

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 3317 of 2015(O&M)

Reserved on: 16.10.2015

Date of decision: 22.12.2015

Karam Singh & others

.....Petitioners

Versus

Union of India & others

.....Respondents

CWP No.3314 of 2015(O&M)

Vinod Kumar

.....Petitioner

Versus

Union of India & another

.....Respondents

CWP No.1418 of 2015(O&M)

Ajay Singh

.....Petitioner

Versus

Union of India & others

.....Respondents

**CORAM : HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr.Vikram Chaudhary, Sr. Advocate
with Ms. Ishya Goyal, Advocate,
and Mr. Anurag Chopra, Advocate,
for the petitioners.

Mr.D.D.Sharma, Advocate
and Mr.Suresh Batra,
Advocate, for the respondents.

G.S.Sandhawalia J.

1. This judgment shall dispose of three Civil Writ Petitions bearing CWP Nos.3317, 3314 & 1418 of 2015, since the questions of law are common between the parties. However, to dictate orders, facts have been taken from CWP No.3317 of 2015 titled *Karam Singh & others Vs. Union of India & others*.

2. Challenge in the present writ petition, as per the amended primary prayer, is to the ECIR No.CDZO/05 dated 25/03/2013 (Annexure P37), vide which, the Assistant Director of the Directorate of Enforcement (for short the 'ED') has registered a case under Sections 3 & 4 of the Prevention of the Money Laundering Act, 2002 (for short, the 'PMLA'). The ancillary challenge is further to the summons issued to the petitioners by the officers of the ED under Section 50 (2) & (3) of the PMLA on the ground that the offences are non-cognizable in nature and in the absence of any prior sanction/order of a Magistrate, the investigation being conducted by the said authorities, is not justified. Prayer has also been made that if the offences are cognizable, then investigation be done by some other authorities/officers, appointed/authorized than respondents No.2 to 4 and

direct examination and recording of statement of the petitioners in the presence of their Advocate. Videography be conducted during the examination and recording of the statements of the petitioners and for quashing the action of the respondents, seizing the bank accounts of the petitioners.

3. The case of the petitioners is that the respondents are investigating the matter in ECIR No.CDZO/05 dated 25/03/2013, relating to FIR No.4 dated 22.07.2009, lodged at Police Station (Vigilance) Chandigarh under Sections 419, 420, 467, 468, 471, 201, 120B IPC and 13(1)(d) and 13 (2) of the Prevention of Corruption Act, 1988, registered against one Mr.G.S.Sawhney, Advocate, his Clerk, Harnek Singh, O.P.Mittal (now deceased), Sant Ram (Retired Superintendent of Estate Office) and Narinder Kumar Verma, Jr.Assistant in the Estate Office. The said ECIR was registered on complaint of one Tara Singh, resident of United Kingdom, who was a client of Mr.G.S.Sawhney and it was alleged that the power of attorney of Harnek Singh was forged. The said power of attorney had been used for execution of sale deed in collusion with Mr.G.S.Sawhney, who was representing Mr.Tara Singh in a suit for specific performance and the trial of the said case was pending in the Court of the Sessions Judge, Chandigarh. The ECIR (Annexure P37) in question was registered and the petitioners were nowhere connected or involved and associated with the said FIR. Petitioner No.1 was doing his business at Gobindgarh and on 13.01.2015, when he was away for business, the officials of the respondents visited his residence in the morning and searched his house in the presence of his wife and nothing had been seized. He was a client of Mr.Mukesh

Mittal, Advocate and he had been summoned vide summons dated 06.02.2015 and 09.02.2015, to appear before the officials of the ED and to bring documents. The said summons were issued under Sub-sections (2) & (3) of Section 50 of the PMLA.

4. Petitioner No.3 is an agriculturist and was involved in the business of construction and he was also a client of Mr.Mukesh Mittal and knows him for the last several years and had also filed an application for anticipatory bail, which is pending before the Court of Sessions Judge, Chandigarh and he had also been summoned vide various summons (Annexures P8 to P15). Petitioner No.4 is alleged to be working in the office of Mr.Mukesh Mittal and he has also filed an application for anticipatory bail whereas petitioner No.5, Mr. Vineet Goyal who had done his B.Tech in Civil Engineering, started working as building contractor and also got involved in Real Estate business. His house was searched on 13.01.2015 and he was also a client of Mr.Mukesh Mittal. Petitioner No.6 is the brother of petitioner No.5, who are both sons of petitioner No.7, Mr.Y.K.Goel and certain documents had been seized by the officials and not returned. Their father was serving as a Doctor with the Punjab Government and not connected with the business of his two sons but he had also been summoned. Petitioner No.8 is a practising Advocate since the year 2006 and summons had been sent to him and he had also filed application for grant of anticipatory bail along with petitioner Nos.3 & 4. Petitioner No.9 is stated to be the real brother of petitioner No.4 and running his business at Village Suhin, Tehsil Rakkar, District Kangra. It was, accordingly, alleged that the said petitioners were nowhere connected or involved in any manner in the FIR registered by the

U.T. Police and with the impugned ECIR and the officers of the respondent-ED had transgressed the circumscribed limits as well as illegally exercised investigating powers by assuming jurisdiction in a completely unlawful manner.

5. The investigation was, thus, challenged on various grounds, to which, we will advert to later and thus, the authority of the ED was challenged, including the seizure of accounts. It was pleaded that initially it was provided that the offences were to be cognizable and non-bailable but vide the amendment in the year 2005 the offence under the Act was made non-cognizable and only a complaint could be lodged. The investigation could not be carried out of a non-cognizable offence without the order of the jurisdictional Magistrate and therefore, the procedure being followed by the respondents was without jurisdiction and they had no power to investigate without following the procedure prescribed under the Code of Criminal Procedure. The rights of the petitioners were being violated under the guise of the commission of the offence as the mandatory procedure prescribed by law was not being followed and the petitioners were neither accused in the FIR and were being harassed by certain influential persons in the echelons of power who were inimical to Mr.Mukesh Mittal. After registration of the ECIR, no copy had been sent to the Magistrate and the act of seizing the bank accounts was wholly illegal and unwarranted.

6. In the written statement filed on behalf of the respondents, it is pleaded that after the lodging of FIR No.4 dated 22.07.2009 against the main accused therein, against whom charges have been framed, the present ECIR No.5 had been lodged to investigate in the offences of money

laundering as the offences under Sections 406, 419, 420, 467, 471, 120B of IPC and under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 were covered under the Schedule to PMLA. On the basis of the material and reasons to believe, searches were conducted under Section 17 of PMLA at 6 premises on 13.01.2015 which had resulted in seizure of highly incriminating documents relating to the several shell companies, including 214 blank signed cheques, records relating to several shell companies (without any business activities and having heavy financial transactions) and properties worth crores of rupees which were believed to be linked with “the proceeds of crime”. The investigation conducted revealed that the petitioner and others were jointly and severally along with other shell companies, found to be indulging in all the activities relating to money laundering. The bank account of the petitioner No.3, Lal Chand, who happens to be a driver, showed that ₹22 crores had been deposited/transferred to some other account/shell companies and he was not a beneficiary of any amount and was not doing any activities of trade, manufacturing, financing etc., as per the scrutiny of his Income Tax Returns for the past 5 years. The said petitioner was a share holder or Director of companies like Shivalik Services Pvt. Ltd., Mount Hills Services & Promoters Pvt. Ltd. and had no source of income. The investigation showed that petitioners no. 4 to 6 and petitioner No.9 along with one Ajay Singh, petitioner in CWP No.1418 of 2015, had floated shell companies which were seven in number and the details of which are given as under:

- “1. Shivalik Services & Promoters Pvt. Ltd.
2. Mount Hills Services & Promoters Pvt. Ltd.
3. Sharvila Builder and Developers Pvt. Ltd.

4. Awasthi Real Estates Pvt. Ltd.
5. Lake View Services & Promoters Pvt. Ltd.
6. Radhey Sham Saree Centre Pvt. Ltd.
7. Solan SR Services Pvt. Ltd.”

7. Ajay Singh had signed most of the documents whereas petitioner No.8 was junior of Mr.Mukesh Mittal, who was the mastermind of illegal sale of SCF No.8, Sector 20, Chandigarh relating to Mr.Tara Singh. All the documents relating to the said SCF were prepared in the office of Mr.Mukesh Mittal and most of the documents were signed by Mr.Ajay Singh. Number of documents pertaining to one bigha of land situated in Kandaghat area of Himachal Pradesh and transactions of crores of rupees were found during the search from the premises of Mr.Mukesh Mittal and Vineet Goyal-petitioner no. 5 and money had been routed through his accounts. The respondent-ED was finding out the source, acquisition, nature, flow and possession of the proceeds of crime on the basis of voluminous incriminating documents including bank accounts, documents received from the ROC, Estate Office and Income Tax Department and materials seized during the course of the search. The investigation had been conducted under the provisions of the PMLA in view of the crime mentioned in the FIR No.4. Another FIR No.5 dated 13.06.2012 under Section 406, 424, 467, 468, 120B had been registered at Police Station (Vigilance) Chandigarh against Ajay Singh, petitioner in CWP No.1418 of 2015, for cheating the share-holders of the company and ECIR No.CDZO08 had also been lodged.

