

**IN THE SPECIAL COURT FOR THE TRIAL OF PMLA CASES/
SPECIAL COURT (SPE/CBI)-I/NIA, ERNAKULAM.**

Present:-

Sri. P.K. Mohandas, Judge, Special court for PMLA Cases

Saturday the 16th day of March, 2024 / 26th Phalguna, 1945.

Crl.M.P. No.130/2023 in SC No.533/2018

Petitioner/Accused No.1 : S. Martin, aged about 61 years, S/o. Santiago, No. 135/1, Thiruvalluvar Street,, G.N. Mills Post, Vellakinar Pirivu, Coimbatore- 641 209.

By Adv. Mathews K. Uthuppachan,

Respondent/Complainant : Directorate of Enforcement Represented by Special Public Prosecutor (PMLA)

**By Adv. Govindu.P. Renuka Devi,
Special Public Prosecutor, PMLA for
Directorate of Enforcement.**

This Crl.MP coming on for hearing before me on 05.03.2024 and the Court on 16.03.2024 passed the following:

ORDER

This is an application filed by the first accused for keeping all further proceedings in the case in abeyance till the disposal of CC No.218/2015 (predicate case).

2. The petitioner is the first accused in the case. The petitioner allegedly committed the offence punishable under Section 4 r/w. section 70 and 8(5) of the PMLA, 2002. The case was taken on file on the basis of a complaint submitted by the Assistant Director, Directorate of Enforcement,

Kochi in Enforcement Case Information Report (ECIR) No.KCZO/04//2014. The compliant was filed on 11-6-2018 against 7 persons. Upon receipt of summons, all the accused appeared before the court. On 3-6-2022, the complainant filed a supplementary complaint by implicating 37 additional accused. They also appeared on summons. The petitioner filed a discharge petition on 30-9-2019 and the same is pending.

3. The petitioner's case is that C.C. No.218 of 2015 on the file of the Chief Judicial Magistrate Court, Ernakulam was taken on file on the basis of the final report submitted by the Deputy Superintendent of Police, CBI Cochin. The petitioner is the first accused in that case. Upon receipt of summons, the petitioner appeared before the Magistrate Court and he was released on bail. The petitioner had filed a discharge petition on 28-6-2016 and the same is pending consideration.

4. The consolidated final report filed by the CBI in 7 RC's was treated as the predicate case for the registration of ECIR No. KCZO/04//2014. On 09.02.2023 the complainant herein filed an application under Section 44 (1) (c) of PMLA for transferring C.C. No.218 of 2015 and the same is now transferred to this Court. During the pendency of the above applications, the Apex Court in Vijay Madanlal Choudhary and ors. v. Union of India and ors. (2022 Live Law (SC) 633 : 2022 KHC Online 6742 – SLP (Crl.) No.4634/2014 dated 27.7.2022) pronounced a judgment whereby it

was interalia held that the proceedings under PMLA cannot be continued once there is an acquittal or discharge in the predicate case. In that case, the ambiguity regarding the fate of the PMLA case after acquittal or discharge in the alleged scheduled offence stands settled and the PMLA proceedings cannot continue once there is acquittal or discharge in the predicate case. Therefore, the continuation or conclusion of the PMLA proceedings after discharge/acquittal in the predicate case would be paradoxical. So, the trial in the alleged scheduled offence ought to be concluded first, before the commencement of the trial in the PMLA case. The petitioner filed this application to keep the case in abeyance till the final disposal of the predicate case.

5. The respondent opposed the application and filed a preliminary objection and an additional objection. It is contended that the petitioner is the first accused in this case and charges are yet to be framed in the matter. CC No.218 of 2015, which is committed to this Court pertains to the scheduled offence. This case is filed under the Prevention of Money Laundering Act, 2002 for the offence of money laundering as defined under Section 3 and punishable under Section 4 of the Act. The conclusion of trial in the scheduled offence is not necessary for framing of charge and commencement of the trial in this case. The present petition is not maintainable.

6. When the matter came-up for consideration, I have heard the learned counsel for the petitioner and the Special Public Prosecutor.

7. It is the undisputed fact that the petitioner is the first accused in this case as well as CC 218/2015 on the file of the Chief Judicial Magistrate Court, which is now committed to this Court and pending as SC (PMLA) 3/2023. It is further admitted that the present case was registered by the Enforcement Directorate on the basis of the final report for the scheduled offence filed in that case. The allegation in this case is that the petitioner and the other accused have committed money laundering as defined in Section 3 of the PMLA and thereby committed the offence punishable u/s.4 of the Act.

8. The learned counsel for the petitioner submits that the application for discharge in the predicate case filed by the petitioner is pending consideration. According to him, in the event of petitioner/accused being discharged in the predicate case, there will be no question of continuation of PMLA proceedings. He relied on the decision of the Hon'ble Supreme Court in *Vijay Madanlal's case (supra)*.

9. The learned counsel submitted that relying upon the judgment in *Vijay Madanlal's case* the Hon'ble Telangana High Court in *M/s.Bharti Cement Corporation Private Limited v. Directorate of Enforcement (Criminal Revision Case No.87/2021)* has held that the proceedings in the PMLA case shall await the outcome of the alleged predicate case. He also submitted that

in another case, i.e. V. Vijay Sai Reddy v. Enforcement Directorate (Criminal Petition No. 1218 of 2021) the Hon'ble Telangana High Court has passed similar directions.

10. The learned counsel submitted that the trial in the PMLA case can commence only after the conclusion of the trial in the predicate case and the same is also evident from Section 24 of the PMLA. He relied on the observations of the Court in paragraphs 334 and 343 (as reported in 2022 SCC Online 929) of the judgment in *Vijay Mandanlal's* case. Paragraphs 333 and 334 of the judgment as reported in SCC Online (para 92 & 93 of the original judgment) read:

“333. It is, thus, clear that this special provision regarding burden of proof in any proceeding relating to proceeds of crime under this Act would apply to stated proceeding before the Adjudicating Authority and not limited to the proceeding before the Special Court. That is evident from the plain language, indicative of applicability of the provision to any proceeding before the "Authority" or the "Court". The expression "Authority" occurring in this provision must be given its proper meaning indicative of the Adjudicating Authority appointed under Section 6 of the 2002 Act to adjudicate on matters concerning confirmation of provisional attachment order and eventual

confiscation and vesting of the property, if the fact situation so warrant. It is an independent body, free from the control of the Executive. It is ordained to deal with civil aspects of the action of attachment and confiscation of the proceeds of crime and not about the criminality of the offence under Section 3 of the 2002 Act. When this provision is made applicable to the proceeding before the Authority, it would not be necessary to follow the strict principle of standard of proof beyond reasonable doubt, as applicable in criminal trials. That principle will have no bearing on the proceeding before the Authority. However, when the same evidence and provision is relied upon in the proceeding before the Special Court regarding trial of offence of money laundering under Section 3 of the 2002 Act, it would have a different connotation in the context of a criminal trial.

