply. To be noted, there is no *pari materia* provisions under the FERA Act as contained in Act 15 of 2003 with specific reference to Sections 52, 65 and 72. Further, the petitioner therein was

apprehending trouble at the hands of her husband and therefore, the aforesaid case is distinguishable on facts.

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46. The Gujarat High Court in FOZIYA SAMIR GODIL v. UNION OF INDIA (Spl. Crl. Application (Direction) No. 1725 of 2014 with Spl. Crl. Appln. No. 1748 of 2014 dated 09.05.2014) was in fact dealing with the very same issue. After going through the abovesaid judgment, we are of the view that inasmuch as there is no conflict between Section 52 of the Act and Section 160 of the Code, it is not mandatory in all cases a woman shall never be called whatever be her involvement and status. Thus, it is for the second respondent to exercise power in a given case either to call a person or an authorised agent. Since a definition of the word "person" would include a woman, it is certainly open to the authority to take a call either summon her physically or otherwise through an agent.

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48. Much has been said on the decision of the Apex Court in ASHOK MUNILAL JAIN v. ASSISTANT DIRECTOR, DIRECTORATE OF ENFORCEMENT (Crl. Appeal No. 566 of 2017 dated 22.03.2017), where the appellant was given the benefit of statutory bail. The said decision also cannot help the case of the appellant. We are not dealing with the provision, which gives a substantive right.

49. In fine, both the appeals stand dismissed. However, liberty is given to the respondents to issue a fresh summons to the appellant requiring her appearance in person. No costs."

28. The Respondent has further pointed out that the Hon'ble Supreme Court has not stayed the order of the Hon'ble High Court of Judicature and Madras and merely granted interim relief on the facts of the case considering the age of the Petitioner in the said case and the said interim order would have no precedential value in view of the judgment in Shree Chamumdi Moped Ltd. Vs. Church of South India Trust (1992) 3 SCC 1. The relevant portion of the said order is quoted below:

"10. In the instant case, the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act were pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the order of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving

the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed."

29. In order to appreciate the controversy, it is important to refer to Section 4 and 5 of the CrPC along with Section 65 and 71 of the PMLA. The said provisions are quoted as under:-

"CRPC

4. Trial of offences under the Indian Penal Code and other laws.—

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving.—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

PMLA

Section 65 : Code of Criminal Procedure, 1973 to apply

The provisions of the Code of Criminal Procedure, 1973 (1 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

Section 71 : Act to have overriding effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

30. From a bare reading of the said provisions along with the scheme of the PMLA, it is clear that sections of CrPC would apply only if the field is not covered, in any manner, by the provisions of the special enactment by way of the PMLA. The CrPC by way of Section 4 & Section 5 itself provides that in case a special law exists, such law will apply over and above the CrPC. Section 65 read with Section 71 of the PMLA further provides that while certain provisions of the CrPC may apply in case there exists no provision in the PMLA, in case of any inconsistency, contradiction or confusion arises, the provisions of the PMLA will prevail and override the provisions of the CrPC. It is otherwise also settled law that special law prevails over general law. The PMLA being a special criminal enactment providing for a separate investigative procedure and power, it is imperative that due meaning and regard is given to the provisions of the PMLA in its totality and the said provisions are allowed to operate in their full force on their own.

31. As far as the reliance of the Petitioners on the judgments is concerned, the Hon'ble Supreme Court in Ashok Munilal Jain (supra) was faced with the situation wherein there existed no provision in the PMLA which would even remotely be relatable to the power exercised by the courts in remanding arrested persons to custody, and therefore, held that Section 167 of the CrPC would apply to arrests made under the PMLA. The Hon'ble Supreme Court had relied on the judgment in Deepak Mahajan (supra) wherein the Hon'ble Supreme Court was confronted with the similar issue in the context of the Customs Act and the FERA. Therefore, undoubtedly the judgment of the Hon'ble Supreme Court in Ashok Munilal Jain (supra) is a binding authority as far as the applicability of Section 167 of the

CrPC is concerned however, the ratio of the said judgment would not carry the case of the Petitioners any further in view of the fact that Section 50 of the PMLA and Section 160 of the CrPC operate in the same field and have inconsistencies between them as pointed out above.

