

(2016) 01 KAR CK 0348

In the Karnataka High Court

Case No : Writ Petition No. 14649 of 2014 (GM-RES) with W.P. No. 19732 of 2014 (GM-RES)

K. Sowbaghya

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Citation : (2016) 338 ELT 65

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : S/Shri Rajeev Awasthi for Kiran S. Javali and Chandrashekara K, Advocates, for the Petitioner; S/Shri Prabhuling K. Navadgi, Addl. Solicitor General for Krishna S. Dixit, Assistant Solicitor General and Mahesh S, Special Public Prosecutor, for the Respond

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—These petitions are disposed of by this common order.

2. The brief facts of the case in the first of these petitions is as follows :

The petitioner's husband and son are politicians and businessmen. The Karnataka Lokayukta Police are said to have registered a case in Crime No. 57/2010 against the petitioner's husband, her son and several others alleging offences punishable under Sections 7, 8, 12, 13(1) & (2) of the Prevention of Corruption Act, 1988, read with Sections 419, 420, 465, 468, 471 read with Section 120B of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC", for brevity).

As the Charge sheet disclosed the commission of "Scheduled Offences", as contemplated under the provisions of the Prevention of Money Laundering Act, 2002, (hereinafter referred to as "the PML Act", for brevity), the Directorate of Enforcement, Government of India has registered a case under the PML Act. A

provisional Order of Attachment passed in respect of movable and immovable properties standing in the name of the petitioner and other family members of the petitioner's husband having been confirmed by the competent authority, in proceedings duly initiated under the PML Act, the present petition is filed.

In so far as the connected petition in WP 19732/2014, is concerned, it is by the same petitioner as in the first of these petitions, to contend that in spite of a restraint order passed in the first of these petitions, restraining the respondent from proceeding to take action pursuant to the Amendment No. 2/2013 of the PML Act, the respondent having instituted a complaint before the Special Court, before the restraint order could be served on the respondent, and the Special Court having taken cognizance of the offences alleged, has sought to file the second of these petitions, with an additional prayer seeking the quashing of the order of the Special Court, taking cognizance.

The common feature in these petitions is that the petitioner seeks to challenge the vires of certain provisions of the Prevention of Money Laundering Act, 2002 (Central Act No. 15 of 2003) as amended by the Prevention of Money Laundering (Amendment) Act, 2005 (Central Act No. 20 of 2005) and as further amended by the Prevention of Money Laundering (Amendment) Act, 2009 (Central Act 21 of 2009) and further amended by the Prevention of Money Laundering (Amendment) Act, 2013 (Central Act No. 2 of 2013).

3. The historical background to the enactment of the Prevention of Money Laundering Act, 2002 (Hereinafter referred to as the PML Act, for brevity) is that the General Assembly of the United Nations passed a resolution as on 14-12-1984, to initiate preparation of a draft convention about illicit traffic in Narcotic drugs. The Convention, to which India is a party, called for preventing of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such crimes. The PML Act is enacted keeping in view the main purpose of attaching and confiscating the proceeds of crime which are derived or obtained from the commission of offences having cross border implications. As such proceeds of crime are used for terrorist financing, which can cause a serious threat to the security of the country and pose a threat to the economy of the country as well.

It is contended by the learned counsel Shri Rajeev Awasthi, appearing for the counsel for the petitioners that the phrase "proceeds of crime" is defined under Section 2(u) of the PML Act, to mean 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 the property. A "scheduled offence" is again defined under the Act, to mean an offence falling under Part-A, or Part-B or Part-C of the Schedule to the Act.

Section 3 of the Act is the charging section. The Section read as follows prior to the 2013 Amendment Act :

"3. Offence of money-laundering. - Whosoever directly or indirectly attempts to

indulge or knowingly assists is a party or is actually involved in any process or activity connected proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering."

Post amendment, it reads as follows :

"3. Offence of money-laundering. - Whosoever directly or indirectly attempts to indulge or knowingly assists is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering."

It is pointed out that the main requirement to proceed under Section 3 was the presence of mens rea. But by virtue of the amendment substituting the phrase - "with the proceeds of crime and projecting" - with the phrase "concealment, possession, acquisition or use and projecting or claiming" - the Section has armed the competent officers under the Act with unfettered powers to proceed against persons who may have innocently acquired, what is possibly proceeds of crime. There is now no need to demonstrate the presence of mens rea to prosecute any person accused of money laundering. This circumstance was never intended by the legislation nor is it in consonance with the Scheme of the Act. Shri Awasthi would therefore contend that the amended Section is violative of Articles 14 and 21 of the Constitution of India.

It is next contended that the Scheme of the Act envisaged two parallel proceedings. Firstly, in terms of Section 5 of the Act, if the authorised officer under the Act has reason to believe that any person is in possession of any proceeds of crime he may provisionally attach the property for a period of 180 days, as an urgent measure to prevent the property from being concealed, transferred or dealt with in any manner. Secondly, there follows prosecution and punishment under Sections 3 & 4 of the PML Act.

It is pointed out that till the year 2009, Section 5 contained three sub-clauses under sub-section (1), which empowered a competent officer under the Act to provisionally attach property, as referred to above, if :

- (a) any person was in possession of any proceeds of crime;
- (b) such person had been charged of having committed a Scheduled offence and
- (c) such proceeds of crime were likely to be concealed, transferred or dealt with in any manner which would result in frustrating any proceedings relating to confiscation of such proceeds of crime.

The first proviso to sub-section (1) makes it mandatory that no attachment order shall be made unless in relation to a Scheduled offence, a report had been forwarded to the Magistrate under Section 173 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as the "Cr.PC", for brevity).

As Clause (b) above ensured that the property of a person could be attached

only if he had committed a Scheduled offence, and to obviate this requisite, in the year 2009, a second proviso was added which reads as follows :

"(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed :

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to the 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 that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country :

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe the reasons for such belief to be recorded in writing, on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act."

This was obviously an amendment which was clarificatory in nature - vis-a-vis, Clause (b) above. Now as per the 2013 Amendment, clause (b) of sub-section (1) of Section 5 has been omitted and the erstwhile clause (c) is transposed as clause (b). In the result, the second proviso is left in a vacuum and is incongruous. It is contended that the 2013 Amendment is contrary to the legislative Scheme and has denuded the basic protection granted to persons as provided under the second proviso to Section 5(1) which empowers officers to attach property of any person even without there being a charge sheet under Section 173 of the Cr.P.C. It places him in a worse position than a person who is accused of having committed a Scheduled offence - where the attachment could take place only if there was a final report under Section 173 of Cr.P.C. It is also pointed out that the expression employed in the Second proviso is "attachment" and not "provisional attachment", as in the case of an accused in a Scheduled offence. And the limit of 180 days is also absent, while it is available under the first proviso. This, it is contended, is again violative of Articles 14 and 21 of the Constitution of India.

It is contended that Section 8 mandates that any provisional attachment order made under Section 5(1) of the PML Act would only remain valid upto 180 days. During the said period the complaint was to be filed under Section 5(5) of the

Act, before the Adjudicating Authority, who after issuing notice and affording a hearing, would either confirm the provisional attachment order or if no order is passed within 180 days the attachment order shall cease to have any effect as per Section 8(3). If the adjudicating authority confirms the order and holds that the property is involved in money laundering, he could confirm the attachment order, if the conditions under Section 8(3) are satisfied and the order of confirmation of provisional attachment, which order of attachment shall :

(a) continue during the pendency of the proceedings relating to any Scheduled offence before the court, and

(b) would become final after the guilt of the person is proved before the Trial Court and the order of the Trial Court becomes final.