8. It was admitted that nothing was recovered from the office of petitioner No.1 and search was conducted on the basis of the material and

reasons to believe but he had not received summons so far. Petitioner No.2 had been issued summons on the complaint from NRI Mr.Karadeep Singh that the property of his grandfather had been grabbed by the said petitioner and he had never entered into the said agreement nor had made cash payment of ₹15 lacs. He had, accordingly, been summoned to show the source of the cash payment. Petitioner No.3 was a co-sharer in one bigha of land in Himachal Pradesh and was working as a Driver. He had filed an application for anticipatory bail which was withdrawn from the Court of Special Judge, Chandigarh. Despite the summons issued to him, he had not appeared before the ED and was delaying the investigation on one pretext or the other and he had been holding benami properties. Petitioner No.4 was stated to have been using false addresses and was not residing at the address mentioned and was residing at Kharar and his application for anticipatory bail had also been withdrawn.

9. Regarding petitioner Nos.5 to 7, reply was that number of incriminating documents had been recovered from their premises, pertaining to their own properties and the properties of Mr.Mukesh Mittal which were concealed at their residence and the office of petitioner No.5. They were not joining the investigation in response to the summons issued and neither petitioner No.7 was appearing to explain regarding the recovery of the huge incriminating documents and the source of property in the names of his sons. Petitioner No.8 was stated to be a practising Lawyer and had signed most of the documents prepared in the office of Mr.Mukesh Mittal, including the document giving the attorney to Mr.Harneek Singh. He had also not appeared with the required documents and had also withdrawn his

application for anticipatory bail.

10. In reply to the legal issues raised, it was pleaded that the Act was a complete statute and giving power to the Director, Deputy Director or Assistant Director to investigate the offence of money laundering and the same is cognizable and non-bailable, as per Section 45. The Police Officers were barred from investigating into the offence under the Act unless specifically authorized by the Central Government by its general and special order. The provisions of Section 155 (2) of the Code of Criminal Procedure, 1973 (for short, the 'Cr.P.C.') were inapplicable, in view of Section 71 of the PMLA Act which had an overriding effect on any other law and Special Courts had been set up to deal with the offences under Sections 3 & 4, which is the Court of Sessions. The Court of Judicial Magistrate had no jurisdiction to issue permission to investigate. As per the provisions of the Act, intimation about the search operation and regarding seizure of documents and freezing of bank accounts and properties was to be sent to the adjudicating authority at New Delhi within the stipulated period. Show cause notice had been issued to the petitioner and 42 other persons for 23.04.2015. The procedure was prescribed under the PMLA and the complaint had to be filed under Section 44 read with Section 45. The said provisions being under the special statute, reliance was placed upon Section 65 read with Sections 4 & 5 of the Cr.P.C., to submit that the investigation was being carried out under a special statute and therefore, the jurisdiction of the authorities was, accordingly, justified.

11. The ECIR was registered which was only for internal purposes to start investigation and the petitioners were not cooperating in the

investigation inspite of summons having been issued. The freezing of the bank accounts of respondents No.3 to 6 was legal and intimation had been sent to the competent authorities as required under Section 17, who had issued show cause notice to the petitioners. Petitioner No.1 had not been issued any summons or notice. Reliance was placed upon the judgment of the Division Bench of the Gujarat High Court in Rakesh Manekchand Kothari Vs. Union of India decided on 16.01.2015 (Annexure R-1), whereby the arrest under the Act had been upheld and the petitions filed had been dismissed wherein the investigation was being done by the officials of the ED and the judgment of the Apex Court in ***D.K.Basu Vs. State of West Bengal 1997 (1) SCC 416*** was discussed.

12. In the replication filed, plea taken was that the offences had been reduced to a non-cognizable offence and in the absence of any complaint filed, the authorization of the officers was without jurisdiction. The Special Court had not taken cognizance and as per Section 65, the investigation procedure must comply with the mandate of the Cr.P.C. The bail applications had been withdrawn only due to the pendency of the writ petitions. It was pleaded that neither the petitioners nor Mr.Mukesh Mittal were accused in the case in which chargesheet had been filed and the power of attorney had been executed in the United Kingdom. The respondents could not start investigation of the transactions which are not covered in any manner by the concerned scheduled offences and alleged proceeds of crime and documents and account had been seized under the reasons to believe. It was denied that petitioner No.4 was not disclosing his correct address and the address was given of Kharar and that he was also residing in

Chandigarh. The FIR No.5 registered against Mr.Ajay Singh was baseless and this Court had stayed proceedings in the said case and the officials were inflicting torture and third degree methods on the petitioners.

13. Mr. Vikram Chaudhary, Sr. counsel has accordingly raised two legal submissions on the basis of the above facts and pleadings. It is his contention that the PMLA initially provided that the offences under the Act were to be cognizable and non-bailable, however, in view of the amendment w.e.f. 01.07.2005, the offences have been made non-cognizable and the Special Court can only take cognizance of the offence punishable under Section 4 upon a complaint in writing made by the authorized officers. It is accordingly submitted that the investigation which is thus in progress and the summoning of the petitioners by the officers of the E.D. is without jurisdiction in the absence of any complaint having been filed before the Special Court. Reliance has been placed upon Section 155(2) of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') to submit that without the order of the Magistrate, investigation cannot be done and, therefore, the lodging of the ECIR dated 25/26.03.2013 (Annexure P-37) has been challenged. It is submitted that since the Cr.P.C. is the parent Act for the purpose of arrest, search, seizure and investigation and without having taken any such permissions from the Competent Court, the officials are acting without jurisdiction. Thus, the said ECIR is liable to be quashed including the search and seizure which has been done under the Act. Accordingly, reliance has been placed upon the judgment of the Apex Court in ***Om Parkash and another vs. Union of India and another, 2011 (14) SCC 1*** to submit that the non-cognizable offences under the Act are to be treated as

bailable offences and the investigation could not have commenced and neither the petitioners can be arrested in respect of such offences without a warrant of arrest. The authorities under the Act could not treat the non-cognizable offence as a cognizable offence and the procedure would be void and proceedings are liable to be quashed. Reliance is accordingly placed upon the judgment of the Apex Court in *State of Haryana vs. Bhajan Lal*, **AIR 1992 SC 604 (1)** and reference was accordingly made to the principle no. 4 to submit that no investigation is permitted by the officials of the E.D. since the offence was not cognizable. Reliance was also placed upon the judgment of the Apex Court in *Keshav Lal Thakur vs. State of Bihar*, **1996 (11) SCC 557**.

14. In the alternative, it has been argued that if it is deemed to be taken as a cognizable offence, then a specific procedure is prescribed under Chapter XII of Cr.P.C. and the investigating agencies have to follow the said procedure since the authority for the investigating agency to investigate a cognizable offence is prescribed therein which prescribes certain safeguards. Reliance has been placed upon Section 65 of the PMLA to submit that the Cr.P.C. applies and the safeguards have been provided under the same which are being openly violated since neither any case diaries have been maintained which the Court can summon and, therefore, no judicial check is in place against the officials of the respondent-E.D. In view of such procedure not being followed, the right of the anticipatory bail has also been denied as copies of documents etc. are not readily available. Accordingly, reliance is placed upon the judgment of the Apex Court in *Directorate of Enforcement vs. Deepak Mahajan and another*, **AIR**

1994 SC 1775 (1) to submit that the enforcement officers were not empowered to file a final report whereas the police officers could do so. Reliance was also placed upon the directions issued by the Apex Court in *D.K. Basu vs. State of Bengal, AIR 1997 SC 610 (1)* to contend that principles of arrest and detention had been laid down and the same were openly being violated in the present case by the officials of the E.D. Reference was also made to the Constitution Bench judgment of the Apex Court in *Lalitha Kumari vs. Government of U.P. and others, 2014 (2) SCC 1* to submit that principles were laid down that for a cognizable offence to be made out, the FIR was to be registered before investigation and to ensure that there is a judicial check provided on the authorities and the word “shall” in Section 154 of the Cr.P.C. provided that it was mandatory to register an FIR if a cognizable offence is made out. But in the present case, neither any such FIR has been registered and the lodging of the ECIR and the investigation was without jurisdiction.

