

(2019) 08 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 5299, 5408, 5420, 5423, 5423, 5824, 6210 Of 2019

Sachin Narayan

APPELLANT

Vs

Income Tax Department And Ors

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Income Tax Act, 1961 — Section 132, 276C, 276C(1), 277, 279(1A), 279(1), 288

Indian Penal Code, 1860 — Section 120B, 477A

Prevention of Money-Laundering Act, 2002 — Section 2(a), 2(p), 2(u), 2(y), 2(x), 2(1)(x), 2(1)(y), 2(na), 3, 4, 5(1)(b), 5(1), 5(5), 6(15), 6, 8, 8(1), 5(1)(a), 44, 50, 50(2), 50(3)

Code Of Criminal Procedure, 1973 — Section 173, 200

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 36(1)

Constitution Of India, 1950 — Article 14, 19, 21, 23, 142, 226, 227

Citation : (2019) 08 KAR CK 0021

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Kapil Sibal, C.V. Nagesh, B.V. Acharya, Sandeep Patil, Prabhuling K Navadagi, K.M. Nataraj, Jeevan J Neeralgi, Unnikrishanan

Final Decision : Dismissed

Judgement

1. In these writ petitions though initially reliefs as set out in the respective writ petitions was sought for, they have restricted to single prayer only by filing memos on 07.03.2019 stating thereunder that they would not press other prayers as indicated in the respective memos and would restrict their prayer as indicated therein. In other words, prayer sought for in all these writ petitions relates to quashing of the summons issued to petitioners by the Enforcement Directorate (for short 'ED') to appear before them for investigation. The reliefs now sought for in the respective writ petitions relates to quashing of summons issued by ED and for immediate reference the prayer sought for in W.P.No.5824/2019 is extracted herein below: e. issue an appropriate writ or order declaring that the action of the Enforcement Directorate Authorities registered ECIR/HQ/4/2018 for an alleged offence under Prevention of Money

Laundering Act, 2012, whereby necessitating the petitioner to appear for an investigation and other proceedings as illegal and resultantly quash the summons issued to the petitioner dated 15.02.2019 vide Annexure-L and summons dated 25.02.2019 vide Annexure-M to the writ petition and quash all further proceedings pursuant thereto.

Hence, these writ petitions are examined in the background of above prayer sought for which is identical in all these writ petitions.

2. I have heard the arguments of Sri. Kapil Sibal, Sri.B.V.Acharya, Sri.A.Shankar and Sri. Shashikiran Shetty, learned Senior Advocates and Sri.Sham Sundar, learned Advocate appearing for petitioners and Sri.K.M.Nataraj, learned Additional Solicitor General of India, Sri.Prabhuling K Navadgi, the then Learned Additional Solicitor General of India assisted by Sri.Unnikrishnan, learned Central Government Standing Counsel for Enforcement Directorate and Sri.Jeevan Neeralagi, learned Standing Counsel appearing for Income Tax Department.

3. Sri Kapil Sibal, learned Senior counsel appearing for petitioner in W.P.No.6210/2019 would contend that basis on which the Enforcement Directorate have issued summons to the petitioner to appear before them is for a purported investigation being carried, which is an offshoot of search conducted by the Income Tax Department and a complaint having been filed before the jurisdictional Court after purportedly obtaining sanction under Section 279(1) of the Income Tax Act, 1961 (for short 'IT Act') alleging thereunder, that accused No.1 i.e., Sri D K Shivakumar committed an offence punishable under Sections 276C(I), 277 of IT Act and Sections 193 and 199 read with Section 120B of IPC and accused Nos.2 to 5 had committed an offence punishable under Sections 278, 277 of IT Act and Sections 193 and 199 read with Section 120B of IPC and to take cognizance for which offences are not scheduled offences under the provisions of Prevention of Money Laundering Act, 2002 (for short 'PML Act'). He would contend that Section 120B of IPC cannot be invoked in the absence of predicate offence and offence under IT Act not being a scheduled offence, proceedings under PML Act cannot be continued. He would also contend that a plain reading of the definition clause of Section 2(p), 2(u) & Section 3 of PML Act would clearly indicate that it is only the "proceeds of crime" if attempted to be ploughed into main stream of the economy would attract the definition of "money laundering" and offence alleged to have been committed by the petitioner even according to respondents being under IT Act and same not being a scheduled offence, which is sine qua non for the provisions of PML Act being attracted, question of petitioner appearing before ED does not arise. He would elaborate his submission by contending that offence punishable under Section 276C(1) and Section 277 of the IT Act are compoundable offences under Section 279(2) and stage has not come where prosecution can be lodged and the procedure adopted by the enforcement authority is unknown to the canons of law. Hence, he seeks for quashing of summons issued to petitioner to appear for investigation and entire proceedings pending before ED.

4. Sri B.V.Acharya, learned Senior counsel appearing on behalf of petitioner in W.P.No.5299/2019 would submit that very initiation of the prosecution against petitioner for the alleged offences punishable under IT Act has been challenged by the petitioner in W.P.No.32593/2018 by questioning the validity of the sanction order, contending interalia that said authority who had issued the sanction order to prosecute the petitioner did not possess authority and said order is without jurisdiction and he is not the competent authority empowered to grant such sanction under Section 279(1) of IT Act, which fact had been taken note of by the co-ordinate Bench and by order dated 30.07.2018 had granted stay of further proceedings pursuant to order passed by the jurisdictional Court taking cognizance of the offence, which order of stay enures to the benefit of petitioner and as such, Enforcement Directorate could not have issued the impugned notice/summons calling upon petitioner to appear for investigation. He would draw the attention of the Court to Section 279(1A) of IT Act in respect of which, penalty is imposable for the offence under Section 276C and 277 of IT Act and as such proceedings under PML Act cannot be continued against petitioner. He would contend that order of stay passed in W.P.No.32593/2018, in effect would mean that no proceedings can be taken or proceeded with against petitioner by the Enforcement Directorate, inasmuch as, the impugned notice is continuation of the proceedings before Special Court which is an offshoot of the search made under the provisions of the IT Act. He would also draw the attention of the Court to the sanction order dated 28.05.2018 (Annexure-G) to contend that Section 120B of IPC having been referred to thereunder is also the subject matter of stay order passed in W.P.No.32593/2018 on 30.07.2018.