334. Be that as it may, this Section 24 deals with two situations. The first part concerns the person charged with the offence of money-laundering under Section 3. The second part (Clause (b)) concerns any other person. Taking the second part first, such other person would obviously mean a person not charged with the offence of money laundering under Section 3 of the 2002 Act. The two parts, in one sense, are mutually exclusive. If a

person is charged with the offence of money laundering under Section 3 of the 2002 Act owing to a complaint filed by the authority authorised before the Special Court, Clause (a) would trigger in. As regards the second category (Clause (b) of person, the expression used is may presume. Whereas, qua the first category (covered under Clause (a)) the expression used is "shall, unless the contrary is proved, presume. In this category, if a charge is already framed against the person for having committed offence of money laundering, it would presuppose that the Court framing charge against him was prima facie convinced that the materials placed before it had disclosed grave suspicion against such person. In such a case, once the issue of admissibility of materials supporting the factum of grave suspicion about the involvement of the person in the commission of crime under the 2002 Act, is accepted, in law, the burden must shift on the person concerned to dispel that suspicion. It would then not be a case of reversal of burden of proof as such, but one of shifting of burden on him to show that no offence of money laundering had been committed and, in any case, the property (proceeds of crime) was not involved in money-laundering."

11. Para 343 of the judgment as reported in SCC Online (original para 97) reads:

“343. Be that as it may, we may now proceed to decipher the purport of Section 24 of the 2002 Act. In the first place, it must be noticed that the legal presumption in either case is about the involvement of proceeds of crime in money-laundering. This fact becomes relevant, only if, the prosecution or the authorities have succeeded in establishing at least three basic or foundational facts. First, that the criminal activity relating to a scheduled offence has been committed. Second, that the property in question has been derived or obtained, directly or indirectly, by any person as a result of that criminal activity. Third, the person concerned is, directly or indirectly, involved in any process or activity connected with the said property being proceeds of crime. On establishing the fact that there existed proceeds of crime and the person concerned was involved in any process or activity connected therewith, itself, constitutes offence of money-laundering. The nature of process or activity has now been elaborated in the form of Explanation inserted vide Finance (No.2) Act, 2019. On establishing these foundational facts in terms of Section 24 of the 2002 Act, a legal presumption would

arise that such proceeds of crime are involved in money-laundering. The fact that the person concerned had no causal connection with such proceeds of crime and he is able to disprove the fact about his involvement in any process or activity connected therewith, by producing evidence in that regard, the legal presumption would stand rebutted.”

12. The learned counsel submitted that out of the three foundational facts required to be established to attract an offence under the PMLA, the first two basic facts, i.e., that the criminal activity relating to a scheduled offence has been committed; and that the property in question has been derived or obtained, directly or indirectly, by any person as a result of that criminal activity can be established only in the trial of the predicate case.

13. The learned counsel argued that the trial of the predicate case is to be conducted first and the trial of this case is to be kept in abeyance during the pendency of the predicate case. No prejudice will be caused to the complainant by keeping further proceedings in abeyance till the disposal of the predicate case. If further proceedings in this case is not kept in abeyance, it would cause serious prejudice, irreparable injury and harm to the petitioner.

14. It is submitted by the counsel for the petitioner that the present PMLA case is predicated on the CBI charge sheet in SC (PMLA) 3/23. He

submits that the said case was registered pursuant of the notifications issued by the State of Kerala and the Central Government, by which investigation of 32 FIRs was transferred to the CBI. The allegations were concerning the illegal sale of other State lotteries. The CBI, after investigation, filed closure reports in connection with multiple cases and filed a single charge sheet in connection with seven cases and alleged larger conspiracy in connection with all 32 cases. Cognizance on the CBI charge sheet was taken as per order dated 13/11/2015.

15. It is submitted that predicated on the CBI charge sheet the respondent registered ECIR No.KCZO/4/2014 on 19/08/2014. Six provisional attachment orders and one freezing order were passed. The said orders were challenged by the petitioner and are pending at various appellate stages. In connection with the first provisional attachment order, the petitioner filed WP(C) 23327 of 2016 before the Hon'ble High Court. The Hon'ble High Court by order dated 04/08/2016 has observed that prima facie the allegations under Section 420 and 120B of IPC are not made out independent of the provisions of the Lotteries Regulations Act. Therefore the Adjudicating Authority was directed to decide the issue of jurisdiction as preliminary issue. The Adjudicating Authority, instead of deciding the issue in the context that it was raised and directed to be decided, proceeded to reject the objection by its order dated 22/09/2016. The said order of the

Adjudicating Authority was set aside as per the order dated 18/09/2019 of Appellate Tribunal as the prosecution failed to file the complaint within 365 days as contemplated in Section 8 (3) (a) of the PMLA. The respondent has preferred an appeal and the same is pending. There is no stay of the order dated 18/09/2019. The properties attached by the PAO No. 02/2016 are not available to be dealt with under Section 8 (5) or (6) of the PMLA, as the case may be, and therefore the proceedings in SC No. 533 of 2018 cannot be continued.

16. The learned counsel submitted that the Apex Court in *Vijay Madanlal Choudhary's case* (2022 SCC Online SC 929), settled the law and interalia held that the ED authorities cannot proceed on notional basis and absent a predicate case, the PMLA proceedings cannot be continued. In the event of a person being discharged or acquitted in the scheduled/predicate case, the proceedings under PMLA cannot be continued. He referred to the observations of the Hon'ble Court in paragraph Nos. 251 to 253, 281 to 283 and 467 (v) (d) as reported in the SCC Online.