15. Mr. D.D. Sharma, Special Public Prosecutor under the PMLA, on the other hand, submitted that the PMLA was a Code in itself and investigation could be carried out as per the definition of Section 2(na) for the collection of the evidence for the offence of money laundering under Section 3 and the offence was cognizable and non-bailable. He also placed reliance upon Sections 46 and 65 to submit that the provisions of the Cr.P.C. would apply in so far as they were not inconsistent with the provisions of PMLA. Reference was made to Section 44 to submit that only a Special Court, upon a complaint, could take cognizance upon Sections 44 and 45 and that also upon a complaint in writing by the Director or any

officer of the Central Government or State Government authorized in writing in that behalf by the State Government by general or special order. Section 48 was referred to, to show the classes of authorities who can be appointed for the purpose of the Act which was headed by the Director, Additional Director, Joint Director, Deputy Director and Assistant Director. Accordingly, it was argued that the procedure as prescribed under the Act had been followed by the authorities who were investigating into the proceeds of crime which they had stumbled upon on account of the lodging of FIR Nos. 4 and 5 with the Police Station, Vigilance under the scheduled offences for which trial was going on. It was submitted that the investigation was at a nascent stage and this Court would not nip the same in the bud by permitting it to come to a grinding halt at the instance of the petitioners. It was argued that the petitioners were defending the cause of the main accused who had floated the shell companies, details of which were given and who were prima facie involved in the offence of money laundering. The petitioners were closely associated with the main accused being either his colleagues, drivers or property consultants. Reference was made to the details of 38 accounts in which various amounts have been deposited in the accounts of shell companies and all the main accused and his family members including the petitioners. The details of the shell companies account numbers and the amounts lying in the said bank accounts were given as under:-

<i>S. No.</i>	<i>Name of the Company/party</i>	<i>Account Number</i>	<i>Bank Name</i>	<i>Branch</i>	<i>Total Credit Amount (Rs.)</i>
1	M/s. Sharvila Hotels & Resorts Private Limited	11151131001490	The Oriental Bank of Commerce	Sector 8 C Chandigarh	180468045

<i>S. No.</i>	<i>Name of the Company/party</i>	<i>Account Number</i>	<i>Bank Name</i>	<i>Branch</i>	<i>Total Credit Amount (Rs.)</i>
2	M/s. Sharvila Hotels & Resorts Private Limited	11157021000017	The Oriental Bank of Commerce	Sector 8 C Chandigarh	100681777
3	M/s. Sharvila Hotels & Resorts Private Limited	3651131000536	The Oriental Bank of Commerce	Sector 19-D	4420500
4	M/s. Mount Hills Services & Promoters Private Limited	1115131002725	The Oriental Bank of Commerce	Sector 8 C	45315000
5	M/s. Mount Hills Services & Promoters Private Limited	435001000970	Punjab State Cooperative Bank	Sector 8 C	25056275
6	M/s. Lake View Services & Promoters Private Limited	11151131002237	The Oriental Bank of Commerce	Sector 8 C	9030417
7	M/s. Lake View Services & Promoters Private Limited	302010200005128	Axis Bank	Sector 9 C	13060500
8	M/s. Shivalik Services and Promoters Private Limited	2451201000764	Canara Bank	Sector 8 C	28669375
9	M/s. Solan SR Services Pvt. Ltd.	11151131001643	The Oriental Bank of Commerce	Sector 8 C	153386000
10	M/s. Sharvila Hotels & Resorts Private Limited	11151131001964	The Oriental Bank of Commerce	Sector 8 C	2010000
11	M/s EMM EMM Associates	11151131001926	The Oriental Bank of Commerce	Sector 8 C	164740000
12	M/s EMM EMM Associates	11151131002732	The Oriental Bank of Commerce	Sector 8 C	113311037
13	M/s EMM EMM Associates	31025517362	State Bank of India	Sector 18	255709815
14	M/s. EMM EMM Associates	50039903777	Allahabad Bank	Sector 8	19507100
15	M/s. National Engineers and Contractors	11154011000415	The Oriental Bank of Commerce	Sector 8 C	56789284
16	M/s. Awasthi Real Estate Pvt. Ltd.	11151131001988	The Oriental Bank of Commerce	Sector 8 C	82648235
17	M/s. Pushpak Landlinks	74411000898	The Oriental Bank of Commerce	Sector 21 C	112684287
18	Sh. Mukesh Mittal	11152191003707	The Oriental Bank of Commerce	Sector 8 C Chandigarh	98684332
19	Sh. Mukesh Mittal	50032533213	Allahabad Bank	Sector 8 C Chandigarh	13349209
20	Sh. Mukesh Mittal HUF	50032533064	Allahabad Bank	Sector 8 C Chandigarh	10997181
21	Sh. Mukesh Mittal & Smt. Alka Mittal	1956903973	Central Bank of India	Sector 18 C	30186849

<i>S. No.</i>	<i>Name of the Company/party</i>	<i>Account Number</i>	<i>Bank Name</i>	<i>Branch</i>	<i>Total Credit Amount (Rs.)</i>
22	Sh. Mukesh Mittal	65010069183	State Bank of Patiala	Sector 26	25957272
23	Sh. Mukesh Mittal	10006607550	State Bank of Patiala	Sector 26	11786172
24	Smt. Alka Mittal	11152191003714	The Oriental Bank of Commerce	Sector 8 C	36239791
25	Smt. Alka Mittal	302010100105835	Axis Bank	Sector 9 C	14850908
26	Mr. Akshay Mittal	31518472716	State Bank of India	Sector 18	
27	Mr. Akshay Mittal	11152191003791	The Oriental Bank of Commerce	Sector 8 C	49480255
28	Mr. Akshay Mittal	1956915005	Central Bank of India	Sector 18 C	4488026
29	Mr. Vineet Goyal	7442191009913	The Oriental Bank of Commerce	Sector 21 C	19152079
30	Mr. Vineet Goyal	31201692561	State Bank of India	Sector 18 D	26462337
31	Mr. Nishant Goyal	7442191009920	The Oriental Bank of Commerce	Sector 21-C	37530997
32	Sh. Munish Kumar/Kamla Devi	3652151008717	The Oriental Bank of Commerce	Sector 19-D	78969713
33	Sh. Munish Kumar	50037338626	Allahabad Bank	Sector 8	5129159
34	Sh. Parveen Kumar Sharma	3652151008564	The Oriental Bank of Commerce	Sector 19/D	156724128
35	Sh. Ajay Singh	10006624375	State Bank of Patiala	Sector 43	3989133
36	Sh. Lal Chand	1152191003776	The Oriental Bank of Commerce	Sector 8 C	115012390
37	Sh. Lal Chand	3652151007819	The Oriental Bank of Commerce	Sector 19/D	106263552
38	Mr. Vijay Pal Singh	41010100166348	Axis Bank	Sector 35-D	134740398

16. The police authorities had specially been precluded from investigating into an offence under the Act unless specifically authorized by the Central Government by general or special order and subject to certain conditions as per Section 45(1)(a). It was accordingly submitted that under Sections 3 and 4, where any person was involved in the process of the proceeds of crime including its concealment, possession and acquisition, he would be guilty of the offence of money laundering if he was claiming it as

untainted property. Section 4 provided that the punishment for money laundering was not to be less than 3 years which may extend to 7 years and accordingly, the Cr.P.C. was relied upon to submit that once the sentence was more than 3 years, the offence would be cognizable as such.

17. In order to rebut the second contention raised by senior counsel for the petitioner, reliance was placed upon Section 73 of the PMLA which provided for making of the Rules. Reliance was made to the various Rules framed under the Act which pertain to the provisional attachment of properties and supply of reasons, receipts to be issued and the management of confiscated properties, the maintenance of the records and the forwarding of reasons to the adjudicating authorities alongwith the impounding and custody of the records and the period of retention. Similarly, reference was also made to the forms and the manner of the arrest which could be made under Section 19 and the liability to produce before the Magistrate within 24 hours under Sub-clause 3 while forwarding the copy of the order of the arrest alongwith the material in possession to the Adjudicating Authority which was a statutory and independent body set up under Section 6 of the Act. The provisions of Section 71 which provided that the Act had an overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. That Section 54 was referred to, to contend that officers of the customs and central excise department, officers appointed under Section 5(1) of the Narcotic Drugs and Psychotropic Substances Act, 1995, income tax authorities, officers of the police etc. were required to assist the authorities and the Act was notified for the purpose of obviating threats to the financial system of the countries

and also to the integrity and sovereignty of the country.