5. Elaborating his submissions, Sri.B.V.Acharya, learned Senior Counsel would draw the attention of the Court to the various provisions of PML Act to contend that if the principle of interpretation is to be adopted, then there was no necessity for the law makers to include the expression "conspiracy" as found in several enactments as an independent offence and if the intent was to bring within the sweep of the expression "conspiracy" as defined under Section 120B IPC, which finds a place in Part-A as stand-alone offence same expression as found in other paragraphs of Part-A, said expression would not have found entry. In this regard, he would submit that criminal conspiracy as found in Part A refers to the Indian Penal Code and specifically with reference to other references and relatable to IPC provisions indicated in the schedule.

6. He would also contend that Section 120B cannot be applied independently under the PML Act and it is always referable to a predicate offence and to buttress his argument, he would draw the attention of the Court to column No.3 and 4 of First Schedule of IPC to contend that law makers while indicating as to whether said offence is cognizable or non-cognizable, bailable or non-bailable and by what court the offence is triable has clearly indicated that insofar as offence under Section 120B is concerned, would be attracted if the offence which is the object of conspiracy or in other words, it is only the predicate offence if cognizable, the offence under Section 120B becomes cognizable as otherwise, if

the predicate offence is non-cognizable, it would also follow the same. He would also contend that if predicate offence is bailable or non-bailable, then offence under Section 120B would also follow the suit. Same principle is also applicable to the court which can try the said offence namely, if offence under Section 120B IPC hinges on the predicate offence, then such court which can try the predicate offence would also be having jurisdiction to try the offence of 120B IPC. Hence, he contends that on the strength of Section 120B IPC having been included in Part A of the Schedule by itself would not partake the character of same being as independent offence and it has to be necessarily read along with predicate offence. He would also contend that notice issued to the petitioner is vague and nothing is indicated in the notice namely, as to what is required to be answered by the noticee/petitioner and as such, it is violation of principles of natural justice. In support of this proposition, he relies upon the judgment of co-ordinate Bench rendered in the matter of MR.S.N.SINHA vs THE STATE OF KARNATAKA, BY ITS SECRETARY, DEPARTMENT OF REVENUE AND OTHERS reported in ILR 2012 KAR 448. He would submit that no particulars having been furnished under the impugned notice and yet calling upon petitioner to appear for investigation is without any foundation or basis and as such, it is in violation of principles of natural justice. Hence, he prays for allowing the petition by granting the prayer sought for in the writ petition.

7. Sri Shashikiran Shetty, learned Senior Counsel appearing for petitioner in W.P.No.5408/2019 by adopting the arguments advanced by learned Senior Counsel-Sri Kapil Sibal, Sri B.V.Acharya would add that under the sanction order dated 28.05.2018 (Annexure-A), it is alleged that petitioner has aided and abetted and as such, Section 120B IPC is not attracted or it does not arise and until and unless petitioner is found guilty of the offence under Section 277 and 278 of IT Act, Section 120B IPC cannot be invoked. Hence, he prays for allowing the writ petition by quashing the impugned notice.

8. Sri A Shankar, learned Senior counsel appearing for petitioner in W.P.No. 5824/2019 would contend that none of the provisions of IT Act are Schedule offences under Part-A to C of PML Act and the offence punishable under Section 277 and 278 of IT Act which is invoked for grant of sanction not being a Scheduled offence under PML Act, the very invoking of the provisions of PML Act is bad in law. He would contend that third respondent has clearly admitted that ECIR has been registered against the petitioner for the offences under the provisions of PML Act, pursuant to a private complaint filed by first respondent, which is IT Department and as such proceedings under PML Act is liable to be quashed.

9. He would further contend that a conjoint reading of Sections 3, 2(u) and 2(y) of PML Act, it would be very clear that occurrence of a schedule offence is the substratal condition for giving rise to any proceeds of crime and consequently application of Section 3 of PML Act. In other words, he would contend that commission of schedule offence is the fundamental and essential pre-condition

for any proceedings under the PML Act and without schedule offence being there, question of proceeds of crime coming into existence does not arise and consequently, the proceedings under PML Act cannot be continued.

10. He would also contend that it is not open to the tax authorities to invoke Section 120B IPC and Section 279 of IT Act which authorizes grant of sanction, does not authorize said authority to award sanction for prosecution of an offence under Section 120B IPC.

11. He would further contend that Section 120B IPC deals with punishment with criminal conspiracy and definition of conspiracy can be found in Section 120A IPC and object of criminal conspiracy must be to do an illegal act, which must be clear and Schedule I to the Cr.P.C clearly indicates that to constitute an offence under Section 120B, it would always relate to the objective offence. On these amongst other grounds as urged in the petition, he seeks for quashing of the proceedings by allowing the writ petition.

12. Sri Shyamsundar, learned Advocate appearing for petitioner in W.P.Nos.5420-423/2019 would contend if a particular act describes for confiscation of a property, then, it stands excluded from the purview of PML Act. He would contend that Section 120B which is included in Part A of PML Act is relatable to the offences under the IPC provisions as morefully specified in Part-A - Paragraph 1 of the Schedule to PML Act. He would also contend that summons issued to the petitioner is violative of Article 23 of the Constitution of India and in support of his submission, he has relied upon judgment of Hon'ble Apex Court in the matter of STATE OF GUJARAT vs SHYAMLAL MOHANLAL CHOKSI, MANUBHAI PATEL reported in AIR 1965 SC 1251.