17. It is also submitted by the learned counsel that the presumption under Section 24 (1) (a) of the PMLA can arise only after framing of the charge in the PMLA case. To raise the presumption under Section 24 (1) (a), the three foundational or basic facts are required to be established, i.e. "*First, that the criminal activity relating to a scheduled offence has been committed.*"

Second, that the property in question has been derived or obtained, directly or indirectly, by any person as a result of that criminal activity. Third, the person concerned is, directly or indirectly, involved in any process or activity connected with the said property being proceeds of crime." (referring to para 343 of the judgment).

18. The learned counsel argued that after the pronouncement of the judgment in *Vijay Madanlal's* case, in multiple cases the proceedings under PMLA were dropped or quashed based on the grounds of discharge, quashing, or acquittal in the predicate case. He submits that in the decision in *Directorate of Enforcement v. M/s.Obulapuram Mining Company Ltd.* (Criminal Appeal No 1269/2017), *Parvathi Kollur and anr. v. State by Directorate of Enforcement* (Criminal Appeal No.1254/2022) and *Deputy Director, ED v. Emta Coal Ltd. and ors.* (SLP Civil Diary No.15235/2023), etc the fair stand of the learned Law Officers, including that of the learned Solicitor General was to the effect that the PMLA case cannot survive absent the scheduled offence.

19. The learned counsel submits that before passing the judgment in *Vijay Madanlal Choudhary's* case, some of the Hon'ble High Courts, including the Telangana High Court in *Jagati Publication Ltd. v. Enforcement Directorate* (Crl. Petition No.1073/2021) as order dated 10/08/2021 (prior to the judgment in *Vijay Madanlal's* case) had taken the view that the

proceedings under PMLA can proceed independent of the predicate case and the PMLA offence is not dependent on the predicate/scheduled offence. Later, the Hon'ble Telangana High Court by judgment dated 08/09/2022 passed in Jagati Publicationd Ltd. v. Enforcement Directorate (Crl. Petition No.1219/2021), in Bharathi Cement Corporation Pvt. Ltd. v. Directorate of Enforcement (Crl.R.C. 87/2021) and in Vijay Sai Reddy v. Enforcement Directorate (Crl. Petition No.1218/2021), after taking note of the judgment in *Vijay Madanlal Choudhary's case*, took a view in consonance with the Apex Court judgment, and it was observed that *"Keeping the principles of judicial discipline and the doctrine of precedent, this Court would have followed the aforesaid decision of the learned single judge dated 10.8.2021 rendered in Crl.P. No.1073 of 2021 and batch, but for the decision of the Supreme Court in Vijay Madanlal Choudary (supra)"*.

20. The learned counsel argued that the trial of a predicated case can commence only after the conclusion of the trial in the predicate case. It is impossible to conceive of a PMLA case absent a predicate case. In the event of discharge or acquittal of accused in the PMLA case, the PMLA proceedings cannot continue.

21. The learned counsel argued that framing of the charges in the PMLA case before the conclusion of trial in the predicate case would cause prejudice to the accused. According to him, the accused would be subjected

to a presumption under Section 24 (1) (a) without the foundational facts required to be established for raising the presumption being in existence. Some of the witnesses in the predicate case and the PMLA case would be common and thus, if the trial of the PMLA case commences before the conclusion of the trial of the predicate case, the accused would be forced to disclose his defence at a premature stage. The witnesses would be forewarned regarding the line of cross examination, and the same would cause serious prejudice to accused. Once the charges are framed in the PMLA case, there is no other stage in trial of the PMLA case for discharge of the accused, in the event if the accused is discharged or acquitted in the predicate case. The accused in addition to disclosing his defence at a premature stage in the PMLA case, would be required to make statements and lead evidence to rebut the presumption that would be raised without the preconditions being established.

22. The learned Special Public Prosecutor argued that the petitioner has filed a petition U/s. 239 Cr.P.C., as Crl.M.P. No.2426/2019 for discharge and when that application came-up for hearing, the petitioner had raised the question of jurisdiction and same was heard and decided in favour of the respondent as per order dated 17/02/2020. After seeking several adjournments, the petitioner has filed the present petition. The petition filed by the respondent under section 44(1) (c) of the PMLA was allowed for the

purpose of speedy trial in the interest of justice. If the present petition is allowed, the very purpose of the section 44(1) (c) will be defeated.

23. It is submitted by the Special Public Prosecutor that in the light of the provisions in PMLA and the judgment of the Apex Court in *Rana Ayyub v. Directorate of Enforcement through its Assistant Director* (2023 (1) KHC 699 : Writ Petition (Crl.) No. 12 of 2023 of the Hon'ble Supreme Court), in *Vijay Madanlal Choudary's case (supra)* and the judgment of the Hon'ble High Court of Kerala in *Inspector of police CBI/SCB v. Assistant Director, ED* (2019:KER:66460 : Crl.M.C. No. 2178 of 2019) the present petition is not maintainable.

24. It is submitted that the predicate case, C.C. No.218/2015, is now committed to this Court vide order dated 28-09-2023 of the Chief Judicial Magistrate, Ernakulam. The same is renumbered as SC (PMLA) No. 3 of 2023. This petition is filed only to delay the proceedings in this case, since the petitioner could not get stay order in other pending proceedings. Even though, the final result of the trial in scheduled offence will affect the PMLA case, the jurisdiction of the Special Court during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial. Trial of scheduled offence and the trial concerning offence of money laundering need to proceed independently,

even though it may be tried by the same Special Court as both are distinct and independent offences. In that, the offence of money-laundering is and can be only in relation to the process or activity connected with proceeds of crime and has nothing to do with the criminal activity relating to a scheduled offence as such.

25. It is further submitted by the Special Public Prosecutor that in the scheduled offence, the accused herein are neither discharged nor acquitted. The trial of the both predicate case and PMLA case shall be simultaneously and independently proceeded with and there shall not to be a joint trial. It is submitted that this aspect is further clarified in *Rana Ayyub's case and Vijay Madanlal's case*.

26. *The learned Special Public Prosecutor relied on the following observations of the Apex Court in Vijay Madanlal's case in paragraphs 104 to 114 of the judgment (paragraphs 352 to 370 of SCC Online) :*

“104. The expression “Special Court” has been defined in Section 2(1)(z), which in turn refers to Section 43.

