
(2019) 06 ATPMLA CK 0006

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-4772/MUM/2018, FPA-PMLA-2303/MUM/2018

Ashok Patel & Anr.

APPELLANT

Vs

Assistant Director Directorate Of Enforcement, Mumbai

RESPONDENT

Date of Decision : 12-06-2019

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 3, 4, 5(1), 8, 8(3), 8(3)(a), 17, 17(1), 17(1A), 17(4), 18, 19, 20, 20(1), 20(2), 20(3), 21, 21(4), 26, 44(1)(b), 45, 65, 73

Indian Penal Code, 1860 — Section 120B, 420, 465, 468

Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Code Of Criminal Procedure, 1973 — Section 2(d), 102, 102(1), 102(3), 173(5), 457

Reserve Bank of India Act, 1934 — Section 58

Citation : (2019) 06 ATPMLA CK 0006

Hon'ble Judges : Manmohan Singh, J;G. C. Mishra, Acting Chairman

Bench : Division Bench

Advocate : Abhishek Chauhan, Shilpi Satyapriya Satyam, Radhika Arora

Final Decision : Allowed

Judgement

Sr. No.,Shareholder,Value (in Lakhs),%

1.,Chandrakant Patel,53.70,26.92

2.,Manisha C. Patel,32.00,16.04

3.,Varsha C Patel,39.40,19.75

4.,Mahesh N. Patel,13.70,6.75

5.,Yash M. Patel,16.00,8.02

6.,Suchit C. Patel,7.40,3.71

7.,Pushpak Realities Pvt. Ltd.,17.50.,8.77

8., "Growmore Commodities Pvt.

Ltd.",19.80,9.92

the said premise. Further during the search India Currency amounting to Rs. 14,75,200/- was seized under reasonable belief that the said property is",,,

involved in money laundering. Mr. Jignesh Patel who is one of the partner of M/s P. Vijay Kumar & Co. and was present during the search, could not",,,

give any satisfactory explanation regarding the source of the said Indian Currency.,,,

11. Further the statement of other partner Mr. Ashok Patel of M/s P. Vijaykuamr & co. was recorded on 16.10.2017, wherein it is alleged that he is in",,,

the business of transfer of money through un-official channels, without reflecting bank accounts. It is further alleged that he could not give satisfactory",,,

reply or submit documents to substantiate the source of the cash of Rs. 14,75,200/-." ,,,

12. As per respondent the property seized during the search is further required for conducting further investigations of the cash in the ECIR mentioned",,,

above.,,,

13. As per respondent the investigations under PMLA, 2002 are in progress and for this purpose, the seized property is essential and required for the",,,

ongoing investigations. Thus, the same is required to be retained till the investigation is completed." ,,,

14. The respondent no. 1 filed an application praying for the purpose fo retention of the seized property under section 17(4) of PMLA, 2002. A copy",,,

of the application dated 8.11.2017 is annexed herewith.,,,

15. That the notice was issued by the Adjudicating Authority to the appellant on 10.11.2017. The appellants had filed their reply on 10.12.2017," ,,,

wherein it has been specifically stated that the amount seized is Rs. 14,75,200/- and the same was for payment of two months bonus to each",,,

employees and salary of 55 workers/employees of M/s P. Vijay Kumar & Co. comes to about Rs. 14,74,000/-. The amount withdrawn from the",,,

account of M/s P. Vijaykumar & Co. during September 2017 and 11th October 2017 is about Rs. 15,50,000/- which is no illegal dealing of the",,,

applicant. The amount withdrawn from account (Union Bank of India, Zaveri Bazaar, Mumbai) of M/s P. Vijaykumar & Co. for payment to",,,

employees. Apart from payment of rs. 14,74,000/- fro salaries, balances was day to working of the applicant. It is submitted that the applicant is",,,

unnecessary roped in. The applicant has no concern with any of the other accused arrayed in FIR.,,,

16. The learned counsel for the respondent does not dispute that no FIR or any criminal complaint filed by CBI is pending against the appellant.,,,