13. On behalf of respondents, initially the arguments came to be commenced or advanced by Sri Prabhuling K Navadgi, the then learned Additional Solicitor General of India appearing for respondents. He contended that where two or more persons come together to do an illegal act or in other words, an act which is not illegal is sought to be done or caused to be done by illegal means and come together in this regard would be a criminal conspiracy as defined under Section 120A IPC or it would fall within the definition of "criminal conspiracy". He would contend that irrespective of the offence under IT Act, the Enforcement Directorate is empowered to proceed to investigate and satisfaction of money being "proceeds of crime" would be sufficient to proceed. He would contend that the writ petitions are premature and notice issued is in consonance with Section 50 of PML Act and he would rely upon the following judgments:

(i) (2011)1 SCC 74 IRIDIUM INDIA TELECOM LIMITED vs MOTOROLA INCORPORATED AND OTHERS (ii) (2011)8 SCC 1 RAM JETHMALANI V. UNION OF INDIA,

14. Sri K.M.Nataraj, learned Additional Solicitor General of India has appeared for respondents and has made submissions contending that challenge to sanction made in these writ petitions having been withdrawn by the petitioners, it would

not be open to the petitioners to raise any contention with regard to the proceedings initiated under IT Act by the Income Tax Department.

14.1. Further elaborating his submissions, he would contend that impugned summons issued by the Enforcement Directorate against respective petitioners is for the offence punishable under Section 120B IPC which is a predicate, distinct and stand alone offence and when there is no challenge to the inclusion of Section 120B in Part A of PML Act, it would not be open for the petitioners to contend that it is not an independent offence.

14.2. He would also contend that summons issued under Section 50(2) of PML Act has nothing to do with The Adjudicating Authority (Procedure) Regulations, 2013 which relates to the procedure to be adopted by the Regulating Authority after complaint has been filed and not pre-investigation. He would submit that persons to whom summons are issued under Section 50 would not be an accused. He would also contend that sanction issued under the IT Act has nothing to do with the proceedings under PML Act and for initiating proceedings under the PML Act for the offence punishable under Section 120B IPC, no sanction is required. He would also contend that under Section 24 of PML Act, a presumption arises that money in question are proceeds of crime which is being laundered and it is for the noticee to rebut such presumption.

DISCUSSION AND FINDINGS:

BRIEF BACKGROUND:

15. A search action under Section 132 of the IT Act came to be conducted by the Income Tax Department at various premises in New Delhi, which is said to have resulted in seizure of more than 7 Crores in cash and statements recorded by the Income Tax Department of some of the persons has also resulted in a complaint being filed under Section 200 Cr.P.C. against petitioners for the offences punishable under the IT Act as morefully specified thereunder, after sanction alleged to have been accorded. The jurisdictional Court is said to have taken cognizance of the offences and further proceedings are on, which is not delved upon in these petitions or opinion expressed, since it is likely to prejudice the rights of the parties.

16. Be that as it may. This search proceedings has triggered the ED Authorities to register an ECIR against petitioners and investigation has been commenced and for said purposes summons under Section 50(2) and (3) of PML Act has been issued to petitioners. This fact is also admitted by the ED in its statement of objections filed vide paragraph 4. For immediate reference said plea raised by ED is extracted herein below:

"The averments regarding the initiation of the proceedings under the Income Tax Act have been answered by the First Respondent. This Respondent adopts the same as they are part of record. The averments in the petition that this Respondent had registered an ECIR for the offences under the provisions of the

Prevention of Money Laundering Act, pursuant to a private complaint filed by the First respondent on the basis of the scheduled offence under Section 120B of the Indian Penal Code is true and correct."

17. A contention or a plea has been raised by the respondents that writ petition is not maintainable for quashing the summons, as it is only a show cause notice issued to the respective petitioners to appear for investigation. There cannot be any dispute to the proposition of law that judicial review of administrative action by this Court is a part of basic structure of the Constitution of India, as held by the Hon'ble Apex Court in the case of L.CHANDRA KUMAR vs. UNION OF INDIA reported in (1997) 3 SCC 261. Hon'ble Apex Court in the case of SHALINI SHYAM SHETTY VS. RAJENDRA SHANKAR PATIL reported in (2010) 8 SCC 329 has held that power of superintendence available to the High Court under Article 227 is extremely vast, but it cannot be exercised at the drop of the hat. It is also held that it cannot be exercised to correct mere errors of law or fact only because another view is possible. It has been held:

"This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 of the Constitution is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above."

18. It is to be further observed that, no doubt would arise with regard to exercise of jurisdiction under Article 226 and 227 of Constitution of India by this Court and same cannot be curtailed. Yet, judicial restraint would be adopted where there is no allegation of fundamental right being violated or the authority exercising the jurisdiction is contended as not possessing jurisdiction. Though Article 226 of the Constitution of India is the repository of vast powers vested in this Court, yet, the very vastness of the powers imposes the responsibility to use them with circumspection and in accordance with the well established principles. As held by the Hon'ble Apex Court in STATE OF MAHARASHTRA VS ABDUL HAMID HAJI MOHAMMAD reported in (1994) 2 SCC 664 the exercise of the power under Article 226 should be most sparingly used and only in rare and appropriate cases, that too in extreme circumstances it can be used. However, the nagging question would be, what are those rare cases and in what circumstances the Constitutional Court would justify the entertaining of the petitions under Article 226 of Constitution of India? Same cannot be defined by a mathematical formula or with precision nor can it be put in a straight jacket formula. It all depends on facts and circumstances obtained in each case or to put it differently, the contours cannot be defined and it all depends on the terrain such facts may travel. Where there is allegation of violation of Article 14, 19 or Article 21 or when the vires of a statute is under challenge or where the authority exercising the power is alleged to have none, are some of the circumstances which enable the exercise of jurisdiction under Article 226 of Constitution of India and such

power is sparingly used to do complete justice between the parties. The Hon'ble Apex Court in the case of GIRISH KUMAR SUNEJA Vs. CBI reported in (2017)14 SCC 809 has held to the following effect:

"58. It is no doubt true that the words 'complete justice' appearing in Article 142 of the Constitution enable this Court to exercise extremely wide powers but there is also no doubt that the power is ancillary and can be made use of only when it is not in conflict with the substantive provisions of any law. This has been the view expressed by several larger Benches of this Court including in *Mirajkar and Antulay* and was also settled in *Supreme Court Bar Association vs. Union of India*. It is not necessary for us to further elucidate this position or to elaborate on it.