.....

The amendment of 2013 in fact clarifies the dispensation to be followed in regard to trials concerning offence of money-laundering under this Act and the trial in relation to scheduled offence including before the Special Court trying such

(scheduled) offence. By virtue of this clause, the trials regarding the offence of money-laundering need to proceed before the Special Court constituted for the area in which the offence of money-laundering has been committed. *In case the scheduled offence is triable by Special Court under the special enactment elsewhere, the provision, as amended, makes it amply clear that both the trials after coming into effect of this Act need to proceed independently, but in the area where the offence of money laundering has been committed.*

105. In that, the offence of money-laundering ought to proceed for trial only before the Special Court designated to try money laundering offences where the offence of money-laundering has been committed. This is a special enactment and being a later law, would prevail over any other law for the time being in force in terms of Section 71 of the 2002 Act.

106. The proviso in Clause (a) of sub-section (1) of Section 44, is in the nature of an exception. It predicates that before the commencement of this Act, if the Special Court elsewhere was already trying the scheduled offence, shall continue to try the same. *Prima facie*, it is possible to take the view that the effect of this proviso, which has come in 2013, may have retrospective

effect. However, no specific case has been brought to our notice wherein the effect of such amendment is required to be examined. Accordingly, it is not necessary to dilate on this aspect any further.

107. This stipulation, however, will have to be regarded as directory provision. We say so because in a given case, the offence of money laundering may have been committed at place x, which may be in one State, but the property which is subject matter of money laundering may have been derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence committed at more than one place including in multiple States throughout the country. In such a case, it will not be open to the Special Court at place x to transfer all other cases in the area (even outside the State). If the provision is to be interpreted otherwise, it would have serious consequences on the trials which are pending in connection with the scheduled offences including before the Special Court elsewhere. This provision, therefore, needs to be read down to mean that as far as possible, the trial of scheduled offence before the Special Court under the concerned law, if in different area, that Special Court may

continue to try such scheduled offence. For, the trial of the scheduled offence and the trial in connection with the money-laundering are in any way required to proceed independently. That is because, the offence of money-laundering by itself is an independent offence in respect of the process and activity connected with the proceeds of crime which may have been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence.

108. The stipulation in Clause (b) of sub-section (1) of Section 44 has been amended vide Act 20 of 2005, Act 2 of 2013 and the Finance (No.2) Act, 2019. Consequent to amendment of 2013, the Clause (b) read thus:

.....

Later, a proviso came to be inserted vide Finance (No.2) Act, 2019, which reads thus:

“44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a)^{***}

(b)^{***}

[Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or

.....”

Clause (b) of sub-section (1) of Section 44 before amendment of 2019 envisaged that the Special Court upon a complaint made by any authority authorised in this behalf under this Act, could take cognizance of offence of money-laundering under Section 3 of the 2002 Act without the accused being committed to it for trial. This would mean that if the accused was already in custody and facing trial in respect of a scheduled offence elsewhere and is not required to be produced before the Special Court (PMLA) at the time of taking cognizance on the complaint filed by the authority authorised. This provision again must be regarded as directory or a discretionary provision and the Special Court trying the offence of money laundering need not insist for producing the accused before it at the time of taking cognizance of offence of money-laundering, provided no prejudice is caused to such accused. The expression “committed” occurring in this clause can be also construed as

“produced”. If so understood, we fail to comprehend as to how this provision violates any right of the accused, much less constitutional rights.

109. Coming to the proviso inserted in this clause [Section 44(1)(b)] vide Finance (No.2) Act, 2019, is, in fact, an enabling provision. It permits the Authority authorised to file a closure report before the Special Court in case it is of the opinion that no offence of money laundering has been made out, requiring filing of such complaint. This provision is only to dispel the doubt that in the event the person has been arrested by the officer authorised under Section 19 of this Act on the basis of material in his possession and having reason to believe and recorded in writing of being guilty of an offence punishable under this Act, but after the inquiry done by him in exercise of powers under Chapters V and VIII of the 2002 Act, he forms an opinion that no offence of money-laundering is made out, requiring filing of complaint, it is open to him to file a closure report before the Special Court disclosing that position. The proviso would, thus, come into play in such cases where the complaint is yet to be filed owing to the pendency of inquiry before the authorities, under Chapters V and VIII of the 2002

Act. In that view of the matter and more so keeping in mind the purposes and objects behind the enactment of 2002 Act, such a provision must be regarded as having reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act. Accordingly, for the view taken by us, we do not find any dichotomy in these provisions, much less being manifestly arbitrary or unconstitutional.

110. We now revert to Clause (c) of sub-section (1) of Section 44 of the 2002 Act. The same has undergone amendment vide Act 2 of 2013 and post that amendment, it reads thus:

“44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a)^{***}

(b)^{***}

(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the

Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.]”

We must reconcile this provision with Clause (a) of sub-section (1) of Section 44. That provision has already been elaborated in the earlier part of this judgment and read down to mean that it is an enabling and discretionary provision. The same consideration must be kept in mind by the Special Court while considering the application filed in terms of this clause. For, this clause also recognizes that the trial of scheduled offence and the trial concerning offence of money laundering need to proceed independently, even though it may be tried by the same Special Court as both are distinct and independent offences. In that, the offence of money-laundering is and can be only in relation to the process or activity connected with proceeds of crime and has nothing to do with the criminal activity relating to a scheduled offence as such.