17. It is also admitted by the learned counsel for the respondent that no complaint under section 8(3)(a) has been filed against appellant within 90 days,, from the date of impugned order. It is stated by counsel of respondent that at the later stage, his client may find some evidence. Therefore, it is",,, immaterial if the prosecution complaint is not filed.,,,

18. It is true that before amendment of the provision of Section 8(3)(a), the legal position was different. Since by virtue of amendment, the specific",,, period of time is fixed, therefore, earlier orders passed before amendment have no application." ,,,

19. The relevant provisions are reproduced in order to understand the issued in hand:,,,

Section 17 of PMLA, 2002 reads as under:" ,,,

â??17 Search and seizure. â?"(1) Where [the Director or any other officer not below the rank of Deputy Director authorised by him for,,,

the purposes of this section,] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded" ,,,

in writing) that any person â?" ,,,

(i) has committed any act which constitutes money-laundering, or" ,,,

(ii) is in possession of any proceeds of crime involved in money-laundering, or" ,,,

(iii) is in possession of any records relating to money-laundering, (or)" ,,,

(iv) is in possession of any property related to crime],,,

then, subject to the rules made in this behalf, he may authorize any officer subordinate to him to -" ,,,

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime" ,,,

are kept;,,,

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where" ,,,

the keys thereof are not available;,,,

(c) seize any record or property found as a result of such search;,,,

(d) place marks of identification on such record or [property, if required or] make or cause to be made extracts or copies therefrom;" ,,,

(e) make a note or an inventory of such record or property; ,,,

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for" ,,,

the purposes of any investigation under this Act: ,,,

[Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate" ,,,

under section 157 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person, authorised to" ,,,

investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case" ,,,

may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been" ,,,

submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the" ,,,

Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who" ,,,

may be authorized by the Central Government, by notification, for this purpose.]" ,,,

[(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze" ,,,

such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer" ,,,

making such order, and a copy of such order shall be served on the person concerned:" ,,,

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of Section 8 or Section 58B or sub-Section (2A)" ,,,

of Section 60, it becomes practical to seize a frozen property, the officer authorised under sub-Section (1) may seize such property.]" ,,,

(2) The authority, who has been authorized under sub-section(1) shall, immediately after search and seizure [or upon issuance of a freezing" ,,,

order] forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating" ,,,

Authority in a sealed envelope, in the manner, as may be prescribed and such

Adjudicating Authority shall keep such reason and material",,,

for such period, as may be prescribed.",,,

(3) Where an authority upon information obtained during survey under section 16, is satisfied that an evidence shall be or is likely to be",,,

concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is",,,

located and seize that evidence.,,,

Provided that no authorization referred to in sub-section (1) shall be required for search under this sub-section.,,,

(4) The authority seizing any record or property under sub-Section (1) or freezing any record or property under sub-Section (1A) shall,",,

within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record",,,

or property seized under sub-Section (1) or for continuation of the order of freezing served under sub-Section (1A), before the Adjudicating",,,

Authority.],,,

20. Section 18 of PMLA, 2002 reads as under:",,,

18. Search of persons. â?"",,,

(1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for",,,

such belief to be recorded in writing) that any person has secreted about his person or in anything under his possession, ownership or",,,

control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person",,,

and seize such record or property which may be useful for or relevant to any proceedings under this Act:",,,

[Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a",,,

Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to",,,

investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case",,,

may be.],,,

(2) The authority, who has been authorised under sub-section (1) shall,

immediately after search and seizure, forward a copy of the reasons",,,

so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the",,,

manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.",,,

(3) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the",,,

nearest gazetted officer, superior in rank to him, or a Magistrate:",,,

Provided that the period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest,,,

gazetted officer, superior in rank to him, or Magistrate's Court.",,,

(4) If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking",,,

him before the Gazetted Officer superior in rank to him, or the Magistrate referred to in that sub-section:",,,

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the,,,

Gazetted Officer, superior in rank to him, or the Magistrate's Court.",,,

(5) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search,",,

forthwith discharge such person but otherwise shall direct that search be made.,,,