59. While it is true that the fundamental rights of a citizen cannot be taken away even by an order of the court except where a restriction is placed by the statute such as remanding an accused to judicial custody, no right of the appellants has been curtailed by this Court by the order under consideration. As repeatedly emphasized, it is only the forum in which the right to seek relief has been varied, and not denied. We do not see how this is impermissible or contrary to any law or any fundamental right of the appellants."

19. In these petitions, the summons issued by the ED and its power to issue the same to the petitioners to appear for investigation is under challenge contending their right to liberty under Article 21 of the Constitution is being violated. Hence, this Court is of the considered view that writ petitions cannot be thrown or nipped at the bud on the ground of same not being maintainable. Said contention stands rejected.

20. The PML Act came to be enacted to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental thereto. That illegal activities of money laundering posed a great and serious threat not only to the financial system of the country, but also to the integrity and sovereignty and therefore, international communities including the United Nations on different conventions recognized concerted efforts of all Member Countries to strictly deal with the evil of money-laundering. The object of the Act is to prevent money-laundering and connected activities and confiscation of "proceeds of crime" and preventing legitimizing of the money earned through illegal and criminal activities by investments in movable and immovable properties often involving layering of the money so generated through illegal activities namely, by inducting and integrating the money with legitimate money and its off-shoot like purchase of movable and immovable property. Therefore, the expression "proceeds of crime" has to receive expansive interpretation so as to sub-serve the broad objectives of the Act.

21. The object of the PML Act as envisaged under the statement of object and reasons would indicate that money laundering was posing a serious threat not

only to the financial system of the country but also to the integrity and sovereignty and this has led to enactment of PML Act. It has been enacted to prevent money laundering and connected activities. The statement of objects and reasons for such enactment as set out in the Bill was to achieve the objects envisaged thereunder and it reads:

"Statement of objects and reasons.

It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:--

(a) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.

(b) the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money laundering.

(c) the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering.

The recommendations were classified under various heads.

Some of the important heads are-

(i) declaration of laundering of monies carried through serious crimes a criminal offence;

(ii) to word out modalities of disclosure by financial institutions regarding reportable transactions;

(iii) confiscation of the proceeds of crime;

(iv) declaring money-laundering to be an extraditable offence; and

(v) promoting international co-operation in investigation of money-laundering.

(d) the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/12 of 23rd February, 1990, inter alia, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

(e) the United Nations in the Special Session on countering World Drug Problem

Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money-laundering.

India is a signatory to this declaration.

2. In view of an urgent need for the enactment or a comprehensive legislation inter alia for preventing money-laundering and connected activities confiscation of proceeds of crime, setting up of agencies and mechanisms for co-ordinating measures for combating money-laundering, etc., the Prevention of Money-Laundering Bill, 1998 was introduced in the Lok Sabha on the 4th August, 1998. The Bill was referred to the Standing Committee on Finance, which presented its report on the 4th March, 1999 to the Lok Sabha. The recommendations of the Standing Committee accepted by the Central Government are that (a) the expressions "banking company" and "person" may be defined; (b) in Part I of the Schedule under Indian Penal Code the word offence under section 477A relating to falsification of accounts should be omitted; (c) 'knowingly' be inserted in clause 3(b) relating to the definition of money-laundering; (d) the banking companies financial institutions and intermediaries should be required to furnish information of transactions to the Director instead of Commissioner of Income-tax (e) the banking companies should also be brought within the ambit of clause II relating to obligations of financial institutions and intermediaries; (f) a definite time-limit of 24 hours should be provided for producing a person about to be searched or arrested person before the Gazetted Officer or Magistrate; (g) the words "unless otherwise proved to the satisfaction of the authority concerned" may be inserted in clause 22 relating to presumption on inter-connected transactions; (h) vacancy in the office of the Chairperson of an Appellate Tribunal, by reason of his death, resignation or otherwise, the senior-most member shall act as the Chairperson till the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill the vacancy, enters upon his office;

(i) the appellant before the Appellate Tribunal may be authorized to engage any authorized representative as defined under section 288 of the Income-tax Act, 1961, (j) the punishment for vexatious search and for false information may be enhanced from three months imprisonment to two years imprisonment, or fine of rupees ten thousand to fine of rupees fifty thousand or both; (k) the word 'good faith' may be incorporated in the clause relating to Bar of legal proceedings. The Central Government have broadly accepted the above recommendations and made provisions of the said recommendations in the Bill.

3. In addition to above recommendations of the standing committee the Central Government proposes to (a) relax the conditions prescribed for grant of bail so that the Court may grant bail to a person who is below sixteen years of age, or woman, or sick or infirm, (b) levy of fine for default of non-compliance of the issue of summons, etc. (c) make provisions for having reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property so as to facilitate the transfer of funds involved in money-laundering

kept outside the country and extradition of the accused persons from abroad.