18. The case was reserved on 17.07.2015 for judgment and thereafter, an application was made on behalf of the petitioners for further hearing, which was allowed. During the course of this hearing, Mr. Chaudhary *inter alia* placed reliance upon the judgment of the Division Bench of the Gujarat High Court titled as *Rakesh Manekchand Kothari vs. Union of India and others* decided on 03.08.2015 to buttress his argument that it had been held that it is mandatory to comply with the provisions of the Cr.P.C. and that the procedure prescribed under the Court had to be followed irrespective of whether the offence was cognizable or non-cognizable.

19. In order to appreciate the arguments raised by the petitioners, it would be necessary to refer to the relevant provisions of the Act. The offence of money laundering as defined under Section 3 is directed against the proceeds of crime and is admittedly punishable with not less than 3 years which may extend to 7 years under Section 4. Money laundering has been defined under Section 2(p) and 2(u) and Section 3. The proceeds of crime as per Section 2(u) pertain to any property derived, obtained directly or indirectly, as a result of criminal activity by any person relating to a scheduled offence or the value of such property. The scheduled offences have been defined under Section 2(y) and admittedly, Sections 419, 420, 467, 471 are part of the scheduled offences as described under part A of the schedule. Section 2(p), 2(u), 3 and 4 reads thus:-

2(p) “money-laundering” has the meaning assigned to it in section 3;

2(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.”

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

*4. Punishment for money-laundering.—Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine [***]*

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted. ”

20. Under Section 2(na), investigation for all the proceedings under the Act are to be conducted by the Director or any authority authorized by the Central Government for collection of evidence. The said Section reads thus:-

“2(na) “investigation” includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central

Government under this Act for the collection of evidence;

21. Under Section 49, the power of the Central Government is there to appoint such persons as it thinks fit to be the authorities for the purpose of the Act and Section 48 provides the class of authorities which reads thus:-

“48. Authorities under the Act.— There shall be the following classes of authorities for the purposes of this Act, namely:—

(a) Director or Additional Director or Joint Director,

(b) Deputy Director,

(c) Assistant Director, and

(d) such other class of officers as may be appointed for the purposes of this Act.

22. Section 16 falling under Chapter V which pertains to summons, searches and seizures, gives the power of survey to an authority on the basis of the material in its possession on reasons to believe (reasons for such belief to be recorded in writing) that an offence under Section 3 has been committed. The search and seizure can be conducted by the said authorities on the basis of information in possession and on the reason to believe and such belief is to be recorded in writing that the act of money laundering has been committed or a person is in possession of any proceeds of crime involved in money laundering. Section 17(1A) gives further power to seize the record and a copy of the said order is to be served on the person concerned. Section 17(4) of the Act provides that on the freezing of the record of property within a period of 30 days from such seizure or freezing, an application has to be filed in writing of such record of a continuation of

order of freezing before the adjudicating authority. Similarly, Section 18 provides for the search of persons and Section 19 provides power of arrest again on the reason to believe which have to be recorded in writing on the basis of the material in possession. The said reasons thereafter have to be forwarded to the adjudicating authority under sub-clause (2) and the person arrested is to be taken to the Judicial Magistrate within 24 hours or a Metropolitan Magistrate having jurisdiction. The said Section reads thus:-

“19. Power to arrest.— (1) If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours

shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court."

23. This Chapter thus deals with the power of summons and searches with which we are concerned with and further provides that the retention of the property can be continued for a period not exceeding 180 days under Section 20 and whereas, under sub-section (3), the Adjudicating Authority can permit the retention or continuation of freezing of such property beyond the said period. Section 24 further provides that in the proceedings relating to the proceeds of crime, burden of proof would be upon the person charged with the offence of money laundering under Section 3 and the Court is to presume that the proceeds of crime are involved in money laundering.

24. Chapter III, on the other hand, deals with the attachment, adjudication and confiscation of the attachment of properties to which an ancillary challenge has also been raised. Section 5 provides that the attachment can be made, therefore, for a period of 90 days from the date of order and no attachment is to be made unless in relation to a scheduled offence, a report is forwarded to the Magistrate under Section 173 Cr.P.C. or a complaint has been filed by the person authorized to investigate the offences mentioned in that schedule. It is not disputed that in the scheduled offences charges have been framed and the matter is pending before the Sessions Court, Chandigarh in FIR No. 4 against the accused in that case. Section 6 further provides that an adjudicating authority shall be appointed by the Central Government, who shall consist of a Chairperson and two other Members. The case of the respondents is that notice has already been

issued by the Adjudicating Authority to the petitioners on account of the freezing of the accounts and seizing of the records. Procedure is provided under Section 8 pertaining to the adjudication to be done by the said authorities who are to further pass an order to decide whether the freezing is to continue during the pendency of the proceedings and the petitioners, thus, have an alternative remedy before the said authorities pertaining to the dispute of attachment and seizure to which ancillary challenge has been raised and admittedly, notices had been issued for putting in appearance.

25. This Court in a connected matter in ***CWP No. 21705 of 2014, Sudeep Kaur Sawhney vs. Union of India and others*** decided on 19.05.2015 has already relegated the petitioner therein to an alternative and efficacious remedy before the authorities. The claim of the petitioner therein on the issue as to whether the attachment order was liable to be set aside on account of the fact that period of more than 30 days had expired under Section 17(4) from the date of the freezing of the accounts was rejected. Thus, the petitioners have an alternative and efficacious remedy as such before the said authorities as disputed questions arise as to the source of funds, which is to be decided by the authorities and whether the money is part of the proceeds of crime. It is settled principle that this Court is not to go into the disputed questions of facts which arise as the petitioners would have a right of appeal after adjudicating authorities have passed an order.

26. The first legal issue which, thus, arises for consideration before this Court is that whether the offence is cognizable or non-cognizable in view of the amendment made and whether the authorities under the Act have any jurisdiction to investigate into the cognizable offence.

27. Section 45 of the Act, as it originally was and thereafter amended reads thus:-

Unamended Section 45:-	Amended Section 45:-
“45. Offences to be cognizable and non-bailable.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), (a) every offence punishable under this Act shall be cognizable; (b) No person accused of an offence punishable for a term of imprisonment of more than three years <i>under Part A of the Schedule</i> shall be released on bail or on his own bond unless- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail : Provided that a person, who, is under the ge of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by - (i) the Director, or (ii) any officer of the Central Government of State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government. (2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”	“45. Offences to be cognizable and non-bailable.- (1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by— (i) the Director; or (ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government. 2 [(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.] (2) The limitation on granting of bail specified in [***] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

28. The amended provisions specifically provide that no person

accused of an offence punishable for a term of imprisonment for more than 3 years under Part A of the Schedule shall be released on bail on his own bond unless the public prosecutor is given an opportunity to oppose the application for said release.

29. In our considered opinion, the above provisions are of no help to the petitioners and only lay down certain terms and conditions for the Courts while deciding the application for bail. Reference has been made to the said provisions to persons who are accused of the offences which are provided under Part A of the Schedule which are punishable for a term of imprisonment for a period of more than 3 years. Thus, restriction is sought to be imposed upon that category of accused and the Court has to comply with certain conditions while deciding their bail application. In the present case, the petitioners are not accused of the said offence but are being investigated for the offence of money laundering under Section 3. Section 4, as noticed above, provides that the punishment for the offence of money laundering shall not be less than 3 years but which may extend to 7 years. The first schedule of the Cr.P.C. specifically provides the classification of offences which are cognizable or non-cognizable, bailable or non-bailable and by what Court triable apart from the punishment which is provided for the said offences. Under Part II of the first schedule, classification of offences against other laws provide that offences punishable with imprisonment for more than 3 years and upwards would be cognizable and non-bailable. The same reads as under:-

Offence	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
	2	3	4

If punishable with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Non-bailable	Court of Session
If punishable with imprisonment for 3 years, and upwards but not more than 7 years	Cognizable	Non-bailable	Magistrate of the first class
If punishable with imprisonment for less than 3 years or with fine only	Non-cognizable	Bailable	Any Magistrate

30. Thus, the argument which is being sought to be raised by learned counsel for the petitioner that the offences are now only bailable in view of the amendment and non-cognizable cannot be accepted as the petitioners are covered under Section 4 of the Act. Chapter V, as noticed above, provides the power of summons, searches and seizures as per the investigation which has been carried out and the same is to be done by the authorities appointed under the Act to the exclusion of the police officers under Section 45(1A) until duly authorized. Section 19 further provides the powers of arrest upon the reasons to believe and to be recorded in writing. The investigation, for the purposes of money laundering for the collection of evidence gives the power to the authorities to arrest. The definition of the cognizable offence provided under Section 2(c) of the Cr.P.C. reads thus:-

(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

31. The definition of investigation under Section 2(h) of the

Cr.P.C. pertains to the proceedings under the said Code and, therefore, one has to fall back on the definition under Section 2(na) of the PMLA, which specifically provides that all proceedings under the Act are to be conducted by the authorized authorities for the collection of evidence.