32. On the issue of the applicability of Section 160 of the CrPC to investigations under the PMLA, specifically with regard to the protection granted to a woman, and not with regard to the territorial limitation, different Hon'ble High Courts have rendered different findings. The Hon'ble High Court of Gujarat in *Foziya* (supra) has held that the proviso to Section 160 CrPC would apply but Hon'ble High Court of Judicature in Madras in *Nalini Chidambaram* (supra) has held that the said protection would not be available. In my view, considering that Section 50 of the PMLA specifically refers to 'any person' which would include a woman, the special provision in Section 160 CrPC available to a woman would not apply in view of the overriding provision in Section 71 of the PMLA. To apply proviso to Section 160 CrPC concerning a woman to a summons issued under Section 50 of the PMLA would amount to curtailing the powers of the authorized officer under the PMLA, which extends to all persons and has not been statutory limited either on the basis of territory or on the basis of the gender of the person.

33. Though the said judgment can be based solely on the above finding, it may be recorded that the protection under Section 160 of CrPC to a woman is extended in order to keep women and children away from police stations and police company considering the peculiar condition of police stations in the country. It may further be noted that police station has a specific statutory meaning and when any person is summoned under Section 50 of the PMLA, including a woman, such woman is not summoned to a 'police station' as envisaged under Section 160 of the CrPC. As per the judgment of the Hon'ble Supreme Court in *Nandini Satpathy* (supra), the protection to a woman under Section 160 CrPC serves a particular purpose in the context of police stations and the police powers. The said purpose is absent from an investigation under the PMLA which are conducted by high level officers as defined under Section 48 of the PMLA, headed by the Director who is appointed under Section 25 of the Central Vigilance Commission Act.

The offices of the Directorate of Enforcement cannot be said to be police station under the meaning of Section 2(s) of the CrPC. It may be noted other persons would be summoned to the office of Directorate of Enforcement during any investigation of proceeds of crime and may also involve summoning any person who may not even be a witness (like officials of bank etc) to be summoned to such offices requiring them to furnish information in connection with the same. If the proviso to Section 160 CrPC is made applicable to Section 50 of the PMLA, the said provision may become unworkable as often women would have to be summoned in order to carry out the functions vested under the Act over and beyond the investigative powers under the Act. Such an interpretation would defeat the very object of the Act.

34. It is further relevant to note that it is settled law that the legislature is aware of the statutes already enacted and when the PMLA was enacted in 2002, the Parliament was aware of the protection afforded to a woman under Section 160 CrPC. Despite being aware of the same, the Parliament while enacting a similar provision providing for compulsory attendance of persons, chose not to extend the same protection under the PMLA Act. At the same time wherever the Parliament thought it to be necessary it extended the protection to a woman under the PMLA, it has specifically provided so – as is in case of Section 45 of the PMLA. Therefore, on this point also, it is clear that there is an inconsistency between Section 50 of the PMLA and Section 160 of the CrPC and also there is a clear legislative intent behind not providing the protection in the nature of the proviso to Section 160 of the CrPC to a woman under Section 50 of the PMLA.

35. As far as the judgment of the Division Bench of this Hon'ble Court in Asmita Agarwal (supra) is concerned, it may be noted that FERA had no overriding provision in the nature of Section 71 of the PMLA. Therefore, when an officer operating under FERA summons a person in absence of there not being an overriding provision in FERA, the Hon'ble Division Bench sought to interpret under Section 160 of CrPC and Section 40 of FERA harmoniously in order to interpret them in tandem. As opposed to the same, the PMLA clearly provides for an overriding provision in case of any inconsistency and therefore, it is imperative, as stated above, to give full effect to the provisions of the PMLA. It would not be possible to interpret Section 50 of the PMLA harmoniously with Section 160 of CrPC. In view of the difference in the language and provision of the PMLA and FERA and specifically in view of the absence of an overriding provision in FERA the reliance of the Petitioners on the judgment in Asmita Agarwal (supra) is misplaced.