4. The Bill seeks to achieve the above objects."

22. In all these writ petitions, summons issued by the Enforcement Directorate under Section 50(2) and (3) of PML Act is called in question. A person issued with a summons under the PML Act may or may not be an offender of any scheduled offences. The authorities are invested with the power to investigate the offence of money laundering. The offence of money laundering under Section 3 of the Act, involves attempting or indulging in or knowingly assisting or knowingly being a party or being involved in any process or activity connected with the "proceeds of crime", including its concealment, possession, acquisition or use and projecting or claiming it as an untainted property. In fact, it is an offence independent of the predicate offence and to launch prosecution under Section 3 of the Act, it is not necessary that a predicate offence should also have been committed. Section 3 of the Act clearly discloses that possession or the 'conversion' of the 'proceeds of crime' as untainted property would be a criminal act. In fact, the essential ingredient namely, mens rea is conspicuously found in Section 3 since it criminalises possession or the conversion of the "proceeds of crime" which includes projecting or claiming the "proceeds of crime" as untainted property. Whereas under definition clause defining "proceeds of crime" i.e., Section 2(u), it does not and thereby it provides succor to an innocent person. The expression 'knowingly' used in Section 3 of the Act would indicate the intent of keeping an innocent out of the purview of the offence. The offence indicated under Section 3 would surface when a person knowingly attempts to indulge, assist or is a party, or involved in any process or activity connected with "proceeds of crime" and thus would be guilty of the offence under the Act. A person who is in possession of any proceeds of crime who might not be a person, charged of having committed a schedule offence would be liable to be proceeded under PML Act for attaching his property came up for consideration before High Court of Bombay in the matter of RADHA MOHAN LAKHOTIA vs. DEPUTY DIRECTOR, PMLA in First Appeal No.527/2010 decided on 5th August, 2010 and it came to be held as follows:

"13. The Appellants however, have placed emphasis on the expression "such person" used in clause (b) of section 5(1) of the Act. According to them, the word "such" is prefix to the word "person" in clause (b). That is not superfluous, but is ascribable to the person referred to in clause (a). Which means that even clause (a) deals with person who has been charged of having committed a scheduled offence. It is not possible to countenance this submission. We are conscious of the fact that penal provisions should be strictly construed. At the same time, we cannot overlook the language of section 5 as applicable at the relevant time. In our opinion, clause (a) refers to "any person"- whether he has been charged of having committed a scheduled offence "or otherwise". The only requirement is that that person should be in possession of any proceeds of crime. The governing factor is possession of any proceeds of crime by a person.

Taking any other view may defeat the legislative intent. In as much as, a person who has been charged of having committed a scheduled offence can successfully defeat the object of the enactment of attachment and confiscation of the proceeds of crime by transferring it to some other person who is not so involved with him in commission of stated scheduled offence. In our opinion, on fair reading of section 5 (1) read with section 8 of the Act, it postulates two categories of persons against whom action of attachment of property can be proceeded with. The first category is any person who is in possession of any proceeds of crime. A person falling in this category need not be a person, charged of having committed a scheduled offence. The second category is of a person who has been charged of having committed a scheduled offence. Besides, being charged of having committed a scheduled offence, that person is found to be in possession of any proceeds of crime. In either case, it is open to take recourse to section 5 of the Act if the specified Authority has reason to believe and reason for such belief is recorded in writing that the 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. Indeed, the proviso to subsection (1) as was applicable at the relevant time envisaged that no order of attachment can be made unless, in relation to the offence under 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; or 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 section 36(1) of NDPS Act, 1985. This proviso essentially is directed against the second category of person covered by sub-section (1), namely, person who has been charged of having committed a schedule offence. In other words, action of attachment of proceeds of crime in possession of the person charged of a scheduled offence can be proceeded only on forwarding of a report to Magistrate under section 173 of the Code or a complaint has been filed for taking cognizance of offence by the Special Court constituted under the NDPS Act. In so far as the person who is not named in the scheduled offence, there can be no question of filing of any report or complaint for taking cognizance. That stipulation has no application to the person who is not a person having been charged of a scheduled offence. The view that we propose to take is reinforced from the purport of section 3 and 4 of the Act of 2002. The same deal with the offence of money-laundering and punishment for money-laundering respectively. Both these provisions, even on strict construction, plainly indicate that the person to be proceeded for this offence need not necessarily be charged of having committed a scheduled offence. For, the expression used is "whosoever". The offence of money-laundering under section 3 of the Act of 2002 is an independent offence. It is committed if "any person" 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. Further, it would create a piquant situation as a person who is not charged of having committed a scheduled offence even if can

be proceeded for offence of money laundering and even if such person is in possession of any proceeds of crime, no action of attachment and confiscation of the proceeds of crime can be resorted to qua himalbeit the proceeds of crime are in his possession. If the argument of the appellants were to be accepted, even the expression "whosoever" appearing in section 3 and 4 of the Act will have to be limited to person who has been charged of having committed a scheduled offence. The object of the enactment of 2002 would be completely defeated by such approach. Besides, the view that we propose to take is reinforced also from the purport of section 8 of the Act of 2002. It provides that the Adjudicating Authority if has reason to believe that "any person" has committed an offence under section 3, may serve notice upon such person calling upon him to indicate his source of his income, earning or assets, out of which or by means of which he has acquired the property attached under section 5(1) of the Act. Once again, the legislature has unambiguously used the term "any person" and not person charged of having committed a scheduled offence. Indeed, any person referred to in this provision is a person who has committed an offence under section 3 of the Act of 2002. He may not necessarily be a person charged of having committed scheduled offence. The proviso to sub-section (1) thereof stipulates that where a notice under the said 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. Suffice it to observe that even section 8 contemplates adjudication to be done by the Adjudicating Authority after provisional attachment order is passed under section 5 of the Act and upon receipt of complaint under section 5(5) of the Act. We are not referring to other provisions mentioned in the said section 8(1), as we are dealing only with the case arising under section 5 of the Act. Considering the above, we are of the considered opinion that there is no merit in the argument of the appellants that action under section 5 of the Act could not have proceeded against them, as they were not charged of having committed a scheduled offence."