111. In the context of this provision, it was emphatically argued before us by the petitioners that it would take away one right of appeal, otherwise available under the 1973 Code. Resultantly, Section 44(1)(c) of the 2002 Act in particular, is unconstitutional. To buttress this submission, reliance has been placed on the

dictum in *A.R. Antulay*. However, this ground need not detain us in view of the just stand taken by the learned Additional Solicitor General appearing for Union of India relying on the decision of this Court in *State (Through Central Bureau of Investigation) vs. Kalyan Singh (Former Chief Minister of Uttar Pradesh) & Ors.* ((2017) 7 SCC 444) which has considered similar challenge. The latter decision has distinguished the exposition in *A.R. Antulay*. In that, the core issue considered in *A.R. Antulay* was whether the High Court was competent to transfer the criminal trial pending before the Special Court dealing with the offence of PC Act, to itself by invoking powers under Section 407 of the 1973 Code. The Court answered the same in the negative and held that such power does not exist in the High Court and it would inevitably violate Article 21 of the Constitution. However, we are dealing with the dispensation provided by the law made by the Parliament in the form of 2002 Act. This being a special legislation and keeping in view the purport of Sections 65 and 71 of the 2002 Act, it is not possible to countenance the ground of challenge under consideration. We may usefully refer to paragraph 28 of *Kalyan Singh*, which reads thus:

“28. In the present case, the power of transfer is being

exercised to transfer a case from one Special Judge to another Special Judge, and not to the High Court. The fact that one Special Judge happens to be a Magistrate, whereas the other Special Judge has committed the case to a Court of Session would not make any difference, as has been stated herein above, even a right of appeal from a Magistrate to the Sessions Court, and from the Sessions Court to the High Court could be taken away under the procedure established by law i.e. by virtue of Sections 407(1) and (8) if the case is required to be transferred from the Magistrate at Rae Bareilly to the High Court itself. Hence, under Section 407, even if 2 tiers of appeal are done away with, there is no infraction of Article 21 as such taking away of the right of appeal is expressly contemplated by Section 407(1)(iv) read with Section 407(8). In the circumstances, *Antulay* judgment which dealt with the right of a substantive appeal from a Special Judge to the High Court being taken away by an order of transfer contrary to the non obstante clause in Section 7(1) of the Criminal Law Amendment Act, 1952 would not apply in the facts and circumstances before us.”(emphasis supplied)

Applying the principle underlying this decision, we have no

hesitation in rejecting the challenge to Section 44 as unconstitutional being violative of Articles 14, 20(3) and 21 of the Constitution.

112. Reverting to Clause (d) of sub-section (1) of Section 44, it postulates that a Special Court while trying the scheduled offence or offence of money-laundering shall hold trial in accordance with the provisions of the 1973 Code as it applies to a trial before a Court of Sessions. Going by the plain language of this provision, no fault can be found for conducting trial in the respective cases in the same manner as provided in the 1973 Code. However, the grievance is about the insertion of Explanation vide Finance (No.2) Act, 2019. As a matter of fact, this insertion is only a clarificatory provision, as is evident from the opening statement of the provision which says that “for the removal of doubts, it is clarified that”. None of the clauses inserted by this amendment travel beyond the principal provision contained in Clause (d). Clause (i) of the Explanation enunciates that the jurisdiction of the Special Court while dealing with the offence being tried under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same Court

shall not be construed as joint trials. This, in fact, is reiteration of the earlier part of the same section, which envisages that even though both the trials may proceed before the same Special Court, it must be tried separately as per the provisions of the 1973 Code. Insofar as Clause (ii) of the Explanation, at the first glance, it does give an impression that the same is unconnected with the earlier part of the section. However, on closer scrutiny of this provision, it is noted that the same is only an enabling provision permitting to take on record material regarding further investigation against any accused person involved in respect of offence of money-laundering for which complaint has already been filed, whether he has been named in the complaint or not. Such a provision, in fact, is a wholesome provision to ensure that no person involved in the commission of offence of money laundering must go unpunished. It is always open to the Authority authorised to seek permission of the Court during the trial of the complaint in respect of which cognizance has already been taken by the Court to bring on record further evidence which request can be dealt with by the Special Court in accordance with law keeping in mind the provisions of the 1973 Code as well. It is also open

to the authority authorised to file a fresh complaint against the person who has not been named as accused in the complaint already filed in respect of same offence of money-laundering, including to request the Court to proceed against such other person appearing to be guilty of offence under Section 319 of the 1973 Code, which otherwise would apply to such a trial.

113. The petitioners may be justified in making grievance that the provision though permits the Special Court to proceed with the trial in respect of scheduled offence, yet it may be oppressive as against the accused who is not charged with the offence of money laundering but only scheduled offence. For, he may be denied of opportunity of one appeal or revision, as the case may be before the higher forum. Such a grievance can certainly be looked into by the Special Court if an application is moved by the Authority authorised. Since we have held that the provision is only to bestow enabling power in the Special Court, it must follow that the Special Court will examine the request of the Authority authorised for transfer of trial of predicate offence to itself on case-to-case basis. Similarly, request for trial of offence under another special statute, such as PC Act, NDPS Act, etc. can also be considered by the Special Court on case

to case basis after examining all aspects of the matter.

114. In view of the above discussion, we do not find merit in the challenge to Section 44 being arbitrary or unconstitutional. We hold that the same is consistent with the legislative scheme and the purposes and objects behind the enactment of the 2002 Act to ensure that the proceeds of crime involved in money-laundering are dealt with appropriately as per the special Act and all concerned involved in the process or activity connected with such proceeds of crime are prosecuted for offence of money-laundering.”

27. The learned Special Public Prosecutor referred to the observations of the Apex Court in *Rana Ayyub's case* in paragraphs 25 to 29 and 36 which reads:

“25. Therefore, it is clear that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money - laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money - laundering and not *vice versa*.

26. Since the Act contemplates the trial of the scheduled offence and the trial of the offence of money - laundering to

take place only before the Special Court constituted under S.43(1), a doubt is prone to arise as to whether all the offences are to be tried together. This doubt is sought to be removed by Explanation (i) to S.44(1). Explanation (i) clarifies that the trial of both sets of offences by the same Court shall not be construed as joint trial.

27. A careful dissection of clauses (a) and (c) of sub-section (1) of S.44 shows that they confer primacy upon the Special Court constituted under S.43(1) of the PMLA. These two clauses contain two Rules, *namely*, (i) that the offence punishable under the PMLA as well as a scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence of money - laundering has been committed; and (ii) that if cognizance has been taken by one Court, in respect of the scheduled offence and cognizance has been taken in respect of the offence of money - laundering by the Special Court, the Court trying the scheduled offence shall commit it to the Special Court trying the offence of money – laundering.