36. With regard to the allegation of mala fide it would be apposite to note that the same is to be established to a specific assertion on the basis of proven facts and not on the basis of conjectures and surmises. The burden of establishing mala fide is very heavy on the person who alleges it and further often requires relevant persons against whom such allegations are made to be made parties to the petition so as to enable them to respond to such allegations.

37. In the present case, the Petitioners with regard to mala fide in their written submission, had stated that "The Petitioners have reasonable apprehension that investigation conducted qua them is motivated and mala fide." In light of the settled law of the Hon'ble Apex Court on the subject [Indian Rly. Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC 579, Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764, Nirmal Jeet Singh Hoon v. Irtiza Hussain, (2010) 14 SCC 564, Ratnagiri Gas and Power (P) Ltd. v. RDS Projects Ltd., (2013) 1 SCC 524], no allegation of mala fide cannot be sustained merely on the basis of a reasonable apprehension and, therefore, this Court will refrain from commenting further on the said issue. The assertion that certain questions were put in a roving and fishing manner to the Petitioners cannot be a ground to allege malafides as it is

settled law that investigation is the sole prerogative of the investigating agency as per a long line of judgments starting from King-Emperor Vs. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29.

38. Further, so far as the allegations of malafides are concerned, the same has no place in criminal investigations. Secondly, it is settled law that allegations of malafides are easy to be made than to actually make out. The allegations of malafides need to be corroborated with concise statements of material facts which inspire confidence. Thirdly, apart from non-applicability of such grounds in a criminal investigation, the PMLA and CrPC provides for enough and sufficient safeguard with checks and balances to obviate any such apprehension.

39. So far as the reliance placed upon the interim order passed by the Hon'ble Hon'ble High Court of Calcutta in W.P.A. No. 17576 titled Sumit Roy v. Union of India and Anr. is concerned, the same is perused. The same is, on the face of it, an interim order in a constitutional challenge to the PMLA without delving into the legal position which is discussed hereinabove. It is a settled position that an interim order is never a binding precedent even if the same is passed by a coordinate bench of the same court when the matter is being heard and decided finally.

The interim order of the Hon'ble Calcutta High Court, therefore, may not be relevant when the issues are dealt with finally by this judgment. It is surprising that in the very same investigation, accused are choosing different forums substantially praying for the same relief. However, in view of the examination on merits as above, the conduct of the petitioners or that of the others is not gone into.

40. With regard to the reliance of the Petitioners on the order dated 07.12.2021 in Writ Petition (Crl.) 1768 of 2021, it is stated that the facts of the said case are clearly distinguishable from the present case as the notices under the said case were not issued under the PMLA and were rather issued under Section 160 of the CrPC and, therefore, clearly bound by the territorial limitations of the CrPC. The said interim order does not further the case of the Petitioners on any ground.

41. Though the issue in the present two petitions pertain to applicability or otherwise of Section 160 of CrP Code, the question about applicability of Chapter XII itself [in which section 160 forms part] is pending consideration in a batch of petitions before Hon'ble Supreme Court of India in Vijay Madanlal Choudhary and ors versus Union of India and ors. [SLP (Cr I) No. 4634/2014] and other cognate matters. However, considering the very nature of the investigation under PMLA, this question needs to be examined and decided. Considering the very nature of PMLA, a meaningful reading of section 4 and 5 of CrPC r/w section 65 and 71 of PMLA, it evident that section 160 will have no application as the field is occupied by Section 50 of the PMLA.

42. In light of the above and for all the above reasons, the challenge of the Petitioners to the impugned notices/summons fails. The petition is hereby

dismissed. No order as to costs. All pending applications (if any) are disposed of.

CRL.MC. 2442/2021 AND CRL.M.A. 16069/2021

43. In light of the decision in WP(CRL) No.1808 of 2021, no legal issues survives in the present petition. The factual issues raised by the Petitioner herein can be urged before the jurisdictional Court. No extraordinary case has been made out to exercise inherent powers under Section 482 of the CrPC.

44. The lower courts may decide the issue without being influenced by the observations made in the present judgment.

45. In light of the above, the petition is hereby dismissed. No order as to costs. All pending applications (if any) are disposed of.