Same accordingly deserves to be extended to Section 3 for its interpretation inasmuch as, expression used in Section 5(1)(a) is "any person", whereas, expression used in Section 3 is "whosoever" and in Section 2(u) again the expression used is "any person". Thus, a person who might not be an accused of scheduled offence, if he has deprived or obtained, directly or indirectly any property i.e., corporeal or incorporeal, movable or immovable i.e., as described under the definition clause 2(u) which is a result of criminal activity, that would be sufficient for the authorities under the PML Act to proceed against such person.

23. In other words, the proceedings under PML Act are independent, separate, distinct and different from the proceedings initiated for scheduled offences by other law enforcement agencies. PML Act is a stand alone enactment which differentiates the Schedule offence and the money laundering offence separately. To put it differently, if the investigation for the predicate offence is conducted by the authorities so empowered under the enactments and if for various reasons such proceedings were to be closed or dropped, then, proceedings under PML Act

would not automatically disappear or is not required to be dropped.

24. Even in case of proceeds of crime not being in possession of the alleged offenders, but if it is sought to be projected as an untainted money and sought to be ploughed into the economy, which ultimately derails the economy of the country, then, authorities under the PML Act would be empowered to proceed under the provisions of PML Act. As to whether it is proceeds of crime or its use or concealment or acquisition is to be decided only by the adjudicating authority after verifying the facts and circumstances that would be unraveled by verifying the relevant records and documents during the course of investigation. The mere suspicion of the authorities that proceeds of crime is being ploughed into main stream of the economy as untainted money is sufficient enough for the authorities to investigate and examine and this can be done only by collecting the information, recording the statements who might not be the offender also.

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

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

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

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

28. The person issued with the summons in a proceedings initiated under PML Act, may or not be the offender of the scheduled offence. The authorities under the PML Act can initiate investigation on any of the scheduled offences stipulated under Section 2(1)(x) and 2(1)(y) of the Act. The predicate offence may be a trigger for initiating prosecution under PML and the investigation can be relatable predicate offence or for the offence of money laundering as defined under Section 3 of the PML Act, which investigation is normally conducted by the authorities invested with the power under such enactment and may for various reasons drop or close the proceedings and thereby it cannot be contended that investigation or prosecution commenced under the PML Act would ipso facto fall. Even in cases of the proceeds of crime, if any, not being in possession of an alleged offender, even then authorities under the PML Act are empowered to proceed under PML Act since possession of the proceeds of crime or its concealment or acquisition would fall within the mischief of "money laundering" and this aspect will have to be unearthed by the investigating authority in the background of facts and circumstances that may be obtained in a given case, which can be done only after verifying documents and statements, if any during the course of investigation.

29. It is trite law that at the stage of show cause notice, charge sheet, summons or notice to appear, constitutional courts would not interfere so as to interject the proceedings and thereby prevent the authorities from proceeding with.

30. Ordinarily a writ petition would not lie against a show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of a party unless same having been issued by a person who does not possess jurisdiction or competent to do so. In other words, a writ lies only when some right of a party is infringed or violated. Even in case of applicant/petitioner disputing the jurisdiction of the competent authority, which involves a disputed question of fact, then in such circumstances it would not be appropriate to entertain a writ petition. Where a show cause notice has been issued and a writ petition is filed under Article 226 of Constitution of India against such show cause notice, it would be incumbent upon the petitioner to show to such authority that he has no power or jurisdiction to enquire into the show cause notice so issued. In such circumstances, it would be appropriate to direct the parties to approach the said authority and take all such contentions including objection relating to jurisdiction and only in the event of an adverse decision being rendered, it would be certainly open to the petitioner to assail the same by invoking appropriate appellate or revisional jurisdiction and in appropriate cases by invoking the jurisdiction of this Court under Article 226 of Constitution of India. The mere issuance of a show cause notice or notice to appear for the purposes of investigation does not infringe the right of a party, as it does not affect the right of such party. Thus, question of fundamental right

guaranteed under Article 21 of Constitution of India cannot be held to have been infringed by petitioners on account of they having been summoned for investigation by issuance of impugned summons by ED.

31. The Hon'ble Apex Court in the case of SPECIAL DIRECTOR AND ANOTHER vs. MOHAMMED GULAM GHOUSE AND ANOTHER reported in AIR 2004 SC 1467 while examining the correctness of the interim order passed by the Division Bench staying the show cause notice issued by Enforcement Directorate for alleged large scale financial irregularities, which came to be challenged by the petitioner therein as same being illegal, null and void, which had found favour by the Division Bench came to be reversed by the Apex Court by arriving at following conclusion:

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presences of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even invent gate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection, granted."

32. As already observed herein above, notice/summons has been issued to respective petitioners and same would clearly disclose that in exercise of power vested under Section 50(2) and 50(3) of the PML Act, same has been issued. There being no challenge to the constitutional validity of these provisions and the jurisdiction of the authority not being in serious dispute, entertaining of writ petition on the ground of investigation being hit by Article 20 of Constitution of India cannot be entertained at this stage and it would not be appropriate for this Court to express any opinion as it may prejudice rights of parties.

33. Though Mr. B.V.Acharya, learned Senior Counsel appearing for petitioner in W.P.No.5299/2019 has sought for quashing of the proceedings by raising 2 additional grounds, namely; (1) there has been stay of further proceedings passed in W.P.No.32593/2018 on 30.07.2018 and thereby the impugned summons could not have been issued calling upon the petitioner to appear for investigation; and, (2) impugned notice issued to the petitioner by the

Enforcement Directorate to appear for investigation is bereft of material particulars and lack of clarity. Though at first blush said arguments would look attractive, it is not factually so, for the reasons indicated herein below.