28. It is only because of the Special Court constituted under S.43(1) being conferred primacy that S.44(1) begins with the

words “*notwithstanding anything contained in the Code of Criminal Procedure*”. Though the PMLA contains a *non - obstante* clause in relation to the Cr.P.C, both in S.44(1) and in S.45(1), there are two other provisions where the Code of Criminal Procedure is specifically declared to apply to the proceedings before a Special Court. S.46(1) specifically makes the provisions of the Cr.P.C applicable to proceedings before a Special Court. Similarly, S.65 of the PMLA makes the provisions of CrPC apply to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act.

29. Therefore, it is clear that the provisions of the Cr.P.C. are applicable to all proceedings under the Act including proceedings before the Special Court, except to the extent they are specifically excluded. Hence, S.71 of the PMLA providing an overriding effect, has to be construed in tune with S.46(1) and S.65.

.....

36. Once this combined scheme is understood, it will be clear that in view of the specific mandate of clauses (a) and (c) of sub-section (1) of S.44, it is the Special Court constituted under

the PMLA that would have jurisdiction to try even the scheduled offence. Even if the scheduled offence is taken cognizance of by any other Court, that Court shall commit the same, on an application by the concerned authority, to the Special Court which has taken cognizance of the offence of money - laundering. This answers the first question posed before us.

.....

38. As we have pointed out earlier, the involvement of a person in any one or more of certain processes or activities connected with the proceeds of crime, constitutes the offence of money - laundering. These processes or activities include, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; or (vi) claiming as untainted property.

39. In other words, a person may (i) acquire proceeds of crime in one place, (ii) keep the same in his possession in another place, (iii) conceal the same in a third place, and (iv) use the same in a fourth place. The area in which each one of these places is located, will be the area in which the offence of money - laundering has been committed.”

28. The learned Special Public Prosecutor referred to paragraph

No.31 of the judgment of Hon'ble Kerala High Court in Inspector of Police, CBI/SCB v. Assistant Director (2019 (5) KHC 707 : Crl. M.C. No. 2178 of 2019 decided on 08.11.2019) which reads:

“31. A detailed discussion as above lead to a conclusion that, if the Court which has taken cognizance of scheduled offence is other than the special court which has taken cognizance of the complaint of offence of money laundering, the competent authority under the Money Laundering Act to file a complaint, is given a discretion to make application under section 44(1)(c) in appropriate cases, in the interest of justice and for a speedy trial. The Court also has to duly apply its mind and take a proper decision in accordance with law. In other cases, as held in Anosh Ekka's case (supra), the special court trying offence under the Money Laundering Act will have to wait for the result of trial relating to scheduled offence.”

29. The learned Special Public Prosecutor submitted that the Hon'ble High Court of Madhya Pradesh in Hari Shankar Gurjar & Anr. v. Directorate of Enforcement, in Criminal Revision No.2536 of 2022, has held that scheduled offence is only a trigger point to initiate investigation under PMLA and once ECIR is recorded, case registered under PMLA is independent, distinct and stand alone and it has nothing to do with the continuation of the scheduled

offence. She referred to the following observations of the Court that:

“15. A bare reading of the aforesaid provisions would show that the scheme of the PMLA indicates that it deals only with laundering of money acquired by committing a scheduled offence. In other words, PMLA deals only with the process or activity connected with the proceeds of a scheduled crime, including its concealment, possession, acquisition or use and it has nothing to do with the launch of prosecution for scheduled offence and continuation thereof. Scheduled offence is only a trigger point to initiate investigation under PMLA and once ECIR is recorded, case registered under PMLA is independent, distinct and stand alone...”

30. The learned Special Public Prosecutor also relied on the decisions in P. Rajendran v. Directorate of Enforcement of the Hon'ble Madras High Court in Criminal Original Petition No. 19880 of 2022 dated 14.09.2022, J. Sekar v. Union of India & Ors. (2018 SCC OnLine Del 6523, Radha Mohan Lakhota v. Directorate of Enforcement (2010 SCC OnLine Bom 1116), Directorate of Enforcement v. Aditya Tripathi (2023 SCC OnLine SC 619), etc.

31. The learned Special Public Prosecutor submitted that the judgments relied on by the petitioner are under challenge before the Hon'ble

Apex Court. It is contended that the judgment of M/s.Bharthi Cements Corporation Private Limited v. Directorate of Enforcement, (Crl. Revision No. 87/2021) has been passed by a single judge, which is in clear conflict with the order dated 10.08.2021 by a coordinate bench of the same High Court in M/s.Jagati Publication Ltd. v. The Enforcement Directorate, (Criminal Revision Case No. 83 of 2021). The judgment in *Bharthi Cements Corporation's case* cannot be said to have a binding effect being in conflict with the set principles of law laid down by the Hon'ble Supreme Court in *Sundaradas Kanyalal Bhathija v. The Collector, Thane* (AIR 1991 SC 1893).

32. It is further submitted that, a case under PMLA can only be registered if there exists a predicate offence. Thus, the existence of a predicate offence is quintessential for initiation of a complaint/ECIR in PMLA. According to the counsel, the investigation in the PMLA matter is done by the Directorate of Enforcement while investigation into the predicate offence is done by another agency. Once the investigation in the PMLA has been initiated, it is tried as a separate case as well. Thus, predicate offence triggers an initiation of a case under PMLA, but is not only independently investigated but also independently and separately tried. It is also clear that if there is an order of discharge or acquittal in the predicate offence, then the proceedings in the PMLA case shall come to a stop. That does not mean that if there is an order on charge or conviction, there would also be an automatic

conviction in PMLA case. The case against an accused in PMLA has to be investigated, tried and proved independently of a predicate offence. Thus, the threshold created is that discharge or acquittal automatically puts an end to the proceedings under PMLA regardless of the stage of the case or the nature of the evidence. If PMLA matter is stayed till conclusion of the trial of the predicate case, the witnesses, particularly, public witnesses may be lost. One may also see that witnesses in PMLA case and predicate case may be common, but not necessarily the same. It is also not necessary that accused in predicate and PMLA case may be same.

33. It is also submitted that the right of speedy trial vests not just in accused but also in prosecution. The present application is a dilatory tactic. The respondent got the scheduled offence committed to this court for speedy trial of PMLA case also. The basic purpose of speedy trial and disposal in the interest of justice will affect, if the SC No.533/2018 is kept pending. It is further contended that the respondent has no control or involvement in the proceedings of the scheduled offence.