It is pointed out that Section 8(5) as it existed under the 2009 Amendment Act provided that if a person is acquitted in the Scheduled offence, the attachment of property would cease to have effect, meaning thereby - if there was no crime there could be no question of the existence of "proceeds of crime".

It is hence contended that under the 2013 Amendment Act the entire Scheme is overhauled, the Act is rendered a stand alone legislation. This is evident from the fact that the amendment corresponding to Section 8(5), Section 8(6) is introduced, whereby even if the person is acquitted of a Scheduled offence, he could still be prosecuted under Sections 3 & 4 of the PML Act. This was never the intention of the legislation as originally envisaged. It is contended that if the genesis of action under the PML Act is the commission of the Scheduled offence, as no action under the Act could be initiated unless there was a report under Section 173 of the Cr.P.C, in relation to the Scheduled offence - then it followed that if there was an acquittal of the alleged Scheduled offence it would have a direct bearing on the proceedings under the PML Act; Hence it is inexplicable as to how it is envisaged that there could be prosecution under the PML Act when the proceeds of crime, which was certainly a reference to generation of proceeds by the commission of a Scheduled offence, could no longer be considered as "proceeds of crime", on acquittal in the case pertaining to the Scheduled offence.

It is further contended that as per the 2013 Amendment, if the Adjudicating Authority confirms the provisional attachment order, the said attachment has to pass the test under Section 8(3). And as amended now, the attachment can continue :

(a) during the pendency of the proceedings relating to any offence under the PML Act, and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 of the PML Act.

Further, as per the amended Section 8(5), where upon conclusion of the trial for an offence under the PML Act, the Special Court finds that the offence of money laundering has been committed, it shall order such property to be confiscated to

the State. This procedure results in a situation where even before a statutory remedy of appeal attains finality, no sooner there is a conviction under the PML Act, the Special Court is empowered to pass an order of confiscation, unlike under the 2009 Amendment. It is contended that the same takes away a valuable right and inflicts serious injury to the right to possess property. And is violative of Articles 14 and 21 of the Constitution of India.

It is contended that Section 9 provides for vesting of property in the Central Government. As per the 2009 Amendment, no property could be finally confiscated unless an order of confiscation was made under sub-section (6) of Section 8, which mandated that unless the person was proved guilty of a Scheduled offence and that order attained finality, no property could be finally confiscated. However, under the 2013 Amendment, even if the Adjudicating Authority confirms the provisional attachment order and the guilt is recorded under Sections 3 & 4 by the Special Judge without that order becoming final, confiscation is provided for.

It is further contended that Section 17 provides for Search and Seizure of premises, while Section 18 provides for Search of persons. Till the year 2009, if action under Section 17 and 18 was initiated it was required, as a condition precedent, that there be a report under Section 173 of the Cr.P.C. in relation to a Scheduled offence filed before the competent court. However, under the 2013 Amendment, action under Sections 17 and 18 could be taken merely if a report has been forwarded to a Magistrate under Section 157 of the Cr.P.C. This, it is contended, is blatantly incongruous. In that, when the initiation of proceedings under the PML Act contemplates a report under Section 173 of Cr.P.C. being on record, it is inexplicable that for action in terms of Section 17 & 18 the stage could be altered to the FIR stage. The plea of urgency for such preceptitative action would not justify the same. Such action would always follow the action already initiated in relation to a Scheduled offence and the investigating agency would be expected to seize or recover such incriminating material, which be very much a part of the charge sheet, a copy of which is forwarded to the Enforcement Directorate for action under the PML Act. At that stage, after scrutiny of the report, the Enforcement Directorate would reach further conclusions for initiation of appropriate action under Sections 17 & 18 of the PML Act.

Section 19 of the PML Act provides for power of arrest. It is contended that such power cannot be exercised unless the person is found guilty of having committed a Scheduled offence. Such arrest would inflict bodily injury, when the most immediate or urgent situation as contemplated under the Act is the attachment of properties that could be construed as derived and obtained from proceeds of crime, which is a civil consequence and does not inflict bodily injury. It is also contended that the power of arrest under the PML Act is not circumscribed by any other procedural requirement as in the case of arrest by recourse to the Cr.P.C., and it is outside the ken of judicial scrutiny.

It is contended that under Section 23 of the Act a presumption in interconnected transactions is contemplated, where money laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money laundering, then for purposes of adjudication or confiscation, by virtue of the 2013 Amendment is not dependant on the proceeding under Section 8, unlike under the 2009 position - where if a person is acquitted in respect of the Scheduled offence the presumption with regard to inter-connected transaction would cease to exist.

It is also contended that Section 24 of the Act which prescribes the burden of proof casts the burden on the accused to establish that the alleged proceeds of crime are untainted property by creating a presumption in favour of the Authority or the Court. This is opposed to the first principle of criminal law apart from being violative of Article 14 and Article 21 of the Constitution of India.

In so far as Section 44 of the Act is concerned, under the 2013 Amendment it is provided that the trial in respect of the Scheduled offence as well as the offence under Sections 3 and 4 are made triable by the Special Court constituted under the PML Act.

It is contended that it is an established principle of law that the evidence tendered at one trial could not be considered or appreciated for purposes of another trial. It is wholly incomprehensible as to the wisdom of the two cases proceeding simultaneously before the same court. This is especially so as under the 2009 Amendment if a person was acquitted in respect of the Scheduled offence, the attachment ceases to have any effect and a person could not also be prosecuted under Sections 3 and 4. It is pointed out that unless the trial in respect of the Scheduled offence is completed, it is difficult to countenance the prosecution of a person under Sections 3 & 4 of the PML Act. Or for that matter there could be a situation where the trial under Sections 3 & 4 is completed and a person is convicted, but is acquitted for the Scheduled offence.

It is contended that under sub-section (2) of Section 50 of the Act, the officers named therein are empowered to summon or call any person for the purpose of recording his statement and in terms of sub-section (4), the same is made admissible under the Evidence Act, 1872. This would imply that any and whatever material on being produced before the Special Court, a conviction could follow on the basis of a statement of a person which may have been recorded under duress - which is however made admissible under the Evidence Act. This is a draconian provision and not only inflicts injury on the person but is also grossly violative of a person's fundamental rights.

It is contended that though Section 62 of the Act provides for punishment in the event of a vexatious search, this in practise would be illusory - for Section 64 dilutes the rigour of Section 62 by providing for the requirement of a sanction by the Central Government, which is again left to the discretion of the Central Government, without which no court is empowered to take cognizance of an

offence under Section 62.

It is also pointed out that Section 65 of the Act provides that the provisions of the Cr.P.C., in so far as the same not inconsistent with the provisions of the PML Act, would be applicable to the proceedings under the PML Act. This in effect would enable the Officers under the PML Act to proceed with unfettered vigour and flout the fundamental rights guaranteed to a citizen. In that, a criminal case can be prosecuted without there being any First Information Report, without an investigation, without the need for any case diary and without the supervision of any judicial authority. The first stage of judicial scrutiny under the PML Act arrives only when a complaint is filed under Sections 3 & 4 of the Act, before the Special Court.