(6) Before making the search under sub-section (1) or sub-section (5) the authority shall call upon two or more persons to attend and witness,,,

the search, and the search shall be made in the presence of such persons.",,,

(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the,,,

list.,,,

(8) No female shall be searched by any one except a female.,,,

(9) The Authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or,,,

proceeds of crime found or seized in the course of the search:18 [***],,,

(10) The authority seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an",,,

application requesting for retention of such record or property, before the

Adjudicating Authority." ,,,

21. Sub-section (1), (2) and (3) of Section 20 read as under:-" ,,,

20. Retention of property.â?" ,,,

(1) Where any property has been seized under section 17 or section 18 or frozen under sub-Section (1A) of Section 17 and the officer ,,,

authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be" ,,,

recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property" ,,,

may, if seized be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day" ,,,

on which such property was seized or frozen, as the case may be." ,,,

(2) The officer authorized by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the" ,,,

property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in" ,,,

sub-section (1), to the Adjudicating Authority, in a sealed cover, in the manner as may be prescribed and such Adjudicating Authority shall" ,,,

keep such order and material for such period as may be prescribed.,,,

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized" ,,,

or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property ,,,

beyond the said period.,,,

22. Section 21 of PMLA reads as under:- ,,,

â??21. Retention of records. â?" ,,,

(1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating" ,,,

Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be ,,,

retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not" ,,,

exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be." ,,,

(2) The person, from whom records seized or frozen, shall be entitled to obtain copies of records.",,,

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were",,,

seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such,,,

records beyond the said period.,,,

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in",,,

sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.",,,

(5) After passing of an order of confiscation [or release under sub-section (5) or sub-section (6) or sub-section (7) of section 8 or section 58B,,,

or sub-section (2A) of section 60] , the Adjudicating Authority shall direct the release of the records to the person from whom such records",,,

were seized.,,,

(6) Where an order releasing the records has been made by the Court [Adjudicating Authority under section (5) of section 21] the Director,,,

or any other officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of,,,

(receipt of] such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act.]",,,

23. It is clear from the reading of Sections 17 to 21 that outer limit upto the date for deciding the application for retention of property within the,,,

meaning of sub-section 4 of Section 21 is 180 days from the date of seizure of any property or records. The said period is not extendable.,,,

24. The person concerned/aggrieved party of such order, is entitled to file the appeal under Section 26 of the Act. The same shall be heard and after",,,

giving an opportunity of being heard, the appellant Tribunal shall pass the order either to confirm the order of retention or to modify or setting aside the",,,

same.,,,

25. Where the Adjudicating Authority decides by an order confirm the retention under Sub-section (1) of Section 17 or Section 18 for the purpose of,,,

continuation during investigation for a period not exceeding ninety days under this Act before the Competent Court, or under the corresponding law of",,,

any other countries as the case may be under Sub-section (3) (a) of Section 8 may take necessary action within the time prescribed. In failure to do so,,,

under this Act, all the proceedings, seizures/frozen under Section 17 would be lapsed ipso facto.",,,

26. Section 8 of the PMLA provides for procedure for adjudication by the Adjudicating Authority. The relevant extract of Section 8 of the PMLA is,,,

set out below:-,,,

8. Adjudication.- (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section",,,

17 or under sub-section (10) of Section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence",,,

under Section 3 or is in possession of proceeds of crime, he may serve a notice of not less than thirty days on such person calling upon him",,,

to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-",,,

section (1) of Section 5, or, seized or frozen under Section 17 or Section 18, the evidence on which he relies and other relevant information",,,

and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-",,,

laundering and confiscated by the Central Government:,,,

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of",,,

such notice shall also be served upon such other person:,,,

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

property.,,,

(2) The Adjudicating Authority shall, after-",,,

(a) considering the reply, if any, to the notice issued under sub-section (1);",,,

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and,,,

(c) taking into account all relevant materials placed on record before him,",,,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section",,,

(1) are involved in money-laundering:,,,

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given",,,

an opportunity of being heard to prove that the property is not involved in money laundering.,,,