34. The question to be decided in this application is whether the proceedings in SC 533/2018 is to be kept in abeyance till the final disposal of the predicate case, viz., SC (PMLA) 3/2023. It is not in dispute that the petitioner herein is the first accused in both the cases.

35. Though the learned counsel for the petitioner raised arguments

regarding the presumption under Section 24 of the Act and the difference between Clause (a) and (b) I am not going to the details of the same since the question regarding presumption has no much relevance in deciding this petition. Suffice to say that the presumption under Clause (a) will be available only when charge is framed for offence of money-laundering under section 3. In this case charge is not framed and the application filed by the petitioner for discharge is pending. Even when the presumption is available in favour of the complainant, the primary burden of proving the existence of the 'scheduled offence' and 'proceeds of crime' will be always on the complainant. The provision only state that the Authority or Court shall, unless the contrary is proved, presume that '*such proceeds of crime*' are involved in money-laundering.

36. Section 3 of the PMLA states that whoever 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, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering. Section 4 prescribes punishment for the offence of money laundering. Section 2 (u) defines the term "*proceeds of crime*" and it states that "*proceed of crime*" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled

offence, or the value of any such property, or where such property is taken outside the country, then the property equivalent in value held within the country or abroad.” The term “property” is defined in Section 2(v) as any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and documents evidencing title to, or interest in, such property or assets, wherever located. As rightly argued by the learned counsel for petitioner, in order to make out an offence of money laundering, the prosecution has to establish that a scheduled offence is committed and there is proceeds of crime as defined in Section 2(u) of the Act. So the commission of a scheduled offence is sine qua non for registration of a case for offence u/s. 3 of the PMLA.

37. The Hon'ble Supreme Court in Pavana Dibbur v. Directorate of Enforcement has considered the question whether a person who is not an accused in a predicate case can also be an accused in a proceedings for offence under the PMLA. In the judgment dated 29.11.2023 in Crl. Appeal No.2779/2023 (2023 INSC 1029), the Apex Court held that it is not necessary that a person against to whom the offence u/s.3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. It was further held that even if an accused shown in the complaint under the PMLA is not an accused in the scheduled offence, he will benefit from the acquittal of all

accused in the schedule offence in discharge of all accused in the scheduled offence. Similarly, he will get the benefit of order of quashing the proceedings of the scheduled offence. In that case the Hon'ble Supreme Court was considering a petition filed by one of the accused in the PMLA case who was not an accused in the predicate case. In this case also in addition to the accused in the predicated case, 37 other accused were impleaded by the supplementary complaint filed by the complainant.

38. In *Pavana Dibbur's* case the Hon'ble Supreme Court considered the effect of the accused in the PMLA not being an accused in the predicate case in paragraphs 11 onwards of the judgment. The Court held that:

“On a plain reading of Section 3, unless proceeds of crime exist, there cannot be any money laundering offence. Clause (u) of subsection (1) of Section 2 of the PMLA defines “proceeds of crime”, which reads thus:

“2.Definition – (1) In this Act, unless the context otherwise requires,

.....

(u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then

the property equivalent in value held within the country or abroad;

Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence."

12. Clause (v) of subsection (1) of Section 2 of the PMLA defines "property" to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The explanation clarifies that the proceeds of crime include property, not only derived or obtained from scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime. Thus, the existence of "proceeds of crime" is *sine qua non* for the offence under Section 3 of the PMLA.

13. Clause (x) of subsection (1) of Section 2 of the PMLA defines

“schedule”. Clause (y) thereof defines “scheduled offence”, which reads thus:

.....

14. The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. On this aspect, it is necessary to refer to the decision of this Court in the case of *Vijay Madanlal Choudhary*. In paragraph 253 of the said decision, this Court held thus:

“253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in

the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.”

In paragraphs 269 and 270, this Court held thus:

“269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled

offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for

the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence

as it does not alter or enlarge the scope of Section 3 at all.”

15. Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to “extortion” are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the

scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of *Vijay Madanlal Choudhary* supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of subsection (1) of Section 3 of the PMLA.

16. In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable under Section 3 of the PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled

offence. Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned senior counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the chargesheets filed in the scheduled offences deserves to be rejected.”

39. In paragraph 187 (v) (d) of the judgment in *Vijay Madanlal's case* the Hon'ble Supreme Court has held that :

“The offence under section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process of activity connected with such property, which constitutes the offence of money laundering. The authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiries/trials including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money laundering against him or anyone claiming

such property being the property linked to stated scheduled offence through him.”

40. The binding precedents in *Vijay Madanlal's* case and *Pavana Dibbur's* case make it clear that the decision in the predicate case may have an impact on the decision in the PLMA case. The acquittal or discharge of the accused or quashing of the case for the scheduled offence will put an end to the prosecution under the PMLA. In this case, the petitioner wants to keep the trial of the PMLA case in abeyance till the final disposal of the predicate case. A reading of the decision in *Vijay Madanlal's* case shows that the Hon'ble Supreme Court has not considered the question whether the PMLA case is to be kept in abeyance till the disposal of the predicate case. On the other hand, the Apex Court in paragraph 104 of the judgment has observed that

“In case the scheduled offence is triable by Special Court under the special enactment elsewhere, the provision, as amended, makes it amply clear that *both the trials after coming into effect of this Act need to proceed independently*, but in the area where the offence of money laundering has been committed. such a question in that case.”

this shows that both the cases are to be proceeded independently.