4. The learned Counsel for the petitioner places reliance on the following authorities :

1. Rajiv Chanana v. Deputy Director, W.P.(C). 6293/2014, dated 19-9-2014 of Delhi High Court [2015 (316) E.L.T. 422 (Del.)];
2. Indian Bank v. Govt. of India, 2012 Writ LR 702 of High Court of Madras;
3. M/s. Ajanta Merchants Pvt. Ltd. v. Directorate of Enforcement, Crl. M.C. No. 5581/2014, dated 9-4-2015 of Delhi High Court;
4. Arun Kumar Mishra v. Directorate of Enforcement, Crl. M.C. 5508 of 2014, dated 9-4-2015 of Delhi High Court;
5. State of Punjab v. Bhajan Kaur, (2008) 12 SCC 112;
6. M/s. Punjab Tin Supply v. Central Government, AIR 1984 SC 87;
7. Madiseti Bala Ramul v. Land Acquisition Officer, (2007) 9 SCC 650;
8. Anant Gopal Sheorey v. The State of Bombay, AIR 1958 SC 915;
9. Sangram Singh v. Election Tribunal Kotah and Another, AIR 1955 SC 425;
10. Sharif Ud Din v. Abdul Gani Lone - AIR 1980 SC 303;
11. The Workman of M/s. Firestone Tyer & Rubber Co. of India Private Limited v. The Management and Others, AIR 1973 SC 1227;
12. K.S. Paripoornum v. State of Kerala - AIR 1995 SC 1012;
13. Dr. Subramaniam Swamy v. Director CBI, JT - 2014 (7) SC 474;
14. Globle Energy v. Central Electricity Regulatory Commission, AIR 2009 SC 3194;
15. Shreya Singhal v. Union of India, AIR 2015 SC 1523;
16. Vijay Madanlal Choudhary v. Union of India - 2015 Law Suit (MP) 1105, dated 20-10-2015;

It is hence contended that the amendments brought to the PML Act, after it stood amended by the 2009 Amendment Act, have rendered the provisions extremely onerous and are clearly in violation of the fundamental rights of the petitioners apart from the fact that the said provisions are inconsistent and contrary to other provisions of law, both substantially and procedurally and hence seeks that the petitions be allowed as prayed for.

5. Per contra, Shri Prabhuling K. Navadgi, learned Additional Solicitor General of India, appearing for the Union of India, contends as follows :

The petitioner has called in question the constitutional validity of Sections 2(1)(u), 3, 5, 8, 9, 17, 18, 19, 23, 24 and 44 of the Prevention of Money Laundering Act, 2002 (as amended from time to time).

In so far as Section 3 is concerned, it is the contention of the petitioner that the section is too widely worded so as to include innocent persons and therefore it is arbitrary, offending Article 14 of the Constitution of India and hence the same is liable to be struck down.

A bare perusal of the definition would go to show that the word "knowingly" is advisedly used in Section 3 so as to ensure that an element of mens rea is present to attract the offence of money laundering. In these circumstances, the question of any innocent person being prosecuted for the said offence does not arise.

At any rate, even if in a given case, a person who is not guilty of money laundering is prosecuted erroneously then the remedy is to move the appropriate forum, for termination of such prosecution and not for striking down the Section itself.

Prior to 2013, the definition of Section 3 of the Money Laundering read as under :

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

The Financial Action Task Force (FATF) an inter-Governmental body for development and promotion of policies to combat money laundering and terrorist financing, which ensures adherence to its standards by making sure that countries across the world bring about legislative and regulatory reforms in these areas.

It is contended that FATF Mutual Evaluation (ME) Team made a Mutual Evaluation Report in 2009 and suggested certain changes in so far as definition of Money-Laundering is concerned. It suggested that, among other things, the definition of Money-Laundering also should include possession, acquisition and use as well.

The said recommendations were referred to the Standing Committee, Finance, seeking suitable changes in the Act. The Standing Committee, Finance, in its

56th Report submitted the Prevention of Money Laundering (Amendment) Bill, 2011 on 9th May, 2012 in both the Houses of Parliament. It is in this Report, the Standing Committee on Finance observed that there is a necessity of enhancing the definition pursuant to the mutual evaluation done by FATF and Article 6 of the Palermo Convention.

On the Report being tabled, the definition included possession, acquisition, concealment in the 2013 amendment. No exception whatsoever could be taken by the petitioner in so far as the present definition is concerned. It is contended that except for making a statement that it is arbitrary, the petitioner has not shown under what circumstances the same is liable to be struck down as unconstitutional.

Attention is drawn to Attorney General of India v. Amratlal Prajivandas, reported in (1994) 5 SCC 54 in support of the above proposition.

Therefore it is contended that the assertion that Section 3 of the Act is too widely worded to include innocent persons, is liable to be rejected.

In so far as the challenge to the constitutional validity of Section 2(1)(4) is concerned, no factual foundation or legal argument is advanced to show as to how the said provision is unconstitutional. The definition of "proceeds of crime" is defined as being the same as, any property derived or obtained as a result of criminal activity relating to a scheduled offence.

The scheduled offence is itself defined in Section 2(1)(y) as offences mentioned in Part A, Part B and Part C of the Schedule to the Act. The definition is necessary since the whole object of Money laundering is to stem the commission of offence relating to ill gotten wealth which will be pumped into the economy, thereby destabilizing the economy of the country.

In fact, in the Palermo Convention, the comity of nations decided that heinous crimes, including crimes arising out of corruption by persons holding public office, should not be allowed to launder wealth and it had become absolutely necessary to criminalize each of the offences. Therefore, the definition "Proceeds of Crime", forms the basis of the Act and no exception whatsoever could be taken by the petitioner.

The amended Section 5 is called into question on the ground that it gives wide power to the authorities to even attach properties of persons who are not accused of scheduled offences. It could be seen that Section 5 of the Act, as it stands after the amendment, contemplates provisional attachment of the property against three categories of persons;

- (1) Persons who are accused of having committed scheduled offence.
- (2) Persons who are accused of having committed the offence of money laundering.
- (3) Persons who come in possession of "proceeds of crime" without either having

committed scheduled offence or not holding the proceeds of crime knowingly.

Whereas Section 5(1)(a) of the Act contemplates that attachment could be proceeded against any person in possession of any proceeds of crime. That is to say, that if a person comes in possession of proceeds of crime even without any offence of money laundering, attachment of such property in his hands could be effected.

Proviso (1) contemplates that before such attachment is done, there has to be proceeding in respect of scheduled offence before the Competent Court. Proviso (2) contemplates that if an officer has reason to believe that any property of any person is involved in money laundering, he can then attach the property. Section 5(1)(a) and Proviso (2) of Section 5(1) operate in a situation where a person comes in possession of any proceeds of crime without actually being involved in money laundering or in a scheduled offence. In such a situation, as long as there is a proceeding in respect of any some scheduled offence, the authorities could attach such property if such properties are involved in money laundering. Whereas under proviso (2) of Section 5(1), the authority contemplated under such proviso is expected to attach the property, if it is found that the property is involved in money laundering. The difference between Proviso (1) of Section 5(1) and Proviso (2) of Section 5(1) is that in case there is an urgency and if the officer concerned is of the opinion that if immediate attachment of the property is not done, it is likely to be taken away and would not be available for confiscation, he could resort to Proviso (2).