34. The issue involved in W.P.No.32593/2018 relates to the order passed by the Principal Director of Income Tax (Investigation), who by the said impugned order dated 28.05.2019 had accorded sanction to initiate criminal prosecution against petitioner therein and the authority for granting such sanction being under challenge, has to be necessarily confined to the proceedings arising out of the Income Tax Act, 1961. Said order of interim stay of further proceedings arising out of IT Act cannot take within its sweep proceedings initiated or to be initiated under different enactments by different authorities. Though in the statement of objections filed by the Enforcement Authority at paragraph 4 it has been admitted that:

"The averments in the petition that this respondent had registered in ECIR for the offences under the provisions of the Prevention of Money Laundering Act, pursuant to private complaint filed by the first respondent on the basis of the scheduled offence under Section 120B of the Indian Penal Code is true and correct", the fact remains that Section 120B is a predicate offence by itself or in other words, it is a stand alone offence and as such said argument would not be of any avail to the petitioner to assail the summons issued under Section 50(2) and 50(3) of the Act. That, I have already held, money laundering is an offence independent of the predicate offence and to launch prosecution under Section 3 of the Act, it would not be necessary that a predicate offence should also have been committed.

35. That apart, a plain reading of Section 3 of PML Act would disclose that whosoever directly or indirectly, attempts to indulge or knowingly assess or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property, would be punishable for the offence of money laundering. The expression of "proceeds of crime" has been defined under Section 2(u) of the Act which means any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence xxxxx within the country and the expression "scheduled offence" has been defined under Section 2(y) to mean the offences specified under Part-A or the offences specified in Part-B (the total value in such offences is 1 Crore rupees or more); or the offences specified under Part-C of the schedule. The expression "Scheduled" is defined under Section 2(x) of PML Act to mean the offences specified in the Schedule to the Act. Under Part-A, Paragraph-1 offences under the Indian Penal Code, as morefully described thereunder has been described as offences constituting Schedule offence under the PML Act. Likewise, under Part 'A' at Paragraphs - 2 to 29 the offences under different enactments have been specified to be an offence attracting the provisions of PML Act. In other words, offences which are specified in Part 'A' or

Part 'B' or Part 'C' would automatically attract the offence punishable under the PML Act. Under Part 'A' of the Schedule, Section 120B of IPC has been incorporated to be an offence for the provisions of PML Act.

36. In the case of YOGESH ALIAS SACHIN JAGDISH JOSHI vs STATE OF MAHARASTRA reported in (2008) 10 SCC 394 it has been held by Hon'ble Apex Court that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to such illegal agreement. It came to be held:

"25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement."

37. Hon'ble Apex court in the case of SUDHIR SHANTILAL MEHTA Vs. CENTRAL BUREAU OF INVESTIGATION reported in (2009) 8 SCC 1 has held that criminal conspiracy is an independent offence and punishable independent of other offences. Explaining the ingredients of an offence under criminal conspiracy, it came to be held:

"113. Criminal conspiracy is an independent offence. It is punishable independent of other offences; its ingredients being:

- (i) an agreement between two or more persons.
- (ii) the agreement must relate to doing or causing to be done either
 - (a) an illegal act;
 - (b) an act which is not illegal in itself but is done by illegal means.

It is now, however, well settled that a conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. While however doing so, it must bear in mind that meeting of the minds is essential; mere knowledge or discussion would not be. As the question has been dealt with in some detail in Criminal Appeal No.76 of 2004 (R. Venkatakrishnan vs. CBI12), it is not necessary for us to dilate thereupon any further.

114. We may, however, notice that recently in Yogesh v. State of Maharashtra¹³ a Division Bench of this Court held: (SCC p.402, para 25)

"25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement."

115. Yet again in *Nirmal Singh Kahlon v State of Punjab*¹⁴ this Court following *Ram Lal Narang v. State (Delhi Adm.)*¹⁵ held that a conspiracy may be a general one and a separate one meaning thereby a larger conspiracy and a smaller which may develop in successive stages. For the aforementioned purpose, the conduct of the parties also assumes some relevance. (See also *Chaman Lal v. State of Punjab*¹⁶.)

116. In *K.R. Purushothaman v. State of Kerala*¹⁷ this Court held: (SCC pp.636-38, paras 11 & 13) "11. Section 120-A IPC defines 'criminal conspiracy'. According to this Section when two or more persons agree to do, or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designed a criminal conspiracy. In *Major E.G. Barsay v. State of Bombay*¹⁸ Subba Rao J., speaking for the Court has said: (AIR p.1778, para 31)

'31. ...The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act, It may comprise the commission of a number of acts.'

13. To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair, The existence of conspiracy and its objects are usually deducted from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind the well-known rule governing circumstantial evidence viz., each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. The criminal conspiracy is an

independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se conspiracy. The offence of conspiracy shall continue till the termination of agreement."

38. The expression "criminal conspiracy" has been the subject matter of interpretation by the Apex Court in its authoritative pronouncement in the matter of R VENKATKRISHNAN vs CENTRAL BUREAU OF INVESTIGATION reported in AIR 2010 SC 1812 whereunder it came to be held in unequivocal terms that Section 120B of IPC is an independent offence and it is punishable separately. It has been further held that prosecution, must prove the same by applying the legal principles which are applicable for the purpose of proving a criminal misconduct on the part of an accused. It has been held:

"78. Criminal conspiracy in terms of Section 120B of the Code is an independent offence. It is punishable separately. Prosecution, therefore, must prove the same by applying the legal principles which are applicable for the purpose of proving a criminal misconduct on the part of an accused.