(3) Where the Adjudicating Authority decides under subsection (2) that any property is involved in money-laundering, he shall, by an order",,,

in writing, confirm the attachment of the property made under sub-section (1) of Section 5 or retention of property or record seized or frozen",,,

under Section 17 or Section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or",,,

frozen property or record shall-,,,

(a) continue during investigation for a period not exceeding ninety days or the pendency of the proceedings relating to any offence under,,,

this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India,",,

as the case may be; and,,,

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 or Section 58-B or sub-section,,,

(2-A) of section 60 by the Special Court.,,,

27. The Honâ?ble High of Delhi in its Order dated 9th January, 2019 has rendered the detailed judgement in the case of â??Omar Ali Obaid etc. vs.",,,

EDâ?? has discussed the entire scheme of seizure made under Section-102 of Cr. P.C. The relevant paras 58 to 74 are read as under:-,,,

â??58. In terms of Section 73 of the PMLA, the Central Government is empowered to make rules for carrying out the provisions of the",,,

PMLA. In exercise of such powers, the Central Government has notified the Prevention of Money-Laundering (Forms, Search and Seizure",,,

or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records",,,

and the Period of Retention) Rules, 2005. Rule 4 of the said Rules also provides for the procedure related to freezing of any property found",,,

as a result of search of any building, place, vessel, vehicle or aircraft.",,,

59. It is relevant to note that an order of provisional attachment or an order of seizure is not an end in itself and does not stand in isolation.,,,

The said orders are passed in aid of the provisions to confiscate properties, which

are found to be proceeds of crime." ,,,

60. The scheme of seizure made under Section 102 of the Cr.P.C. is materially different. Section 102 of Cr.P.C. is set out below:- ,,,

102. Power of police officer to seize certain property. ,,,

(1) Any police officer, may seize any property which may be alleged or suspected to have been stolen, or which may be found under" ,,,

circumstances which create suspicion of the commission of any offence. ,,,

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer." ,,,

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the ,,,

property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a" ,,,

bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to ,,,

the disposal of the same. ,,,

61. It is clear from the plain reading of Section 102 Cr.P.C. that any police officer may seize the property, which may be alleged or" ,,,

suspected to have been stolen or which is found in circumstances which create suspicion of the commission of any offence. However, the" ,,,

said order of seizure is only a temporary order and in terms of sub-section (3) of Section 102 of Cr.P.C., the police officer seizing any" ,,,

property on the grounds of suspicion of an offence is required to forthwith report the seizure to the Magistrate having jurisdiction. ,,,

62. The said property seized is required to be produced before a Court and/or reported to a Magistrate. In such cases, the court would have" ,,,

the power to pass necessary orders with regard to the said property. In terms of Section 457 of the Cr.P.C., whenever a property is seized by" ,,,

any police officer and is reported to the Magistrate, the Magistrate is empowered to make such orders as he thinks fit in respect of disposal" ,,,

of the property or the delivery of such property to the person entitled to the possession thereof. In cases where such person cannot be ,,,

ascertained, the Magistrate can pass orders in respect of the custody and production of such property." ,,,

63. It is at once clear that scheme of seizure, including the checks and balances

in exercise of such power, as contemplated under the",,,

Cr.P.C. is wholly inconsistent with the scheme of the provisions under the PMLA.,,,

64. Powers of seizure of properties is a draconian power. Grant of such authoritarian and drastic powers, without commensurate checks and",,,

balances, would militate against the principle of rule of law engrafted in the constitution of India. A police officer does not possess",,,

unfettered rights to freeze any asset without the same being reported immediately to a Magistrate. The party aggrieved, thus, has immediate",,,

recourse in respect of the said action of freezing the property. As observed above, the scheme of provisional attachment or seizure of a",,,

property, as contemplated under the provisions of the PMLA is materially different. The PMLA has separate checks and balances to ensure",,,

that such powers are exercised in aid of the object of confiscating or vesting such proceeds of crime with the Government. The power to",,,

provisionally attach or seize or freeze a property can be exercised only (a) if the specified officer has material in his possession, which",,,

provides him reason to believe that the property sought to be attached or seized is proceeds of crime or related to a crime; and (b) after",,,

recording the reasons in writing.,,,

65. In the aforesaid view, the reliance placed on provisions of Section 65 of the PMLA is misplaced. By virtue of Section 65, the provisions",,,

of Cr.P.C. apply only insofar as they are not inconsistent with the provisions of the PMLA. There can be little doubt that scheme of seizure",,,

under Section 102, Cr.P.C. is inconsistent with the provisions relating to attachment and seizure of property under the PMLA.",,,