41. The Apex Court has considered the Explanation to Section 44(1)

(d) inserted by Act 23 to 2019 which came into force on 01.08.2019 and held that the same is clarificatory in nature. Section 44 (1) (d) states that “*A Special Court while trying the scheduled offence or the offence of money laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.*” Explanation (i) inserted by the amendment of 2019 reads, “*For the removal of doubts, it is clarified that:- (i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act shall not be dependent upon any order passed in respect of the scheduled offence, and the trial of both sets of offences by same court shall not be construed as a joint trial;*” Section 44(c) states that “*if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.*”

42. A conjoint reading of Clause (c) and (d) of section 44 (1) makes it clear that the predicate case and the PMLA case are to be tried by the Special Court. An option is given to the authorised officer to make a request

to the court dealing with the scheduled offence to commit the case to the Special Court when he finds that both the cases are to be tried by the same court. The Hon'ble High Court of Kerala in the decision in Inspector of Police CBI/SCB v. Assistant Director, Directorate of Enforcement (PMLA) and anr. (2019 (5) KHC 707) has also observed that the authorised officer competent to lay the complaint is vested with a solemn discretion to carefully apply his mind and only in appropriate cases where the committal to Special Court will not defeat the prosecution and on the other hand, will enable a speedy disposal of case and achieve purpose of statute should file an application. So it is the discretion of the authorised officer whether to make an application to commit the case or not. Once an application is filed, the court dealing with the predicate case has to commit the same to the Special Court. The main purpose of committing the case for scheduled offence to the Special Court is speedy trial. As rightly argued by the learned Special Public Prosecutor, the predicate case is being prosecuted by some other agency and the complainant under the PMLA has no say or control over the prosecution of that case. Section 44 (c) is inserted in the statute permitting trial of both the cases by the same court for a proper and speedy adjudication of the cases.

43. On going through the entire statute it can be seen that there is no provision enabling the Special Court to stay the proceedings in either of the cases till the disposal of the other case. On the other hand, the provisions

referred above make it clear that both the cases are to be tried independently. Simultaneous or continuous trial one after the other, can be conducted by the Special Court and the cases can be disposed of by separate judgments on the same day. Though the acquittal in the predicate case will have a direct impact on the decision in the PMLA case, the conviction in the predicate case is not sufficient to find the accused guilty in the PMLA case. It is settled law that the evidence in one case cannot be looked into while deciding another case. So, even though the evidence to be tendered to prove the existence of a scheduled offence may be one and the same, the complainant in the PMLA case as well as the prosecution in the predicate case have to adduce independent evidence to prove the commission of scheduled offence. Even if the court comes to a finding in the predicate case that a scheduled offence has been committed, the same will not absolve the complainant in the PMLA case from establishing the commission of the schedule offence by adducing independent evidence. The complainant has to further prove that the money allegedly involved in the PMLA case is the proceeds of crime as defined in Section 2 (u) of the Act. So, even though the acquittal/discharge in the predicate case may have a direct impact in the PMLA case, in all cases where the court finds that the scheduled offence is committed, there cannot be a conviction for offence u/s.3 of the PMLA unless independent evidence is adduced to prove the ingredients to make out an offence u/s.3 of the Act.

44. The apprehension of the petitioner is that if the trial in the PMLA case is proceeded with before the final decision in the predicated case, the accused will be compelled to disclose his defence and that will cause prejudice to the accused. There is no basis for such an apprehension. As stated above, both the cases can be tried separately simultaneously or one after other. The common witness/documents in the cases will be pertaining to the commission of the scheduled offence. All other evidence to be adduced will not be the same. If the evidence to prove the scheduled offence is recorded in the predicate case first and then in the PMLA case, such apprehension of the petitioner can be resolved. So, I find no reason to entertain such an apprehension.

45. As discussed above, there is no provision in the statute to keep one of the cases in abeyance till the disposal of the other. It is settled law that a criminal court cannot pass orders for which it is not specifically empowered by the statute. Neither the CrPC nor the PMLA empowers the criminal court or special court to stay a case pending before it till. There is no provision like Section 151 of the CPC, which provides inherent powers on the court to keep a case in abeyance. A similar question was considered by the Indore Bench of the Hon'ble High Court of Madhya Pradesh in Jayraj Choubey v. Dinesh Pujari (Misc. Criminal Case No.9533/2022 dated 11.10.2023) and the Court held that:

“In Code of Criminal Procedure, there is no such provision or power conferred to the Trial Courts to stay proceedings of trial. Once the charge sheet has been filed then accused either can be discharged or convicted by the Trial Court. There is no such provision to stay the trial by the Trial Court itself. At the most High Court by exercising power under Section 482 of Cr.P.C. or Superior Jurisdictional Revisional Power can quash or stay the proceedings but Trial Court itself cannot stay the proceedings.”

In the light of above decision and there is no provision permitting this court to keep the case in abeyance, the present petition cannot be entertained.

46. Further, as stated above, these two proceedings are independent and separate. Though the decision in one case may affect the result of the other, that alone is not a ground for keeping the case in abeyance till the disposal of the predicate case. That will be against the spirit of section 44 (c) and (d) of the Act. As submitted by the learned counsel for the petitioner in *Bharathi Cement Corporation's* case the Hon'ble Telengana High Court has taken a view that the PMLA case to be kept in abeyance. The Court observed that :

“Thus, on a thorough consideration of all aspects of the matter, impugned order dated 11.01.2021 is hereby quashed. Further, it is directed that though the trial relating to the offence of money

laundering can proceed independent of the trial of scheduled offence, nonetheless as the outcome of the trial for scheduled offence would have a definite bearing on the outcome of the trial for the offence of money laundering, it would be in the interest of justice if the Special Court trying the offence of money laundering while independently proceeding with the trial, may, however take a pause and await the ultimate pronouncement/decision of the Special Court trying the scheduled offence. Otherwise, as has been pointed out by the Supreme Court in *Vijay Madanlal Choudhary* (supra), it may lead to a paradoxical result if the concerned person is later on acquitted of the scheduled offence while convicted of the offence of money laundering under PMLA at an earlier point of time. This would not only be paradoxical but contrary to well established tenets of law as well.”

47. As submitted by the learned Public Prosecutor that the judgment in that case is under challenge and the matter is pending before the Hon’ble Supreme Court and the same has not become final. As stated above, the observations in the judgment in *Vijay Madanlal’s* case make it clear that both cases are to be tried independently. The decision in *Bharathi Cement’s* case has only persuasive effect and it is not a binding precedent as submitted by

the learned counsel for the petitioner.

48. In the light of the above discussion, it can be held that as both the cases are independent and separate and this court has no power to stay the trial of a case pending before it, the present petition cannot be entertained and the same is only to be dismissed.

In the result, the petition is dismissed.

Dictated to the Confidential Asst., transcribed by her, corrected and pronounced by me in open court on this the 16th day of March, 2024.

Sd/-

P. K. Mohandas

Judge, Special Court for PMLA Cases

Appendix: Nil

Id/-

Judge, Special Court for PMLA Cases
(By Order)

//True Copy//

sd/-

Sheristadar.