32. In the present case, as noticed, investigation is in progress of the serious offences of money laundering pertaining to 38 accounts and some of the petitioners are account holders of the said accounts which have been detailed in paragraph no. 15. It has already been noticed that there are serious allegations of money laundering and incriminating documents including 214 blank signed cheques relating to several shell companies without any business activity but having heavy financial dealings which have been unearthed by the investigating agencies in pursuance of the investigation carried out under the provisions of the Act.

33. As noticed, the punishment is not less than 3 years for the said offences and prosecution can only be launched in the Special Court and the purpose of the Act is to prosecute the persons who are involved in such proceeds of crime and the said Act is a special Legislation to curtail the organized crime and to confiscate and prosecute the offenders therein.

34. The Jharkhand High Court had occasion to consider the provisions of the PMLA in ***Hari Narayan Rai vs. Union of India and another, 2010 (2) AIR Jhar R. 692*** and noticed that a complaint can be filed by the authority made by the authorized officer and the police officer is not to investigate. The Act was a special Statute in which there was no police report which has to be filed and only a complaint could be filed after completion of investigation by the authorized authority on the basis of

which cognizance could be taken. The relevant observations read thus:-

“12. From reading the Act as a whole it is manifestly clear that the Prevention of Money Laundering Act being a special statute, the procedure for dealing with the offences are regulated by the provisions contained in the said Act. Section 44(1b) clearly provides that cognizance for the offence punishable under the Act shall be taken only upon a complaint made by an authority authorized in that behalf under the Act. Further Section 45 of the Act put restrictions in the release of the persons on bail unless conditions mentioned therein are fulfilled. It further provides that special Court shall not take cognizance of any offence under section 4 except on a complaint made by the Director or any Officer authorized by the Central Government or the State Government. Sub- Section (1-A) of Section 45 specifically provides that notwithstanding the provisions contained in the Code of Criminal Procedure, no police officer shall investigate into an offence under the Act unless specifically authorized by the Central Government by a general or special order. The provisions of the Act has been given over-riding effect upon any other law and further categorically mentioned that any provision of Code of Criminal Procedure which are inconsistent with the provision of the this Act which deals with attachment, confiscation, investigation and prosecution etc. shall not apply. There is no provision in the Act which is a special statute for filing of police report. It could file a complaint only after completion of investigation by the authorized authority, which shall be the basis of taking cognizance.

13. As noticed above, the word “investigation”

as defined in Section 2(na) has been inserted by virtue of Amendment Act 20 of 2005. According to the definition the word “investigation” includes all the proceedings under the Act conducted by the Director or by an authority authorized by the Central Government under the Act for the collection of evidence.

14. The provision contained in Sections 44 and 45 of the Act prohibits taking of cognizance except on a complaint made by the appropriate authority who can file a complaint only after completion of investigation. In my considered opinion, therefore, in view of non-obstante clause contained in various provisions of the Act, which has overriding effect, the provision contained in section 167(2) of the Cr.P.C. will not apply.”

35. The submission that the offence is non-cognizable mainly because a complaint has to be filed by the authorities before the Special Court to take cognizance does not take away the power of the authorities to investigate and arrest. We are in consonance with the view taken above by the Jharkhand High Court that the right to investigate under the Act is very much part of the scheme of the Act. The argument that the offence is a non-cognizable offence and bailable as defined under Section 2(l) of Cr.P.C. thus, cannot be accepted.

36. As noticed, Section 65 of the Act specifically provides that the provisions of the Cr.P.C. are only to apply in so far as they are not inconsistent with the provisions of the PMLA, 2002. Section 65 reads thus:-

“65. Code of Criminal Procedure, 1973 to apply.—The provisions of the Code of Criminal Procedure, 1973 (2 of

1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.”

37. Section 71 would further be a hurdle in the way of the petitioners which provides that the PMLA has to have an over riding effect and notwithstanding anything inconsistent herewith contained in any other law for the time being in force. Section 71 of PMLA reads thus:-

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

38. Sections 44 and 46 read together would go on to show that a complaint has to be made by the authorities before the Special Court by the authority authorized and the Special Court can take cognizance of the offence under Section 3 without the accused being committed to it for trial. Section 46 further provides that the provisions of the Cr.P.C. shall apply to the proceedings before a Special Court. Sections 44 and 46 of the PMLA read thus:-

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

[(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or]

*(b) a Special Court may, [***] upon a complaint made by an authority authorised in this behalf under this Act take [cognizance of offence under Section 3, without the accused being committed to it for trial].*

[(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.]

[(d) 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 (2 of 1974), as it applies to a trial before a Court of Session.]

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43.

46. Application of the Code of Criminal Procedure, 1973 to proceedings before Special Court.—*(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:*

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly."

39. The Special Court as notified under Section 43 is to be the Sessions Judge of various divisions and for separate revenue districts as per the notification issued by the Central Government after consultation with the Chief Justice of this Court. Thus, it is apparent that the offence under Section 3 as per the first schedule of Cr.P.C. would be a cognizable offence

and a non-bailable offence and Special Court would only take cognizance of the offence upon the complaint made by the authorities under the Act in writing in view of the provisions of the Act. A reading of Section 46 would rather go on to show that it has been specifically provided that Cr.P.C. would apply to the proceedings before the Special Court for the purposes of bails or bonds. Thus, it would be apparent that it is at this stage the procedure prescribed under the Code would come into play for the limited purpose where a person has been taken into custody by the authorized officers under the Act and produced before the competent Court, who will, then proceed to decide the right of bail in accordance with the provisions of the Cr.P.C. The reference to the provisions of Section 155(2) Cr.P.C. whereby, there is a bar for the police officer to investigate the non-cognizable offence without the order of the Magistrate having power to try such case or commit the case for trial thus would be without any basis in view of the fact that the police officers have been specifically excluded from investigating into the matters under Section 45(1A) except with special authorization of the Central Government. Similarly, reference to Section 157 which provides the procedure for investigation by the officer in charge of the police station would not be applicable as the same pertains to the information received under Section 154 of the Cr.P.C. Perusal of Rule 73 (ua) would rather go on to show that rules could be made which provide the conditions to which the police officer could be authorized to investigate into the offence under sub-section (1A) of Section 45. It has not been pointed out in any manner that any such rules have been framed or that any police officers were investigating the offences so that the procedure under Cr.P.C.

has to be followed.

40. The provisions of the Act have already been discussed in detail above which provide that the offences are punishable with not less than 3 years and can go upto 7 years alongwith attachment and confiscation of the properties. The Special Court constituted by the Central Government which is duly notified is to take cognizance of the offences on the complaint filed by the authorities and which is to be tried by the Sessions Judge.

41. It is settled principle of law that the plain meaning of the Statute is to be taken into consideration and the Court is not to read anything into the statutory provisions and only the legislative intent is to be found out and neither any words are to be added, altered or modified unless it is necessary to do so. The Statute has to be read in its whole for the purpose of finding out its object and nothing could be shown that there was any absurdity or manifest injustice which has been caused once the investigation was being done into the offences of money laundering and, therefore, keeping in view the purpose of the Act, it would be not possible to hold that the jurisdiction being exercised by the authorities was without any basis.

42. The argument of Mr. Vikram Chaudhary thus that there is an implied repeal in view of the amendment and the offence under Sections 3 and 4 is non-cognizable and also bailable as per the amended Section 45 is untenable. The said section only provides that persons who are accused of the offence punishable for a term of imprisonment for more than 3 years under part A of the Schedule would have to satisfy the conditions laid down before bail is granted to them by the Special Court. The petitioners are

admittedly not those accused who are accused of the offences under Part A, proceedings against whom are already pending separately.

43. The said argument cannot be accepted as if the offence is to be bailable, it would have specifically been provided so by the Legislature. The doctrine of implied repeal was subject matter of consideration of the Apex Court in ***Harshad S. Mehta and others vs. State of Maharashtra, 2001 (8) SCC 257***. The Apex Court dealt with the issue as to whether the Special Court had the inherent power to grant pardon. The argument raised was that it was excluded by necessary implication as there was no such provision in the Special Court (Trial of Offences relating to Transactions Insecurities) Act, 1992. It was the argument that there was no legislative intendment of conferring the power of pardon on the Special Court which was repealed by noticing that Courts lean against implied repeal. The relevant observations read thus:-

“Mr.Jethmalani further contends that simply to confer on the Special Court the power to tender pardon by itself is not enough without conferring on it the power to punish the person who accepts tender of pardon in case of violation by him of terms and conditions on which the pardon is tendered. The submission is that a reading of the provisions of the Act clearly shows that the power as contained in [Section 308](#) of the Code to punish the accomplice for violation of the terms and conditions of the pardon has not been conferred on the Special Court and, therefore, it is evident that the power to tender pardon has also not been conferred on that court.