66. What is sought to be canvassed on behalf of the Enforcement Directorate is a devised scheme under which the Enforcement Directorate",,,

refers to the provisions of Section 102(1) of Cr.P.C. for drawing the power to issue orders for immediately seizing the property on mere",,,

suspicion but at the same time ignores the provisions of Section 102(3) of Cr.P.C. which requires such seizure to be reported to a Magistrate.,,,

There is clearly no principle of law that would permit such interpretation, where officers can draw the power under a statute and yet not be",,,

accountable for the checks and balances enacted therein.,,,

67. Mr Singh had contended on behalf of the Enforcement Directorate that the

PMLA does not contain any provision regarding seizure on,,,
mere suspicion, therefore the power to make such seizure can be drawn from
Section 102 of Cr.P.C. He contended that the provisions of",,,
Section 102(1) of Cr.P.C. are, therefore, not inconsistent with the provisions of
the PMLA with regard to seizure of property. The said",,,
contention is unmerited. The question whether an enactment is repugnant to
another is not determined on whether two provisions can be,,,
simultaneously obeyed but is determined in the context of the scheme of the
legislative enactment. The question to be asked is whether the,,,
schemes of the two enactments can subsist and be implemented simultaneously.
It is apparent that the scheme of effecting provisional,,,
attachment and seizure of property under the PMLA is wholly inconsistent with
the one as enacted under the Cr.P.C.,,,
68. In *Innoventive Industries Ltd. v. ICICI Bank and Anr.*: (2018) 1 SCC 407, the
Supreme Court had examined the question of",,,
repugnancy between two enactments, namely, the Maharashtra Relief
Undertakings (Special Provisions Act), 1958 and the Insolvency and",,,
Bankruptcy Code, 2016 in the perspective of the Constitution of India. The
Supreme Court had referred to various decisions and culled out",,,
the principles with regard to repugnancy between two enactments. Although the
decision was rendered in an altogether different context â?"",,,
whether the provisions of the central legislation would override a state
enactment â?" the principles of inconsistency between two enactments,,,
as noticed by the Supreme Court would be equally applicable to determine
whether the provisions of Section 102 Cr.P.C. are inconsistent,,,
with the provisions of the PMLA. In that case, the Supreme Court has referred to
various decisions to set out the principles on the anvil of",,,
which the question whether two enactments are inconsistent are to be tested. In
the aforesaid context, the Supreme Court had, inter alia,",,,
observed as under:-,,,
â??51.7. Though there may be no direct conflict, a State law may be inoperative
because the Parliamentary law is intended to be a",,,
complete, exhaustive or exclusive code. In such a case, the State law is
inconsistent and repugnant, even though obedience to both laws is",,,
possible, because so long as the State law is referable to the same subject-

matter as the Parliamentary law to any extent, it must give way." ,,,

One test of seeing whether the subject-matter of the Parliamentary law is encroached upon is to find out whether the Parliamentary statute ,,,

has adopted a plan or scheme which will be hindered and/or obstructed by giving effect to the State law. It can then be said that the State ,,,

law trenches upon the Parliamentary statute. Negatively put, where Parliamentary legislation does not purport to be exhaustive or" ,,,

unqualified, but itself permits or recognises other laws restricting or qualifying the general provisions made in it, there can be said to be no" ,,,

repugnancy.â?? ,,,

69. As is clear from the above, one of the tests for determining whether there is repugnancy between two statutes is to find out where one of" ,,,

the statutes has adopted a plan or a scheme, which will be hindered or obstructed by giving effect to the other statute. This principle to" ,,,

determine whether there is repugnancy between two enactments is of universal application. If one applies the aforesaid test, it is at once" ,,,

clear that the PMLA has set out a separate scheme with a separate set of safeguards for ensuring that properties of parties are not attached ,,,