At any rate, the attachments are for a limited period. This is made clear from a reading of sub-section (3) of Section 5, which contemplates that attachments effected under sub-section (1) would cease to have effect after the expiry of the period specified in that sub-section, which is 180 days. Apart from this, necessary safeguard is provided under the Act as the Director should send the order of attachment to the Adjudicating Authority immediately and a complaint has to be filed within a period of 30 days from the date of attachment under Section 5(5) of the Act. The provisional attachment itself will be decided before the adjudicating authority, who again has to prima facie decide, whether the provisional attachment requires to be confirmed. The authority after issuing notice to the persons concerned would decide upon the confirmation of the attachment. In these circumstances, the argument that Section 5(1) and (2) have become redundant or there is no period specified in Proviso (2), is liable to be rejected.

As regards Section 8 of the Act, it contemplates confirmation of attachment proceedings made under Section 5 of the Act by the Adjudicating Authority. The said provision is in accordance with law and meets the requirement of constitutional provision. It has been stated by the petitioner that Section 8 of the Act is unconstitutional in so far as it is not made dependent upon the conviction of a scheduled offence, but conviction is based on the offence of money laundering. The Financial Action Task Force, which undertook Mutual Evaluation

exercise made 40 recommendations. One of the recommendations was that the attachment proceedings cannot be made contingent upon the commission of predicate offence/scheduled offence. It indicated that money laundering is an independent offence. The said recommendations were made by the FATF as under :

"2. Legal system and related institutional :

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

Although the confiscation regime in India allows for a broad spectrum of seizure and forfeiture measures in the AML/CFT context, it is not fully comprehensive and does show a number of (legal) deficiencies. Therefore it is recommended that :

? Legal measures are taken to allow for confiscation of the money laundered as subject of the ML offence and which is not contingent on a conviction for the predicate offence (stand-alone ML offence)."

The Standing Committee of Finance considered the recommendations of the FATF and having regard to the fact that India became a member of FATF and an obligation is cast upon it by making necessary changes in the domestic law so as to bring about the money laundering legislation in consonance with the international policy, necessary changes were suggested. It can further be seen that the changes now brought about under Sections 5 and 8 of the Act is clearly in accordance with the object of the Act and would result in a fair dispensation of the attachment proceedings. Under the scheme of Sections 5 and 8 all the attachment proceedings could be initiated against three types of persons.

(a) Persons who are accused of a scheduled offence.

(b) Persons who are accused of having committed an offence of money laundering alone.

(c) Persons who come in possession of the proceeds of the crime.

The present provision which makes the attachment proceeds to be dependent upon the offence of money laundering is fair and is to be upheld.

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

property would revert back to him.

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

It is further contended that pre-trial confiscation is a well recognised mechanism in order to stem ill-gotten wealth. Though under the present enactment, there is no pre-trial confiscation, but only attachment which is temporary in nature, it would result in confiscation only after conclusion of the trial.

Reliance is placed on *Yogendra Kumar Jaiswal v. State of Bihar and Others* (Civil Appeal Nos. 6448-6452 of 2011, decided on December 10, 2015), which was a decision considering provisions relating to confiscation of proceeds prior to conclusion of the trial.

It is pointed out that Supreme Court has upheld even a pretrial confiscation, whereas, in the present case, it is just a pre-trial attachment of properties, which would be confiscated only after the guilt is proved and the offence is established under this Act. Therefore, Sections 5 and 8 being in accordance with law, the same are liable to be upheld.

The validity of Section 9 has been challenged on the ground that if adjudicating authority confirms provisional attachment order and guilt is recorded under Sections 3 and 4, there is provision for confiscation which denies a statutory challenge to that order. The said argument is not clear since even after an order of confiscation is passed there could be an appeal against the order of the Trial Court for offences under Section 3 before the Appellate Court. Section 9 is only consequential and if any person is held guilty it is only natural to confiscate his property in favour of the State, which meets the object of the Act.

It is urged that the contentions of the petitioner in assailing the validity of Sections 17, 18 and 19 are two fold, namely :

(a) that the persons, who have been empowered to arrest are not police officers under the Act;

(b) for effective search, seizure and arrest, only a report under Section 157 of Cr.P.C. needs to be forwarded. Whereas for attachment of property final report under Section 173 of the Cr.P.C. is required.

Both the arguments, being fallacious, are liable to be rejected.

The power of arrest, search and seizure are considered an important tool in any investigation. They cannot be considered as being foreign in matters relating to economic offences. In fact, such provisions are contained in the following enactments.

(a) Customs Act, 1962

(b) Prevention of Food Adulteration Act, 1954

(c) Railway Property (Unlawful Possession) Act, 1966.

In so far as Section 65 of the Act is concerned, a reading of the same makes it clear that arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings are subjected to power of jurisdictional Court as contemplated under the provisions of the Cr.P.C.

5. The further argument advanced by the petitioner is that, a mere report under Section 157 of the Cr.P.C. being sufficient for effecting search, seizure and arrest even before pre-charge-sheet stage and hence the same being arbitrary, is not correct. It is settled law that investigation is prior to filing of charge sheet under Section 173 of Cr.P.C. The power of search, seizure and arrest is a part of investigation to detect the crime and apprehend the accused and prevent evidence being destroyed. All these proceedings are therefore required to be done prior to filing of charge sheet itself. Hence, filing of FIR is justified. No prejudice would be caused to any accused if search, seizure and arrest is made, since it is controlled by the other provisions of the Cr.P.C.

Section 19 has been assailed on the ground that "no judicial body is provided to scrutinize initial action as in the case of scheduled offences". This contention is wholly incorrect since Section 19(3) itself provides that every person arrested under the Act would be produced before the Judicial Magistrate within 24 hours.

Apart from this, Section 65 of the Act clearly states that provisions of Criminal Procedure Code would be applicable including the provisions for investigation carried out under the Act. Therefore the argument that provisions of arrest, etc. are not subjected to judicial scrutiny is incorrect. The further argument that there is no necessity of arrest is not correct as the authorised officer has power to arrest on the basis of material in his possession and if he has reasons to believe that the person is guilty of an offence punishable under this Act.

It is contended that Section 24 has been assailed on the ground that it places initial burden upon the accused and violates the principle of Criminal Jurisprudence relating to right of the accused to remain silent. The said Section was also called in question before the Andhra Pradesh High Court in the case of B. Rama Raju v. Union of India (2011) 164 Comp Cases 149 AP, and it is contended that the decision is a complete answer to the challenge.

That apart, the very nature of the offence of money laundering places the initial burden necessarily on the accused, because it is for the accused to explain the source of his property of which he is in possession. After he discharges the same, the burden shifts back upon the prosecution.

There are similar provisions relating to burden of proof in various enactments such as Section 20 of Prevention of Corruption Act, 1988, Section 139 of

Negotiable Instruments Act, 1881 and Section 53 of Prevention of Terrorism Act, 2002.

It is contended that Section 43 provides for creation of Special Courts and for the trial of such cases expeditiously as a part of legislative mechanism to ensure that the offence of money laundering is stemmed at the earliest. The same is valid and not liable to be struck down.

Section 44 now provides for both the offences of money laundering and of scheduled offences to be tried by the Special Court, if the same is connected to Sections 3 and 4. This would prevent conflict of orders and ensures a composite trial. It has been argued that unless the scheduled offence is established before the Competent Court, the offences of money laundering cannot be tried since the person who is acquitted for money laundering cannot be tried for the scheduled offences. It is contended that this argument is incorrect. It requires to be seen that after the 2013 amendment both the offences are to be tried by the same Court. This has been made clear by Section 44(1)(a). Further Section 44(1)(c) now provides for transfer of a case for a scheduled offence to the court where the proceeding for money laundering is tried.