Counsel submits that for deciding these matters

the paramount question one is required to ask himself is why provisions similar to the one in 1952 Act and other such enactments conferring specific power to grant pardon and to inflict punishment in the event of violation of the terms and conditions of the pardon were omitted from the Act. The obvious and the only answer of the question, according to learned counsel, is that the intention of the legislature was not to confer the power of pardon on the Special Court and any other interpretation will defeat that intention of the legislature.

Mr. Jethmalani also sought to invoke the doctrine of implied repeal. Pointing out that [the Code](#) is a general law and the Act - a special later enactment, [Section 13](#) whereof shows its predominance and superiority, this Court should not have any reluctance to accept the applicability of doctrine of implied repeal in these matters, was the submission of learned counsel though he, very fairly and rightly, conceded that there is a presumption against a repeal by implication.

The reason for the presumption as aforesaid is that the legislature while enacting a law has a complete knowledge of the existing laws on the subject matter and, therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. The burden to show that there has been a repeal by implication lies on the party asserting it. Relying upon statutory interpretation by Francis Bennion (1984 Edition), counsel contends that where, as in the present case, the provisions of the later enactment (the Act) are contrary to those of the earlier (the Code), the later by implication repeals the earlier

in accordance with the maxim leges posteriores priores contrarios abrogant (later laws abrogate earlier contrary laws). This is, however, subject to the exception embodied in the maxim generatita specialitatis non derogant (a general provision does not derogate from a special one). One of the important test to determine the issue of implied repeal would be whether the provisions of the Act are irreconcilably inconsistent with those of the Code that the two cannot stand together or the intention of the legislature was only to supplement the provisions of the Code. This intention is to be ascertained from the provisions of the Act. Courts lean against implied repeal. If by any fair interpretation both the statutes can stand together, there will be no implied repeal. If possible implied repeal shall be avoided. It is, however, correct that the presumption against the intent to repeal by implication is overthrown if the new law is inconsistent with or repugnant to the old law, for the inconsistency or repugnancy reveals an intent to repeal the existing laws. Repugnancy must be such that the two statutes cannot be reconciled on reasonable construction or hypothesis. They ought to be clearly and manifestly irreconcilable. It is possible, as contended by Mr. Jethmalani, that the inconsistency may operate on a part of a statute. Learned counsel submits that in the present case the presumption against implied repeal stands rebutted as the provisions of the Act are so inconsistent with or repugnant to the provisions of the earlier Acts that the two cannot stand together. The contention is that the provisions of Sections 306 and 307 cannot be complied with by the Special Court and thus the legislature while enacting the Act clearly intended that the said existing

provisions of the Code would not apply the proceedings under the Act. Learned counsel contends that this court will not construe the Act in a manner which will make Sections 306 and 307 or at least part of the said sections otiose and thereby defeat the legislative intendment whatever be the consequences of such an interpretation.”

44. That if the argument of Mr. Chaudhary is to be accepted then Section 19 which pertains to the power of arrest would be rendered a dead letter on the Statute book if the offence under Section 3 is to be treated as non-cognizable and bailable, as argued by him.

45. Reference to the judgment of the Apex Court in *Om Parkash's case (supra)*, in the above facts and circumstances, is without any basis as the issue before the Apex Court was as to whether the offences under the Central Excise Act, 1944 and The Customs Act, 1962 are bailable since the offences were non-cognizable under the provisions of the Act itself. The offences and penalties pertained to punishment which may extend to 3 years or to 7 years and as per Section 18 of the Central Excise Act, the provisions of Cr.P.C. would apply relating to searches and arrests. It was in such circumstances, the Apex Court held that the offences are bailable in nature. In the present case, as noticed, Section 4 provides for punishment for more than 3 years and thus offences would be cognizable as provided in the Cr.P.C. itself and thus, the first submission raised by counsel for the petitioner is without any basis.

46. Similarly, reliance upon the judgment in *Bhajan Lal's case (supra)* would not be applicable in view of the findings recorded since

admittedly, the offences are punishable for more than 3 years and in such case, it would be a cognizable offence and the authorities under Section 19 would have the power to arrest in view of the special procedure prescribed under the Act. Similarly, the judgment in *Kishan Lal Thakur's case (supra)* would not be applicable since it pertained to the police registering the case under Section 31 of the Representation of the Peoples Act, 1950, which was a non-cognizable offence.

47. The second issue raised that the petitioners have been prejudiced and that the authorities are acting as a law unto themselves and that the procedure provided under Chapter 12 of the Cr.P.C. has to be followed has partly been answered against the petitioners in view of the provisions of Sections 65 and 71 while answering the first issue. Sections 4 and 5 of Cr.P.C. specifically provide that offences under any other law shall be investigated and dealt with in accordance with the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigation. Similarly, Section 5 provides that nothing contained in the Code shall in the absence of specific provision to the contrary shall affect the special or local law for the time being. Sections 4 and 5 of Cr.P.C. reads thus:-

Sections 4 and 5 Cr.P.C.

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

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

(2) All offences under any other law shall be investigated,

inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences

5. Saving

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

48. The judgment relied upon by counsel for the petitioner in *Deepak Mahajan's case (supra)* does not come to his help. The Apex Court in that case had held that a person arrested under the Foreign Exchange Regulation Act, 1973 and which was *pari materia* with Section 104 of the Customs Act could be further detained under Section 167(2) of Cr.P.C. Accordingly, it was held that the provisions of Section 167(1) and (2) were applicable with regard to the production or detention of person arrested and the Magistrate could commit to custody a person taken from him or the customs officer. The power of investigation rather was held not only with the police officers but by the prosecuting agency who was invested with the power of investigation. The relevant observations read thus:-

“104. In our considered opinion, the view taken in O.P. Gupta' and M.K.S. Abu Bucker³⁵ and also of the Kerala High Court and Gujarat High Court is the logical and correct view and we approve the same for the reasons we have given in the preceding part of this judgment. We, indeed, see no imponderability in construing Section 35(2) of FERA and [Section 104\(2\)](#) of Customs Act that the said provisions replace [Section 167\(1\)](#) and serve as a substitute thereof substantially satisfying all the required basic conditions contained therein and that consequent upon such replacement of sub-section (1) of [Section 167](#), the arrested person under those special Acts would be an accused person to be detained by the Magistrate under subsection (2) of [Section 167](#). In

passing, it may be stated that there is no expression 'police officer' deployed in [Section 167\(1\)](#) nor does it appear in any part of [Section 167\(2\)](#). The authority for detaining a person as contemplated under [Section 167\(2\)](#) is in aid of investigation to be carried on by any prosecuting agency who is invested with the power of investigation.

xx xx xx xx

115. It should not be lost sight of the fact that a police officer making an investigation of an offence representing the State files a report under [Section 173](#) of the Code and becomes the complainant whereas the prosecuting agency under the special Acts files a complaint as a complainant i.e. under [Section 61\(ii\)](#) in the case of FERA and under [Section 137](#) of the Customs Act. To say differently, the police officer after consummation of the investigation files a report under [Section 173](#) of the Code upon which the Magistrate may take cognizance of any offence disclosed in the report under [Section 190\(1\)\(b\)](#) of the Code whereas the empowered or authorised officer of the special Acts has to file only a complaint of facts constituting any offence under the provisions of the Act on the receipt of which the Magistrate may take cognizance of the said offence under [Section 190\(1\)\(a\)](#) of the Code. After taking cognizance of the offence either upon a police report or upon receiving a complaint of facts, the Magistrate has to proceed with the case as per the procedure prescribed under [the Code](#) or under the special procedure, if any, prescribed under the special Acts. Therefore, the word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation.”

49. Similarly, it was held that provisions of Section 167(2) would be applicable as the operation of Section 4(2) Cr.P.C. was applicable if there was no specific provision contrary to that excluding operation of Section 167(2). The above observations, thus, would be squarely applicable in the case of the persons accused under Sections 3 and 4 on the account of their being arrested in view of violation of Sections 3 and 4 and the competent court would then proceed to decide the application for bail keeping in mind

the provisions under Section 46 of the PMLA.

50. It was also noticed that investigation was permissible under various regulations like the Foreign Exchange Regulation Act, 1973, Customs Act, 1962, The erstwhile Gold (Control) Act, 1968, The Prevention of Food Adulteration Act, 1954 and The Railways Property (Unlawful Possession) Act, 1966 which provided that the power of investigation was with other officers but there was no power to file a final report and the offences were to be taken cognizance by Special Courts on a complaint being filed. There are similar provisions under the Fertilizer Control Order and the Drugs and Cosmetics Act, 1940 whereby, investigation is done initially by the authorized officers and thereafter complaints are filed in the Special Courts and, therefore, no such fault can be found with the procedure which has been adopted by the respondents.