or seized without the authorities effecting such actions having reason to believe that such properties are proceeds of crime or are related to a ,,,

crime. ,,,

70. If the contention as advanced on behalf of the Enforcement Directorate is accepted, it would mean that whereas the property cannot be" ,,,

provisionally attached under Section 5(1) of the PMLA and/or seized or frozen under Section 17 of the PMLA without (a) the Director having ,,,

a reason to believe, on the basis of material available with him, that the properties are proceeds of crime and (b) recording such reasons in" ,,,

writing; the same officer can on mere suspicion pass orders for freezing the properties without recording reasons. Further, there are strict" ,,,

timelines provided under the PMLA. The orders of provisional attachment and/or seizure and/or freezing cannot extend beyond the period of ,,,

180 days. The Director of the Enforcement Directorate (or the officer authorized by him) is required to file a complaint by seeking extension ,,,

of the period of retention from the adjudicating authority within a period of thirty days from passing such order. However, this safeguard" ,,,

would also be rendered meaningless if the Enforcement Directorate's contention is to be accepted; the Directorate could "as has been,,,

done in this case " freeze the assets without recording reasons and without making any application or complaint to the Adjudicating,,,

Authority. This Court is unable to accept that even in cases where the Director of the Enforcement Directorate has reasons to believe that the,,,

property is proceeds of crime, he can provisionally attach the same only for a period of one hundred and eighty days, but in cases where he",,,

has mere suspicion that the property in question is proceeds of crime, he can without recording any reasons, without issuance of any notice",,,

and without any obligation to make a complaint/ application in this regard to the Adjudicating Authority, pass an order freezing the property",,,

for an indeterminate period. This interpretation would militate against the scheme of the PMLA as enacted by the Parliament.,,,

71. With much respect to the view of the Honâble Gujarat High Court, this Court is unable to agree with the view as expressed in Paresha",,,

G. Shah v. State of Gujarat and Ors. (supra). An order of freezing under Section 102 of Cr.P.C. cannot be considered to be in aid of order of,,,

provisional attachment passed under Section 5(1) of the PMLA or an order of seizure and/or freezing of property under Section 17(1A) of,,,

the PMLA. Both the orders under Section 5(1) and under Section 17 of the PMLA are orders of interim nature and are operative for a,,,

limited period till pending adjudication under Section 8 of the Act and further confiscation of the property. Orders of freezing of property,,,

passed under section 17(1A) of the PMLA or provisional attachment are by their nature provisional orders that require confirmation. Such,,,

powers are exercised in emergent situations warranting passing such orders. The contention that an order of provisional freezing is in aid of,,,

provisional attachment is plainly unpersuasive.,,,

72. It is possible that prior to acquiring any material providing the Enforcement Directorate any reason to believe that any property is a,,,

proceed of crime, the concerned officers may entertain a suspicion that property in question represents proceeds of crime; but that does not",,,

entitle them to freeze the property, interdict transactions and perhaps bring a person's business to a standstill. The nature of the power of",,,

seizure contemplated under the provisions of Cr.P.C. is drastic and exercise of such powers is likely to have severe adverse effects on the,,,

person concerned; thus, the parliament in its wisdom did not confer upon the Enforcement Directorate, any powers to attach or freeze assets",,,,

on a mere suspicion.,,,,

73. The learned counsel appearing for the Enforcement Directorate has also referred to the decision of the Supreme Court in V.T. Khanzode,,,

and Ors. v. Reserve Bank of India and Anr.: (1982) 2 SCC The said decision has no application in the facts of the present case. In that,,,

case, the petitioners had challenged the circular issued by the Reserve Bank of India whereby it had decided to combine the seniority of all",,,,

officers. The petitioners had contended that such conditions of service could not be framed by administrative circulars but necessitated,,,

framing Regulations under Section 58 of the Reserve Bank of India Act, 1934. The Supreme Court repelled the said contention and held",,,,

that under Section 7(2) of the Act, the Central Board had the power to provide for service conditions of the bank staff by issuing",,,,

administrative circulars as long as they did not impinge upon the Regulations made under Section 58 of the said Act. The power of an,,,

employer to fix service conditions cannot be equated to police powers.,,,,

74. In view of the above, the contention that officers of the Enforcement Directorate could issue orders of freezing under Section of Cr.P.C.",,,,

is rejected and the communications issued by the Enforcement Directorate to BSE are, plainly, without authority of law.â??",,,,