This provision entirely takes away the argument of the petitioner that one trial has to wait until the completion of the other trial. If the said contention is accepted, Section 44(1)(a) would stand defeated, as the provision is made exactly to meet such a requirement. The contention that prosecution for the offence of money laundering cannot be tried until the person is found guilty for the scheduled offence, assumes that both the accused would be the same person.

It would be well within the rights to show before the Court for prosecution of money laundering that a person who is not accused of a scheduled offence could be punished for knowingly assisting including concealment, possession, acquisition or projecting proceeds of crime, as untainted property.

In a situation in which the petitioner contemplates that a person who is acquitted of the scheduled offence cannot be prosecuted for an offence of money laundering, is also not correct since the judgment of the court acquitting for a scheduled offence would be relevant evidence for the proceedings of money laundering offences. Further as is being contemplated money laundering is independent and a stand alone offence. In these circumstances, it is contended that the said argument of the petitioner is liable to be rejected.

There could also be a situation that where a person accused of a scheduled offence may not be available on account of his death or if he absconds. There could also be cases where the accused may be acquitted on technical grounds. In these circumstances, it cannot be said that the offence of money laundering cannot be proved.

It has been stated that Section 50 provides for recording of statements by officers concerned in aid of investigation under the Act. The petitioner further has

stated that this could be the basis for conviction. This is wholly incorrect. There cannot be a conviction solely on the basis of statement made to an officer and unless there is a confession as provided under Section 164 of the Code of Criminal Procedure, 1973; Any statement recorded before a quasi-judicial body cannot be the basis for conviction.

It is contended that having regard to the contentions raised in the writ petition, the following principles are also required to be examined.

[A] That the provisions of the Act are capable of being misused.

Merely because the provisions contemplate measures relating to search, seizure and arrest, the same cannot be considered draconian. This could be seen from the following :

- (a) The provisions of attachment is not final, but it is only provisional in nature;
- (b) The officer concerned, before effecting attachment, has to record reasons only on the basis of the material in his possession;
- (c) The matter once again goes before the adjudicating authority, which re-examines the entire issue and affords hearing to both sides including the persons whose properties have been attached;
- (d) Any person aggrieved by the order of adjudicating authority, has a right to file an appeal under Section 26 of PMLA.
- (e) The Appellate Authority consists of retired High Court Judges or retired Supreme Court Judges along with other members.
- (f) There is further provision of appeal before the High Court.
- (g) The proceedings in respect of offences for scheduled offences are tried by the Special Court and all other proceedings are subject matter of the result of such trials.

If any person falsely files a complaint or falsely arrests a person, he is liable for imprisonment. Having regard to the safeguards under Section 63, the liberty of an individual is adequately protected. Therefore, the enactment cannot be termed as arbitrary. Apart from this, the Hon''ble Supreme Court of India has enunciated the principle relating to arbitrariness and held that merely because the provision is liable to be misused, it cannot be a reason to strike down the same as unconstitutional in *People's Union for Civil Liberties and Another v. Union of India*, (2004) 9 SCC 580 and in the following :

- (i) *Manzoor Ali Khan v. Union of India and Others*, (2015) 2 SCC 33;
- (ii) *Sushil Kumar Sharma v. Union of India and Others* - (2005) 6 SCC 281;
- (iii) *Mehmood Alam Tariq v. State of Rajasthan* - (1988) 3 SCC 241; and
- (iv) *Sanjay Dutt v. State through CBI, Bombay (II)*—(1994) 5 SCC 410.

It is contended that the Constitutional Validity of any law is to be tested on the principles laid down in

(i) State of Bihar and Others v. Bihar Distillery Limited and Others - (1997) 2 SCC 453,

(ii) Bhanumati v. State of Uttar Pradesh through its Principal Secretary and Others, (2010) 12 SCC 1, and

(iii) State of A.P. v. Mc.Dowell and Co., (1996) 3 SCC 709.

It is further contended that the argument advanced that the provisions of money laundering contemplates prosecution of persons, who have acquired wealth from offences, which were not part of the schedule when the said offence was committed. In this regard, various High Courts have considered this aspect as in

(i) Hari Narayan Rai v. Union of India - W.P. (Cr.) No. 325 of 2010,

(ii) Hasan Ali Khan v. Union of India - Criminal Bail Application No. 994/2011,

(iii) Sanjay Kumar Choudhary v. Government of India, (2010) CrL.J. 1960, and

(iv) B. Rama Raju v. Union of India and Others, (2011) 164 Comp Cas 149 (A.P.).

It is also pointed out that the petitioner in the entire course of oral arguments has argued only on the questions of law and not on the facts. There is conspicuous silence as to the facts. It is contended that none of the questions of law raised apply to the present case *stricto sensu*. The petitioner, in the writ petition, has suppressed the fact that a prosecution complaint was filed by the respondent and the charge sheet was filed against other accused as well.

It is contended that the petitioners are unable to show as to how the impugned provisions are unconstitutional. It could be seen from the synopsis above that most of the actions taken by the respondent under the Act is prior to 2013 amendment itself. The provisions now assailed are not clearly established or demonstrated.

Hence Shri Navadagi seeks the dismissal of the petitions.

6. It would be useful to refer to and keep in view the background in which the PML Act came into being, in proceeding to address the rival contentions.

(i) On 14-12-1984, the General Assembly of the U.N. by a resolution requested the Economic and Social Council of the U.N. to request the Commission on Narcotic Drugs in its 31st Session, 1985, to initiate preparation of a draft convention about illicit traffic in Narcotic Drugs by considering the problem holistically on a priority basis. Eventually the U.N. Conference for Adoption of A convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (NDPS) met in Vienna and with participation of delegates of 106 States including India; specialised agencies; and representatives of Inter-Governmental Organisations; interested agencies and bodies drew up the U.N. convention

Against Illicit Traffic in NDPS. The conference adopted a draft of resolutions pertaining to exchange of information; provisional application of the U.N. Convention against Illicit Traffic in NDPS and provision of necessary resources to the Division of Narcotic Drugs and the Secretariat of the International Narcotic Board to enable discharge of the task entrusted to them under International Drug Control Treaties. The purpose of the contention was to promote cooperation among the parties and to more effectively address various aspects of illicit traffic in NDPS, having an international dimension. The Convention enumerated measures for incorporation as offences, conduct promoting NDPS and for confiscation of proceeds derived from offences established in relation to NDPS.

(ii) In 1990, the Financial Action Task Force (FATF - an inter-Governmental body, which sets standards, develops and promotes policies to combat money-laundering and terrorist financing with a membership of a number of countries and international organisations) drew up forty recommendations as initiatives to combat money-laundering and terrorist financing to provide an enhanced, comprehensive and consistent frame work of measures for combating money-laundering and terrorist financing.

(iii) The Palermo Convention (United Nations convention against transnational organized crime) was held from 12th to 15th of December, 2000 in Palermo, of which India is a signatory. Under this convention, all the nations were requested to adopt the comprehensive legislation to prevent and punish money-laundering.

(iv) Article 253 of the Constitution of India confers power on the Parliament to make laws for implementation of any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Article 253 of the Constitution of India reads as under :

"253. Legislation for giving effect to international agreements. - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

The PML Act was enacted in the year 2002 and came into effect from 1-7-2005. The Act has undergone four amendments - in the years 2005, 2009, 2013 and by the Finance Act, 2015 (with effect from 14th May, 2015) under Part VI thereof, respectively. The last of the amendments was not brought to the attention of this court by the counsel for the parties. The same however, is kept in view in considering the case of the petitioners, on merits.