51. The Apex Court in *Jeewan Kumar Raut and another vs. Central Bureau of Investigation, 2009 (7) SCC 526* also noticed that in an investigation conducted by the CBI under the Transplantation of Human Organs Act, 1994, (in short 'TOHO') a complaint had been filed in view of the specific provisions under the Special Act and the argument that the complaint petition was not maintainable and only a police report could have been filed due to the investigation conducted was rejected. Section 22 of the said Act was taken into consideration to notice that only a complaint could be filed by the appropriate authority. It was thus held that under special Statutes, investigation could be conducted and there was no provision to file a police report and a specific bar had been created by the Parliament. The relevant observations read thus:-

“19. Section 22 of TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority or the person who had made a complaint earlier to it as laid down therein. Respondent, although, has all the powers of an investigating agency, it expressly has been statutorily prohibited from filing a police report. It could file a complaint petition only as an appropriate authority so as to comply with the requirements contained in Section 22 of TOHO. If by reason of the provisions of TOHO, filing of a police report by necessary implication is necessarily forbidden, the question of its submitting a report in terms of Sub-section (2) of [Section 173](#) of the Code did not and could not arise. In other words, if no police report could be filed, Sub-section (2) of [Section 167](#) of the Code was not attracted.

20. It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorization under Section 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; Sub-section (2) of [Section 167](#) of the Code may not be applicable. The provisions of [the Code](#), thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of [the Code](#) and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over [the Code](#). Ordinarily, thus, although in terms of [the Code](#), the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required

to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 of TOHO.

To put it differently, upon completion of the investigation, an authorized officer could only file a complaint and not a police report, as a specific bar has been created by the Parliament. In that view of the matter, the police report being not a complaint and vice-versa, it was obligatory on the part of the respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner laid down therein and not by any other mode. The procedure laid down in TOHO, thus, would permit the respondent to file a complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of TOHO.”

52. A Division Bench of this Court in ***Naveed Masih vs. State of Punjab, 2014 (1) RCR (Criminal) 56*** also rejected a similar contention raised while placing reliance upon the judgment of the Apex Court in *Deepak Mahajan's case (supra)* itself. The submission that the Narcotics Control Bureau (for short 'NCB') could not file a complaint in the Court of the Special Judge and the procedure under Chapter XII of the Cr.P.C. had to be followed was rejected by holding that the empowered officers of NCB are not police officers and are not bound to carry out the investigations under the Act. The relevant observations read thus:-

“38. Apart from the police constituted under the [Police Act, 1861](#), certain Officers of specified organizations have been invested powers of an Officer-in-charge of a Police Station. With such conferment of

powers, the investigation of the offences can be conducted by the officers, but such power of investigation is under a special Act and not under [the Code](#). After such investigation, which is not any way analogous to the investigation carried out by police under [Section 2 \(h\) of the Code](#), the empowered Officer can file a complaint in terms of [Section 190](#) of the Code.

39. Though [Section 193](#) of the Code prohibits that no Court of Sessions shall take cognizance of any offence as a Court of Original Jurisdiction unless the case has been committed to it by a Magistrate, but such provision being in conflict with [Section 36A](#) of the Act, the police report or a complaint can be filed before the Court of Sessions directly. When a complaint is filed, the Court of Sessions commences proceedings regulated by Chapter XV of the Code. Such provision inter alia contemplates that if a complaint is made in writing, the Magistrate is not required to examine the complainant and the witnesses, if a public servant acting or purporting to act in the discharge of his official duties files a complaint. The Code contemplates investigation by the police culminating with the filing of a police report and also proceedings to be initiated on the basis of a complaint by an empowered Officer in terms of Chapter XV of the Code. Therefore, when a police in terms [of Code](#) investigates into an offence including an offence under the Act, it files a report under [Section 173](#) of the Code, whereas the investigation by an empowered officer under the Act leads to filing of a complaint in terms of [Section 190](#) of the Code.

40. Thus, the argument that the statements of PW-4 Constable Satpal Singh and PW-5 Shyam Kumar were

neither recorded nor supplied to the appellants while filing complaint is not tenable in law. Such witnesses were not examined by the "police officials" during the course of investigations so as to record their statements as provided under [Section 161](#) of the Code. It is the duty of the police official to record statement, supply copy of such statement, as part of the report under [Section 173](#) of the Code, so as to enable the defence to contradict a witness while stepping into witness-box. But it is not necessary for the empowered Officer to record statements of the witnesses contemplated under [Section 161](#) of the Code, as such statements can be recorded only by a Police Officer during the course of investigation. In the present case, the empowered Officer produced a list of 40 documents sought to be relied upon to prove the charges against the appellants including the statements recorded under [Section 67](#) of the Act as well furnished list of witnesses to be examined. Since there is no obligation to record statements by the empowered Officer analogous to [Section 161](#) of the Code, the disclosing the names of the witnesses along with the complaint is compliance of Chapter XV of the Code. The providing of different procedures for filing of complaint by the empowered officers and a report by the police cannot be said to be discriminatory as both of these procedures are to enable the court to pronounce on the guilt of an accused.

41. Therefore, we do not find any merit in the argument that the empowered officers of the NCB under the Act are the police officers and are bound to carry investigations under the Act in accordance with Chapter XII of the Code after lodging of an FIR."

53. A perusal of the rules which have been framed under Section 73 (2)(ee), (f), (jj), (m), (n), (p) and (w) would go on to show that under sub-clause 2(ee) (f) and (m), the manner of seizing and taking possession of the property attached or frozen and the rules relating to search and seizure and the reasons and material referred to in sub-section (2) of Section 17 can be framed. Section 73(2)(ee), (f), (jj), (m), (n), (p) and (w) read thus:-

“73. Power to make rules.—*(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.*

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(ee) the manner of seizing or taking possession of property attached under section 5 or frozen under sub-section (1A) of section 17 or under sub-section (4) of section 8;

(f) the manner in which and the conditions subject to which the properties confiscated may be received and managed under subsection

[(jj) the manner of identifying beneficial owner, if any, from the clients by the reporting entities under clause (d) of sub-section (1) of section 12;]

(m) the rules relating to search and seizure under sub-section (1) of section 17;

(n) the manner in which the reasons and the material referred to in subsection (2) of section 17 shall be maintained.

(p) the manner in which the order and the material referred to in sub-section (2) of section 19 shall be maintained.

(w) the rules relating to impounding and custody of records under sub-section (5) of section 50;”

54. As per the rules framed, we find that as many as 11 set of rules

have been framed under Section 73. The details of same are mentioned below:-

A. The Prevention of Money-Laundering (The Manner of Forwarding a Copy of the Order of Provisional Attachment of Property alongwith the Material, and Copy of the Reasons alongwith the Material in Respect of Survey, to the Adjudicating Authority and its Period of Retention) Rules, 2005.

B. The Prevention of Money-Laundering (Receipt and Management of Confiscated Properties) Rules, 2005.

C. The Prevention of Money-Laundering (Maintenance of Records, 2005.

D The Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention), Rules, 2005.

E The Prevention of Money-Laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person Along With the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005.

F The Prevention of Money-Laundering (The Manner of Forwarding a copy of the Order of Retention of Seized Property Along With the Material to the Adjudicating Authority and the Period of its Retention), Rules, 2005

G The Prevention of Money-Laundering (Manner of Receiving the Records Authenticated Outside India) Rules, 2005

H The Prevention of Money-Laundering (Appeal) Rules, 2005

I The Adjudicating Authority (Procedure) Regulations, 2013

J The Prevention of Money-Laundering (Issuance of Provisional Attachment Order) Rules, 2013

K The Prevention of Money-Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013

55. The above said rules provide a specific procedure to be followed by the authorities for the purpose of the present case. As per Rule 5 of the rule mentioned at Sr. No. D which pertains to the Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention), the provisions of the Cr.P.C. are to apply in so far as they are not inconsistent with the provisions of the Act relating to Search and Seizure. Similarly, as per Rule 11, the Summoning Officer has to issue summons in Form V while exercising powers under sub-sections 2 and 3 of Section 50 of the Act. Rules 5 and 11 alongwith Form V are reproduced as under:-

“5. Applicability of the provisions of the Code of Criminal Procedure, 1973.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of the Act relating to search and seizure.

11. Forms of records.—The Summoning Officer shall, while exercising powers under sub-sections (2) and (3) of section 50 of the Act, issue summons in Form V appended to these rules.”