28. Scheme of Section 8(3) of PMLA,,,

a) Section 8(3)(a) of PMLA, originally provided that confirmation of attachment by Adjudicating Authority would continue during the pendency of",,,,

proceedings relating to scheduled offence before a court and becomes final after guilt of person is proved in the trial court in the said scheduled,,,

offence. Thus, finality of attachment even after confirmation by Adjudicating Authority was dependent upon the pendency of proceedings relating to",,,,

scheduled offence and achieving finality of judgement in such case and not otherwise. Subsequently, there was an amendment incorporated in the said",,,,

provision. The same was applicable w.e.f. 15.2.2013.,,,,

b) With effect from 19.04.2018, an amendment was brought in Section 8(3)(a)

that attachment would continue during investigations for a period not",,,
 exceeding 90 days or pendency of proceedings relating to any offence under PMLA before a court.,,,

c) It is evident from the said provision that investigation has to be completed within a period of 90 days as otherwise there will be no attachment.,,,

d) The latest amendment in PMLA has fixed the limitation of 365 days as limitation of period for investigation. The said amendment is yet to be,,
 notified.,,,

e) Section 45 of PMLA provides that special courts shall not take cognizance of any offence under PMLA, except upon a complaint in writing made",,,
 by â?"",,,

(i) The Director; or,,
 (ii) Any officer of the Central Government or State Government authorized in writing in this behalf by the Central Government by a general or a,,
 special order made in this behalf by that Government.,,,

f) Therefore, criminal complaint before court for punishing offence u/s 3 & 4 of PMLA has to be by way of a complaint in writing by the Director or",,,
 any other officer authorized by the Central/State Government.,,,

g) Section 44(1)(b) of PMLA underwent an amendment where the words â??upon perusal of police report of the case(s) which constitute an,,
 offenceâ? was deleted and thus by deletion, it is clear that cognizance of offence u/s 3 PMLA can be taken only upon a complaint in writing and not",,,
 on a Police report, i.e. charge sheet filed by Police u/s 173(5) Cr.PC. PMLA does not define â??complaintâ? but â??complaintâ? is defined under",,,
 Section 2(d) Cr.PC as allegation made orally or written to be Magistrate for taking action against the persons who have committed the offence.,,,

29. PMLA is a Special Act. The provisions of the said Act are mandatory. They have to be applied as it. Being an independent Act, no different",,,
 meaning can be given. They have to be interpreted as it is.,,,

30. It is correct that the power to attach or seize or freeze a property can be exercised only if the officer concerned has material in his possession,,
 who has a reason to believe that property sought to be attached or seized is proceed of crime or related to the crime irrespective as to whether,,
 complaint under the schedule offence and prosecution complaint under PMLA is

filed or not against the party who has in his possession of proceeds,,,
of crime. But, the situation where the investigation was being done on the basis
of a mere suspicion against the party where the statute provides",,,,
prescribed period of time and mandates the condition that it would continue
during investigation for a period not exceeding ninety days. Having in,,,
possession of proceed of crime and period of investigation on the basis of
suspicion are two different situations.,,,,

31. The law laid down earlier where the time limit was not provided may not be
applicable because of change of situation by virtue of amendment,,,
which was carried on 19.4.2018, the specific period is prescribed in the Act for
the purpose of investigation. Earlier, no specific timeline was set to",,,,
complete the investigation and to file the prosecution complaint. The mandates
now is changed whereby it is mandated that the retention shall continue,,,
during investigation for a period not exceeding ninety days, as provided under
section 8(3)(a) of the Act or under the corresponding law of any other",,,,
country, before the competent court of criminal jurisdiction outside India. The
second part of the provision is not applicable in the absence of such",,,,
situation.,,,,

32. In the light of above, the appeal is allowed. The impugned order dated
02.04.2018 against the appellant is set-aside.",,,,

33. No costs.,,,,