7. Keeping in view the settled principles that while examining a challenge to the constitutionality of an enactment, the court starts with the presumption of constitutionality. And the endeavour would be to sustain its validity to the extent possible. The enactment is not examined to find defects of drafting, or the inexactitude of language employed. Nor can the enactment be struck down on the ground that the provisions are not found to be justified.

The petitioners have called in question the constitutional validity of Sections 3, 5, 8, 9, 17 to 19, 23, 24 & 44 of the PML Act.

The petitioners would have no grievance if the Act as amended in 2009, is maintained. The challenge is mainly to the Amendment Act 2 of 2013. The Act as it was originally enacted and amended from time to time, in so far as the amended provisions under challenge are concerned, are reproduced hereunder for ready reference :

Section

Original enactment as on 2002

After 2005 Amendment Act

After 2009 Amendment Act

After 2013 Amendment Act

After 2015 Amendment Act

Section 3

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

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

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3. Offence of money-laundering. - Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

As can be seen above, the change brought about by the amendment to Section 3 is the inclusion of the following phrase, "including its concealment, possession, acquisition or use". This according to the petitioners is an inclusion which was significantly excluded by the Legislature, after much debate and the section was accordingly redrafted, to avoid unnecessary harassment to innocent people who

may have acquired the possible "proceeds of crime" innocently, without knowledge or without the requisite mens rea. The amendment of the Section has given scope for an expansive definition to the expression "proceeds of crime" and is wholly unreasonable and draconian.

According to the respondent, this amendment was warranted on account of the recommendation made by the Financial Action Task Force (FATF), an inter-Governmental body for development and promotion of policies to combat money-laundering and terrorist financing. It also ensures adherence to its standards by member countries across the world, including India, to bring about legislative and regulatory reforms. It transpires that the FATF Mutual Evaluation Team in a report of the year 2009, had suggested the change which has been incorporated by the 2013 amendment.

Though the petitioners have claimed the inclusion of the above offending phrase as being arbitrary, it is not evident as to how the same renders the Section to be unconstitutional. For it would still have to be established that such concealment, possession, acquisition or use of the "proceeds of crime" was indeed so and that a person has knowingly attempted to indulge or assist or was involved in any activity connected with the proceeds of crime and had projected it as untainted property. The same person could have been accused of the very offence even prior to the amendment. The amendment does not arm the authorities concerned with any greater latitude.

The Apex Court has, in the case of Attorney General of India v. Amratlal Prajivandas, (1994) 5 SCC 54, while examining a similar provision under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, has held thus :

"44??? It is a well-known fact that persons indulging in illegal activities screen the properties acquired from such illegal activity in the names of their relatives and associates. Sometimes they transfer such properties to them, may be, with an intent to transfer the ownership and title. In fact, it is immaterial how such relative or associate holds the properties of convict/detenu-whether as a benami or as a mere name-lender or as a bona fide transferee for value or in any other manner. He cannot claim those properties and must surrender them to the State under the Act. Since he is a relative or associate, as defined by the Act, he cannot put forward any defence once it is proved that property was acquired by the detenu-whether in his own name or in the name of his relatives and associates?"

Section 5 of the PML Act has undergone the following transition.

Section

Original enactment as on 2002

After 2005 Amendment Act

After 2009 Amendment Act

After 2013 Amendment Act

After 2015 Amendment Act

Section 5

"5. Attachment of property involved in money-laundering. - (1)Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that -

"5. Attachment of property involved in money-laundering. - (1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that -

"5. Attachment of property involved in money-laundering. - (1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that -

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"5. Attachment of property involved in money-laundering. - (1) Where the Director, or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that -

(a) any person is in possession of any proceeds of crime;

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(b) such person has been charged of having committed a scheduled offence; and

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(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to

confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed :

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed :

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Income-tax Act, 1961 (43 of 1961) and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of Rule 1 of that Schedule :

Provided that no such order of attachment shall be made unless, in relation to an offence under -

(i) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or

(ii) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of Section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Income-tax Act, 1961 (43 of 1961) and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of Rule 1 of that Schedule :

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(i) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or (ii) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court

constituted under sub-section (1) of Section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).

Provided that no such order of attachment 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 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:

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided further that, notwithstanding anything contained in clause (b), any property be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided that no such order of attachment 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 that Schedule, before a Magistrate or Court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country :

Provided further that, notwithstanding anything contained in first proviso, any property be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the 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 order and material for such

period as may be prescribed.

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the 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 order and material for such period as may be prescribed.

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(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of Section 8, whichever is earlier.

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(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of Section 8 whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation. - For purposes of this sub-section "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation. - For purposes of this sub-section "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

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(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

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(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

Before the 2013 amendment, the attachment of property involved in money-laundering could take place only if a person was in possession of any proceeds of crime [sic] such person has been charged of having committed a scheduled offence and that such proceeds of crime are likely to be concealed, transferred or dealt with, thereby frustrating any proceedings relating to confiscation. And a report had been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973.

As Clause (b) of sub-section (1) did indicate that not only was a person required to be found in possession of proceeds of crime, it seemed that he was also required to have been accused of having committed a scheduled offence and that a report under Section 173 of Cr.P.C. had been forwarded to a Magistrate. Clause (b) was deleted by the 2009 Amendment, while clause (c) took its place as Clause (b).

Now with the amendment of 2013, the reference to the earlier Clause (b) being incongruous is one of the contentions of the petitioner. By virtue of the 2015 Amendment, where by the words "clause (b)" found in the second proviso to sub-section (1), has been substituted by the words "first proviso". It has now rendered meaning to the Second proviso.

Section 5(1)(a) and the second proviso thereto operate in a situation where a person is found to be in possession of what is believed to be proceeds of crime by the competent officer, without actually being involved in money-laundering or in a scheduled offence. While in terms of the first proviso to sub-section (1) of Section 5, it is necessary that there be a report under Section 173 of Cr.P.C., before a Magistrate as regards a scheduled offence. In terms of the second proviso in case of urgency where the competent authority believes that the property is likely to be secreted or dealt with otherwise, thereby frustrating the attachment proceedings, power is afforded to take action.

It is noticed that such attachment by recourse to the second proviso to Section 5(1) is for a limited period, as is clear from a reading of sub-section (3) thereto, which contemplates that attachments effected under sub-section (1) would cease to have effect after the expiry of 180 days. Apart from this there is a safeguard provided under the Act whereby the competent officer is required to send the order of attachment to the Adjudicating Authority immediately and a complaint is to be filed within 30 days from the date of attachment under Section 5(5) of the Act. The Adjudicating Authority is required to decide whether the provisional

attachment should be confirmed.

It may therefore be said that the second proviso is not rendered otiose nor can it be said that the second proviso is bad in law for want of such safe guards as are present in the first proviso.

8. A Division Bench of the Andhra Pradesh High Court in the case of B. Rama Raju v. Union of India - (2011) 164 Comp Cases 149 AP, had occasion to consider the constitutional validity of Section 5 of the Act on the following Issue :

"Whether property owned by or in possession of a person, other than a person charged of having committed a scheduled offence is liable to attachment and confiscation proceedings under Chapter-III and if so whether Section 2(1)(u) which defines "proceeds of crime" broadly, is invalid?"

?????