79. A criminal conspiracy must be put to action and so long a crime is merely generated in the mind of the criminal, it does not become punishable. Thoughts, even criminal in character, often involuntary, are not crimes but when they take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal but by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.

The ingredients of the offence of criminal conspiracy are:

- (i) an agreement between two or more persons;
- (ii) the agreement must relate to doing or causing to be done either-
 - (a) an illegal act;
 - (b) an act which is not illegal in itself but is done by illegal means.

80. Condition precedent, therefore, for holding accused persons guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of a fact which must be established by the prosecution, viz., meeting point of two or more persons for doing or causing to be done an illegal act or an act by illegal means.

81. The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is, thus, difficult, if not impossible, to obtain direct evidence to establish the same.

82. The manner and circumstances in which the offences have been committed and the level of involvement of the accused persons therein are relevant factors. For the said purpose, it is necessary to prove that the propounders had expressly agreed to or caused to be done the illegal act but it may also be proved otherwise by adduction of circumstantial evidence and/ or by necessary implication. [See Mohammad Usman Mohammad Hussain Maniyar & Ors. v. State of Maharashtra (1981) 2 SCC 443: AIR 1981 SC 1062]]

83. The following passage from Russell on Crimes (12th Edn. Vol 1) referred to by Jagannatha Shetty, J. in Kehar Singh and Ors. v. State (Delhi Administration), [1988 (3) SCC 609 at 731] AIR 1988 SC 1883) brings out the legal position succinctly:

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough"

84. It was further noted in that case that to establish an offence of criminal conspiracy '[i]t is not required that a single agreement should be entered into by all the conspirators at one time. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished.'

85. Dr. Hari Singh Gour in his Commentary on Penal Law of India, (Vol. 2, 11th Edn. p. 1138) elaborates:

"In order to constitute a single general conspiracy there must be a common design. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be general plan to accomplish the common design by such means as may from time to time be found expedient."

86. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This Court in State of Maharashtra v. Som Nath Thapa [(1996) 4 SCC 659]: (AIR 1996 SC 1744: 1996 AIR SCW 1977) opined that it is not necessary for the prosecution to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use, stating:

"...to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question

could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."

[See also K.R. Purushothaman v. State of Kerala (2005) 12 SCC 631]: (AIR 2006 SC 35: 2005 AIR SCW 5437).

87. We may also notice a decision of this Court being State (NCT) of Delhi v. Navjot Sandhu @ Afsan Guru [(2005) 11 SCC 600]: (AIR 2005 SC 3820: 2005 AIR SCW 4148), commonly known as the Parliament Attack case, wherein upon taking note of various earlier decisions of this Court, it was opined that as conspiracy is mostly proved by circumstantial evidence, usually both the existence of conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused, stating :

"101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.

In Ram Narayan Popli (AIR 2003 SC 2748: 2003 AIR SCW 3119) (supra), this Court noted:

"...Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment..."

{See also Esher Singh v. State of A.P. [(2004) 11 SCC 585]: (AIR 2004 SC 3030: 2004 AIR SCW 1665)}:

88. Recently, in Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra [(2008) 6 SCALE 469] : (AIR 2008 SC 2991 : 2008 AIR SCW 5043), a Division Bench of this Court held:

"23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that

an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement."

39. As to whether by a criminal conspiracy the offences indicated in the schedule to PML Act is made out or not would be an issue which can be unearthed only after investigation. During the course of investigation, the authorities may arrive at a conclusion that there is no necessity to further investigate the matter and it may drop the investigation or in the event of authorities finding there is some material, it may then proceed to adjudicate. It all depends on circumstances emerging from investigation in a given case.

40. If principles of interpretation is adopted, then, there was no necessity for the expression "conspiracy" being indicated in several enactments as found in the schedule to the PML Act. Section 120B of IPC found in part-A of the schedule to PML Act refers to IPC offences only and if it was referable to other offences, the framers of law would not have incorporated the expression "conspiracy" under Part-A Paragraph -1 as defined under other enactments. Section 120B is a predicate, distinct and stand alone offence. The inclusion of said offence under the schedule is not under challenge in these writ petitions.

41. As rightly contended by Sri K M Nataraj, learned Additional Solicitor General of India that summons issued under Section 50(2) of PML Act has nothing to do with the regulations as defined under the Regulatory Rules and said rules is referable only to proceedings for adjudication and not to pre-adjudication proceedings. In fact, Section 50(2) does not refer to an accused at all.

42. It is contended that summons issued under Section 50(2) is contrary to the Adjudicating Authority Procedure Regulation, 2013 and it does not contain material particulars nor the details which is required to be furnished by the petitioner. A plain reading of the said Regulation would indicate that same has been enacted in exercise of the power conferred by sub-section (15) of Section 6 of the Act. Section 6 of the Act relates to the power of adjudicating authorities and the composition of such adjudicating authority. Section 2(a) defines 'Adjudicating Authority' to mean an authority appointed under sub-section (1) of Section 6. Section 2(na) defines 'Investigation' so as to include all proceedings under the Act conducted by the Director or by an authority authorized by the Central Government under the Act for collection of evidence.

43. Section 6(15) provides the method of adjudication to be followed by the adjudicating authority and it does not refer to any procedure to be adopted by the investigating authority. The definition clauses as noticed herein above viz., sections 2(a) and 2(na) is relatable to adjudicating authority and not to investigation and they are separate, distinct and independent. Hence, mere mention of Section 50(2) or 50(3) in the summons issued, it cannot be contended by petitioners that even at pre-adjudication stage i.e., during investigation stage, the authorities are required to state or reveal the nature of

material upon which they intend to rely upon for summoning a person for investigation. If same is accepted, it would defeat the purpose of investigation itself.

44. In the light of aforestated discussion and for the reasons indicated hereinabove, this Court is of the considered view that there is no merit in these writ petitions and accordingly, they are hereby dismissed.