FORM V
(See rule 11)

FORM FOR SUMMONS

.....
.....
.....

[ADDRESS OF THE SUMMONING OFFICER]

No.

WHEREAS I.....Director or Additional Director or Joint Director or Deputy Director or Assistant Director, am making investigation under the provisions of the Prevention of Money-laundering Act, 2002 (15 of 2003).

AND WHEREAS, I consider the attendance of.....
[name of the person summoned and his address] necessary in connection with the said investigations.

NOW, THEREFORE, in exercise of the powers conferred upon me under sub-section (2) and sub-section (3) of section 50 of the said Act, I requirethesaid [name of the person summoned and his address] to appear before me at my office on at alongwith the documents as per schedule below:-

SCHEDULE

Given under my hand and seal this day of two thousand.....

Summoning Officer

.....

Name and complete address

Seal

To

.....
.....
.....

(Name of the person summoned and his address]

Note.—1. Every proceeding under sub-section (2) and sub-section (3) of section 50 of the Prevention of Money-laundering Act, 2002 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code

2. Without prejudice to the provisions of any other law for the time being in force, if you fail to give evidence as mentioned in the schedule, you shall be liable to penal proceedings under the Prevention of Money-laundering Act, 2002 (15 of 2003). ”

56. It is not disputed that the summons issued to the petitioners which are subject matter of challenge are as per Form V. The petitioner has not challenged any of the rules or the sections of the Act and neither any challenge has been raised to the vires of the Act that it is violative of any procedure and that his fundamental rights under the Constitution are infringed. Thus, it is apparent that it is in pursuance of the statutory powers, the authorities have issued summons.

57. Similarly, under rule mentioned at Sr. No. E pertaining to the Prevention of Money-Laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person Along With the Material to the Adjudicating Authority and its Period of Retention), it has been specifically provided that the Arresting Officer shall prepare an index of the copy of the order and the material in possession and forward the index and order to the adjudicating authority in a sealed envelope. The authorities are to receive the said copy of the order of arrest and preserve the same under Rule 5 for a period of 10 years or as prescribed. As per Rule 6, the arresting Officer has to sign the arrest order in Form III while exercising powers under Section 19(1) of the Act. The said rule reads thus:-

3. Manner of forwarding a copy of the order of arrest and the material to the Adjudicating Authority.—*(1) The Arresting Officer shall prepare an index of the copy of the order and the material in possession and sign each page of such index of the copy of the order and the material and shall also write a letter while forwarding such*

index, order and the material to the Adjudicating Authority in a sealed envelope.

(2) The Arresting Officer shall place an acknowledgement slip in Form I appended to these rules inside the envelope before sealing it.

(3) The Arresting Officer shall indicate a reference number and date of despatch on the sealed envelope.

(4) The sealed envelope shall be marked “Confidential” and “To be opened by the addressee only”, the complete address of the Adjudicating Authority including his name shall be mentioned on the sealed envelope with the official seal.”

(5) The Arresting Officer shall place the sealed envelope inside an outer envelope, along with an acknowledgement slip in Form II appended to these rules.

(6) The outer envelope shall be sealed and complete address of the Adjudicating Authority shall be mentioned on the sealed outer envelope.

(7) The Arresting Officer shall maintain registers and other records such as acknowledgement slip register, dak register for the purposes of this rule and shall ensure that necessary entries are made in the register immediately as soon the copy of the order and the material are forwarded to the Adjudicating Authority.

58. The arrest order is to be issued under Form III under Rule 6.

The format of the arrest order reads thus:-

FORM III
(See Rule 6)
ARREST ORDER

WHEREAS, I Director/Deputy Director/ Assistant Director/Officer authorised in this behalf by the Central Government, have reason to believe that.....[name of the person arrested] resident of..... has been guilty of an offence punishable under the provisions of the Prevention of Money-laundering Act, 2002 (15 of 2003);

NOW, THEREFORE, in exercise of the powers conferred on me under sub-section (1) of section 19 of the Prevention of Money-laundering Act, 2002 (15 of 2003), I hereby arrest the said [name of the person arrested] at..... hours on and he has been informed of the grounds for such arrest.

Dated at on this day of Two thousand

Arresting Officer

Signature with Seal

To
.....

.....

[Name and complete address of the person arrested]”

59 Thus, from the above, it would be apparent that a complete procedure has been prescribed under the Act and the said Rules are not subject matter of challenge. In the absence of any challenge raised and in view of the detailed procedure prescribed and in view of the provisions of the Act, the argument which is sought to be raised that the officers of the E.D. are acting without any jurisdiction in an arbitrary manner and without any authority is without any basis. The statute has given ample power to the authorities and methodology has been prescribed which prima facie goes on to show that sufficient safeguards are in place and the adjudicating authority is to monitor the investigation and the arrest can only be on the basis of reasons to be recorded in writing. Neither any reference had been made to the rules by the petitioner and neither it had been complained that the said rules have been violated in any manner. Due to the lack of any challenge being raised to the same, we are of the opinion that the argument raised that the principles laid down in *D.K. Basu's case (supra)* have been violated is without any basis. Similarly, the observations in *Lalitha Kumari's case (supra)* would not be applicable to the facts and circumstances of the case as the issue therein was pertaining to the non-lodging of the FIRs by the police authorities, in spite of the fact that in Cr.P.C., it is clearly provided that it was mandatory to register an FIR before an investigation was conducted.

60. The Apex Court in ***State of U.P. vs. Singhara Singh, AIR 1964 SC 358*** held that it would be an unnatural construction to hold that any other procedure was permitted than that which was specifically provided

and a thing must be done in a particular manner provided for. The relevant observations read thus:-

“7. In Nazir Ahmed vs. King Emperor AIR 1936 PC 253, the Judicial Committee observed that the principle applied in Taylor vs. Taylor (1876) 1 Ch.D 426 to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that “it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves”.

61. The view was thereafter followed by the Constitution Bench in ***A.R. Antulay vs. Ramdas Srinivas Nayak, 1984 (2) SCC 500***. It was held that once the Statute prescribed the certain method, the thing has to be done in that way or not at all. The relevant observations read thus:-

“22. Once the contention on behalf of the appellant that investigation under Section 5-A is a condition precedent to the initiation of proceedings before a Special Judge and therefore cognizance of an offence cannot be taken except upon a police report, does not commend to us and has no foundation in law, it is unnecessary to refer to the long line

of decisions commencing from Taylor v. Taylor (1876) 1 Ch.D 426; Nazir Ahmad v. King-Emperor AIR 1936 PC 253 and ending with Chettiam Veettil Ammad v. Taluk Land Board Air 1979 SC 1573, laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

62 The Division Bench judgment in *Rakesh Manekchand's case* (*supra*) can be of no assistance to the counsel for the petitioners as admittedly, the order dated 03.08.2015 is interim in nature. Rather, a perusal of the order would also go on to show that there were observations that the issue required deeper consideration though various observations have been made in favour of the petitioners which are sought to be highlighted. Interim orders of this nature cannot be held to be a precedent or of any persuasive value since there has to be a final decision. Interim directions always go with the final decision and cannot be taken into consideration. For precedent to be binding, there has to be final decision and interim directions, issued in a pending case, would go with the final decision and cannot be taken into consideration. The said principle as to what is the "ratio decidendi" and the authoritative and binding element of the final judgment, laying down the precedent is to be taken into consideration and not the interim orders. Reference can be made to the observations made by the Apex court in ***State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha (2009) 5 SCC 694***. Relevant observations of the judgment read as under:

"21. A precedent is a judicial decision containing a

principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing.

22. The observations and directions in Kapil Hingorani (I) and (II) being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non- payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extraordinary power under [Article 142](#) of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extreme hardship, approaching this Court or the High Court alleging human right violations and seeking a mandamus requiring the state, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of Kapila Hingorani (I) and Kapila Hingorani (II)."

63. In the present case, as noticed, the complaint has to be filed and with the investigation being at the initial stage the same cannot be quashed at a thresh hold in the absence of any legal bar provided under the Statute.

64. The ancillary prayers made for videography at the time of investigation in the presence of the advocate while recording statements thus is the only issue left for consideration in view of the above discussion. It is to be noticed that counsel for the respondent, vide order dated 19.03.2015, had undertaken that on the petitioners joining the investigation, they would have no objection to the interrogation/examination being videographed and necessary arrangements would be made for the same.

65. In view of the above undertaking already given, we are of the opinion that no further orders are required and the respondents shall comply with the said undertaking of getting the videography done as and when the investigation/interrogation of the persons summoned is under way.

66. Accordingly, this Court is of the opinion that there is no merit in the present case and the same is dismissed.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

22.12.2015
shivani

To be referred to the Reporters.

Yes	No
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