32. On the afore-stated scheme the provisions of the Act, the prosecution under the Act; and attachment and eventual confiscation proceedings are distinct proceedings. These two sets of proceedings may be initiated against the same person if he is accused of the offence of money-laundering. Even when a person is not so accused, the property in his possession may be proceeded against for attachment and confiscation, on a satisfaction by the appropriate and competent authority that such property constitutes proceeds of crime.

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

34. While the offence of money-laundering comprises various degrees of association and activity with knowledge and information connected with the proceeds of crime and projection of the same as untainted property; for the purposes of attachment and confiscation (imposition of civil and economic and not penal sanctions) neither mens rea nor knowledge that a property has a lineage of criminality is either constitutionally necessary or statutorily enjoined. Proceeds of crime [as defined in Section 2(u)] is property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence or the value of any such property. "Property" is defined in Section 2(v) to include property of every description corporeal, incorporeal, movable, immovable, tangible, and intangible and includes deeds and instruments evidencing title to or interest in such property or assets wherever located.

35. The matrix of the relevant provisions of the Act compel the inference that the legislation subsumes that property which satisfies the definition of "proceeds of crime", prima facie is considered as property whose transfer [defined in Section 2(za)] is subject to verification to consider whether the transfer is a stratagem of

a money-laundering operation and is part of a layering transaction. As the provisions of the Act target malfeasants charged of an offence under Section 3 and the proceeds of crime in the possession of a person so charged and any other person as well, the legislative intent is manifest that attachment and confiscation constitute a critical and clearly intended and specifically enacted strategy to combat the evil of money-laundering. A person though not accused/charged of an offence under Section 3, when in possession of any proceeds of crime, from the provisions of the Act it is clear, has but a defeasible and not a clear title thereto. In the context of attachment and confiscation proceedings, knowledge that a property is proceeds of crime is not legislatively prescribed.

36. Proceeds of crime is defined to include not merely property derived or obtained as a result of criminal activity relating to a scheduled offence but the value of any such property as well. The bogey of apprehensions propounded on behalf of the petitioners is that where proceeds of crime are sequentially transferred through several transactions, in favour of a series of individuals having no knowledge or information as to the criminality antecedent to the property; the authorities may proceed against each and all of such sequential transaction, thus bringing within the vortex of Chapter-III of the Act, all the properties involved in several transactions.

9. The above reasoning is sound and is endorsed by this Court.

Section 8 of the Act as amended from time to time is reproduced hereunder :

Section

Original enactment as on 2002

After 2005 Amendment Act

After 2009 Amendment Act

After 2013 Amendment Act

After 2015 Amendment Act

Section 8

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, 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 2 (sic) 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 :

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, 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 2 (sic) 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 :

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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 :

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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.

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(2) The Adjudicating Authority shall, after -

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

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

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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 sub-section (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 under Section 17 or Section 18 and record a finding to that effect, such attachment or retention of the seized property or record shall -

(3) Where the Adjudicating Authority decides under sub-section (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 under Section 17 or Section 18 and record a finding to that effect, such attachment or retention of the seized property or record shall -

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(3) Where the Adjudicating Authority decides under sub-section (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 the pendency of the proceedings relating to any scheduled offence before a court; and

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(a) continue during 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

(a) continue during 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 the guilt of the person is proved in the Trial Court and order of such Trial Court becomes final.

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(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 or Section 58B or sub-section (2A) of Section 60 by the Adjudicating Authority.

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 or Section 58B or sub-section (2A) of Section 60 by the Special Court.

(4) Where the provisional order of attachment made under sub-section (1) of Section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.

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attached property.

(4) Where the provisional order of attachment made under sub-section (1) of Section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under Section 5 or frozen under sub-section (1A) of Section 17, in such manner as may be prescribed :

(4) Where the provisional order of attachment made under sub-section (1) of Section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under Section 5 or frozen under sub-section (1A) of Section 17, in such manner as may be prescribed :

(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of property or retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect.

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(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.

(6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person

concerned, make an order confiscating such property.

(6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act 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 Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of Section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(7) Where the trial under this Act 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 Special Court shall, on an Application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of Section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money-laundering :

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money-laundering.

It is the case of the petitioners that Section 8(5) as it stood under the Amended Act of 2009, contemplated that if a person was acquitted of the scheduled offence, the attachment of the property ceased to have effect. The same was in

consonance with the logic that if no crime under the scheduled offence could be established there could be no "proceeds of crime". But under the Amendment Act of 2013, it is now contemplated that even if the case instituted in respect of a scheduled offence results in acquittal of the accused, a person could still be prosecuted under Sections 3 & 4 of the PML Act. It is contended that if the genesis of the proceedings is relatable only to the scheduled offence as no action could be initiated under the PML Act unless there was a report under Section 173 of Cr.P.C. in relation to a scheduled offence. Therefore, on acquittal in respect of such offence, should ipso facto, result in the proceedings under the PML Act coming to a close. In other words, without the guilt of the accused in the scheduled offence being proved there could be no proceedings under Sections 3 and 4 of the PML Act.

There is substance in the above contention of the petitioners for the definition of the phrase "proceeds of crime" read with Section 3 if construed strictly. It can be said that having regard to the meaning attributed to "proceeds of crime" under the PML Act, whereby the "crime" contemplated is the alleged scheduled offence, the "proceeds of crime", contemplated under Sections 3 and 4 are clearly and inextricably linked to the scheduled offence and it is not possible to envision an offence under PML Act as a "stand alone" offence without the guilt of the offender in the scheduled offence being established.

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

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

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

10. The endeavour under the Amendment Act, 2013, vis-a-vis Sections 5 & 8 is to enable attachment proceedings against the following :

- (a) persons who are accused of a scheduled offence.
- (b) persons who have been accused of money-laundering alone.
- (c) persons who have come in possession of the proceeds of crime.

It is evident that in view of the 2013 Amendment to the PML Act, a person can be tried for an offence of money-laundering alone without restricting the meaning attributable to it as being with reference to a scheduled offence alone.

Hence Section 8, as amended by the Amendment Act of 2013, cannot be said to

be arbitrary and violative of the fundamental right of a person if the proceedings are continued under the PML Act, even if the trial of a scheduled offence results in an acquittal and the alleged proceeds of crime pertained to that scheduled crime.

The challenge to Section 9 of the Act on the ground that if the Adjudicating Authority confirms a provisional attachment order and the guilt is recorded under Sections 3 and 4, there is a provision for confiscation and hence the statutory remedy of appeal is foreclosed. This proposition may not be accurate. Even after an order of confiscation is made, an appeal is provided for to challenge the basis of such order when the finding of guilt is naturally challenged in appeal. It is merely an enabling provision providing for the consequence of a finding of guilt in respect of the offences alleged under the PML Act.

11. The petitioners have challenged the validity of Sections 17, 18 and 19 of the Act, which provide for search and seizure, search of persons and arrest, respectively, on two grounds - namely, that by virtue of the Amendment Act of 2013, officers who have been empowered to arrest are not police officers under the Act; And secondly, that the said officers are enabled to carry out the above measures merely on a report being made under Section 157 of the Cr.P.C. to the Magistrate, whereas for attachment of property, a final report under Section 173 of Cr.P.C. is required. It is highlighted that the urgency for such action would not be a valid justification, as such action always follows action apparently initiated in respect of the scheduled offence and the concerned investigating agency therein would have recovered, seized all such incriminating material, which would form part of the charge sheet, a copy of which is forwarded to the Enforcement Directorate for action under the PML Act. It is only thereafter that the Enforcement Directorate could initiate action under Sections 17 and 18.

The power of search, seizure and arrest are considered an important tool in any investigation. Such power being available in matters relating to economic offences is not unusual. Identical provisions are found in the Customs Act, 1962, the Prevention of Food Adulteration Act, 1954, the Railway Property (Unlawful Possession) Act, 1966, etc.

Further, as investigation precedes the filing of a charge sheet under Section 173 of Cr.P.C., the exercise of power of search, seizure and arrest as part of investigation would not prejudice any person as such measures are controlled by other provisions of the Cr.P.C. Section 65 of the PML Act does provide that the provisions of the Cr.P.C. would be applicable including the provisions for investigation under the Act. Section 19 is assailed also on the ground that there is no judicial body provided to scrutinize the initial action as in the case of scheduled offences. However, Section 19(3) itself provides that every person arrested under the Act would be produced before a Magistrate within 24 hours of such arrest. Further, the contention that such arrest may not be warranted by an officer under the Act, may not be tenable. If the authorised officer, on the basis of material in his possession has reason to believe that the person is guilty of an

offence punishable under the Act, he being empowered to arrest is akin to powers conferred on authorised officers under other legislation which power of arrest has been upheld by the Apex Court in the case of Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 : 1994 (70) E.L.T. 12 (S.C.).

Section 23 of the Act has been amended in the following terms :

Section

Original enactment as on 2002

After 2005 Amendment Act

After 2009 Amendment Act

After 2013 Amendment Act

After 2015 Amendment Act

Section 23

23. Presumption in interconnected transaction. - Where money-laundering involves two or more interconnected transactions and one or more such transaction is or are proved to be involved in money - laundering, then for the purposes of adjudication or confiscation under Section 8, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such interconnected transactions.

23. Presumption in interconnected transaction. - Where money-laundering involves two or more interconnected transactions and one or more such transaction is or are proved to be involved in money - -laundering, then for the purposes of adjudication or confiscation under Section 8, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such interconnected transactions.

23. Presumption in interconnected transaction. - Where money-laundering involves two or more interconnected transactions and one or more such transaction is or are proved to be involved in money - laundering, then for the purposes of adjudication or confiscation under Section 8, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such interconnected transactions.

23. Presumption in interconnected transaction. - Where money-laundering involves two or more interconnected transactions and one or more such transaction is or are proved to be involved in money - laundering, then for the purposes of adjudication or confiscation under Section 8, or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court, be presumed that the remaining transactions form part of such interconnected transactions.

It is evident that as it existed post the Amendment Act, 2009, in so far as the presumption arising in inter-connected transactions, where money laundering was alleged to be involved in two or more transactions, and if one or more such transactions was proved to be involved in money-laundering then for purposes of adjudication or confiscation under Section 8, unless otherwise proved, it could be presumed that the remaining transactions formed such inter-connected transactions. Hence if the scheduled offence resulted in acquittal, in terms of Section 8 the presumption with regard to inter connected transaction ceased to exist. However, with the Amendment Act of 2013, by the inclusion of the phrase "or for the trial of the money-laundering offence" after the words "for the purpose of adjudication or confiscation under Section 8" - the offence of money-laundering is sought to be treated as not being dependent on the result of the trial of the scheduled offence. Such a presumption is now possible by virtue of the 2013 Amendment. As already noticed, the offence of money-laundering is no more inextricably linked to the proceeds of crime of a scheduled offence.

Section

Original enactment as on 2002

After 2005 Amendment Act

After 2009 Amendment Act

After 2013 Amendment Act

After 2015 Amendment Act

Section 24

24. Burden of proof. - When a person is accused of having committed the offence under Section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.

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24. Burden of proof. - When a person is accused of having committed the offence under Section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.

24. Burden of proof. - In any proceeding relating to proceeds of crime under this Act, -

(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the authority or Court, may presume that such proceeds of crime are involved in money-laundering.

In so far as Section 24 of the Act as it stood prior to or after the amendment by the Amendment Act of 2013, cannot be found fault with. Similar provisions relating to burden of proof in various enactments are to be found. As for instance Section 20 of the Prevention of Corruption Act, 1988, which reads as under :

"20. Presumption where public servant accepts gratification other than legal remuneration. - (1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

Section 139 of the Negotiable Instruments Act, 1881 :

"139. Presumption in favour of holder.

- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

Section 53 of the Prevention of Terrorism Act, 2002 :

"53. Presumption as to offences under section 3. - (1) In a prosecution for an offence under sub-section (1) of Section 3, if it is proved -

(a) that the arms or explosives or any other substances specified in Section 4 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that the finger-prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Special Court shall draw adverse inference against the accused.

(2) In a prosecution for an offence under sub-section (3) of Section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence under that section, the Special Court shall draw adverse inference against the accused."

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

Hence, Section 24 as amended by the Amendment Act of 2013 is held to be constitutionally valid.

13. In so far as Section 44 of the Act is concerned it is sought to be contended that Section 44 mandates that the offence under this Act shall be triable by a Special Court. Sub-section (1) of Section 44 starts with the caption "notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)". The Section also mandates that the scheduled offence as well as the offence under this Act shall be tried jointly by the Special Court of PML Act. The Scheme of the Section completely violates the principles of natural justice and also takes away the valuable legal right of an affected person. There seems to be no justification for insistence of joint trial, as both the trials are independent in nature based their own independent evidence and even while trying the offence of money-laundering, the evidence recorded during the trial of scheduled offence could not be looked into and the same is in the either case. This is absolutely an incongruous situation and contrary to the procedure of a trial. The other main ambiguity created is that, as per the scheme of the PML Act, the action under money-laundering starts when there is a charge sheet under Section 173 of Cr.P.C or a complaint in relation to the scheduled offence, which sets in motion any action under the PML Act. The process of attachment itself takes on end and by the time the prosecution for the offence under money-laundering is filed the scheduled offence would have already moved far ahead. In case of a joint trial, the trial of the scheduled offence will be hampered and will cause undue delay in the decision which violates the right of speedy trial envisaged under the law. It is

also contended that the other relevant fact is that the offence of money laundering shall be tried notwithstanding anything contained in the Code of Criminal Procedure, however, the trial of the scheduled offence would be conducted as per the Code of Criminal Procedure. Therefore, no useful purpose will be achieved in instituting a joint trial. The provisions of Section 44 violates the fundamental right of the under trial as in case the scheduled offence is triable by the Magistrate and as per the mandate of Section 44 upon making an application before the Special Judge PMLA which is a Court of Sessions, the trial of the scheduled offence shall be sent to the Special Judge PMLA who will try both the offences, meaning thereby that the under trial will lose his most important right to appeal before the Sessions Court being aggrieved by the order of the Magistrate. The entire scheme of this section is vague, violates the right to speedy trial and also is ambiguous, vague oppressive, arbitrary, discriminatory, unconstitutional and offending Articles, 14, 20, 21 and Article 300 of the Constitution of India and is ultra vires.

14. The above challenge proceeds on several assumptions. There is no material placed before the Court as to any incongruous situation having arisen wherein the Special Court not being able to reconcile the provisions in arranging the manner in which it has proceeded, thereby resulting in any prejudice being caused to any person or resulting in a miscarriage of justice. This court is not therefore in a position to proceed on a speculation as to particular situations having arisen that could be held as rendering the procedure prescribed, or other infirmity rendering, the creation of the Special Courts or the procedure contemplated as being unconstitutional.

15. The other incidental contentions raised are frivolous and are not discussed.

16. The petitions lack merit and are dismissed.