

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-10-2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. Nos.8383 and 8384 of 2013

And

M.P.Nos.1 and 1 of 2013, 1 and 1 of 2014

Smt.Soodamani Dorai

..Petitioner in WP 8383/2013

Rt.Rev.Dr.Manickam Dorai

..Petitioner in WP 8384/2013

vs

1.The Joint Director of Enforcement (PMLA),
Directorate of Enforcement,
Ministry of Finance,
Department of Revenue,
Government of India,
Shastri Bhavan, 3rd Floor,
3rd Block, No.26, Haddows Road,
Chennai-600 006.

2.The Assistant Director (PMLA),
Directorate of Enforcement,
Ministry of Finance,
Department of Revenue,
Government of India,
Shastri Bhavan, 3rd Floor,
3rd Block, No.26, Haddows Road,
Chennai-600 006.

3.The Chairperson,
Adjudicating Authority,
Prevention of Money Laundering,
4th Floor, Room No.17,
Jeevan Deep Building,
Parliament Street,
New Delhi - 110 001.

.. Respondents in
both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writs of Certiorari, calling for the records of the respondents herein and quash the entire proceedings of the respondents, namely, the first respondent's provisional attachment order in No.1 of 2013 in File No.ECIR.03/2012 AVB dated 14.2.2013 passed pursuant to

enforcement case information Report in No.ECIR No.03/2012 AVB dated 12.4.2012 and consequential notice of the third respondent in Original Complaint No.178 of 2013 dated 13.3.2013.

For Petitioner in both WPs : Mr.S.Sathiaseelan.

For Respondents in both WPs : Mr.G.Rajagopalan,
Additional Solicitor
General of India assisted
by Mr.Rajnish Pathiyil.

C O M M O N O R D E R

Two writ petitions are filed for quashing the proceedings issued by the first respondent in respect of the provisional attachment order No.1 of 2013 in File No.ECIR No.03/2012 AVB dated 12.4.2012 and the consequential notice issued by the third respondent in Original Complaint No.178 of 2013 dated 13.3.2013.

2. WP No.8383 of 2013 is filed by Mrs.Soodamani Dorai, Wife of Rt.Rev.Dr.Manickam Dorai. The writ petition in WP No.8384 of 2013 is filed by Rt.Rev.Dr.Manickam Dorai, who is the husband of the writ petitioner Mrs.Soodamani Dorai in WP No.8384 of 2013. Thus, the first writ petition viz., WP No.8383 of 2013 was filed by the wife of the writ petitioner Rt.Rev.Dr.Manickam Dorai in the second writ petition viz., WP No.8384 of 2013.

3. The facts in nutshell to be considered in these writ petitions are that the writ petitioners are husband and wife. The writ petitioner in WP No.8384 of 2013 Rt.Rev.Dr.Manickam Dorai was holding the post of Bishop of CSI Diocese, Coimbatore from 2000 till 8.1.2012. The writ petitioner in WP No.8383 of 2013 Mrs.Soodamani Dorai was a retired Primary and Middle School Teacher. The writ petitioners have two children, namely, one Mrs.Mercy Angela Dorai, an Engineer working in abroad and Dr.Jeremy Bliss was doing Post Graduation in Medical Education at CMC, Vellore.

4. By this time, the second daughter would have completed her Post Graduation Course. When Rt.Rev.Dr.Manickam Dorai was officiating as Bishop of CSI Diocese, Coimbatore, one Mr.E.Premkumar lodged a criminal complaint before the CBCID, Coimbatore as against Rt.Rev.Dr.Manickam Dorai for the alleged misuse of Bishopship of CSI Diocese, Coimbatore by helping his relatives etc., during the period between 2005 and 2008.

5. Based on the criminal complaint, the CBCID, Coimbatore registered an FIR in Crime No.1 of 2009 as against Rt.Rev.Dr.Manickam Dorai and thirty others for the alleged offences under Sections 120-B, 409, 468, 471 and 477 of IPC and

another FIR in Crime No.5 of 2010 was also registered based on the another complaint lodged by the very same E.Premkumar against Rt.Rev.Dr.Manickam Dorai by the CBCID, Coimbatore. In FIR No.1 of 2009, charge sheet was filed on 3.5.2011 and the same was taken cognizance by the Chief Judicial Magistrate, Coimbatore in C.C.No.158 of 2011. As against the above charge sheet in FIR No.1 of 2009 and C.C.No.158 of 2011, a quash petition under Section 482 Cr.P.C., was preferred in Crl.O.P.No.15098 of 2011 on the file of this Court and the said Criminal Original Petition was subsequently dismissed.

6. During the pendency of the criminal proceedings and charge sheet, the second respondent registered an Enforcement Case Information Report in ECIR No.3 of 2012 dated 12.4.2012 based on the above FIR No.1 of 2009 and the charge sheet stayed by this Court as against the one of the writ petitioners Rt.Rev.Dr.Manickam Dorai for the alleged commission of scheduled offences under Sections 120-B, 420 and 471 of IPC under the PMLA, 2002. Consequent upon the registration of above ECIR, the second respondent vide proceedings dated 14.2.2013 provisionally attached the properties which stand in the name of Mrs.Soodamani Dorai, one of the writ petitioners in Document No.2186 of 2009 dated 27.4.2009, without recording any reasons in writing whether the authority has any reason to believe for attaching the property and as if the provisionally attached property in the possession of Mrs.Soodamani Dorai was purchased out of the alleged proceeds of crime relating to scheduled offences. Thereafter, the third respondent registered an original complaint in O.C.No.178 of 2013 dated 27.2.2013 as against the writ petitioners and consequent upon the registration of the above complaint, issued the impugned show cause notice dated 13.3.2013.

7. It is contended that the property in Document No.2186 of 2009 attached by the second respondent dated 27.4.2009 was purchased out of money gifted by the writ petitioners' daughter Mr.Mercy Angela Dorai working abroad through her NRE Saving Bank Account No.5124127426 in Citi Bank, Coimbatore by way of issuing three bearer cheques dated 21.4.2009, 23.4.2009 and 24.4.2009, which were encashed by the Mediators through whom the seller was paid. To that effect, the respondent-Authorities itself called for the records and the bank statements from the Citi Bank.

8. During the pendency of the above money laundering proceedings, the income tax Assessing Officer, Vellore, on the very same set of allegations that the subject matter of property under attachment has been purchased out of unexplained income, made an addition to income and issued a demand notice to pay the tax vide its proceedings dated 30.3.2016 as against the assessee

Mrs.Soodamani Dorai. When the above proceedings of the Assessing Officer was appealed before the CIT (A), Chennai, the above order of the Id.A.O. was confirmed by the CIT(A), Chennai vide its order dated 2.5.2017. As against the above order of the CIT (A), Chennai, appeal was preferred before the ITAT, 'D' Bench, Chennai, by Mrs.Soodamani Dorai and the above appeal was allowed, both the orders of the Id.A.O and the CIT (A), Chennai was set aside with a direction to the Id.A.O to delete the addition of Rs.7,50,000/- made in the hands of the Assessee as unexplained investment vide its order dated 23.10.2017. The above order of the ITAT, 'D' Bench, Chennai was also implemented by the Id.A.O, Vellore vide its proceedings dated 27.11.2017.

9. Thus, the issue of unexplained income and investment etc., raised by the respondents herein have not been accepted by the Income Tax Appellate Authority ratifying the explanation/reasons given by the one of the writ petitioners Mrs.Soodamani Dorai and the same also attained the finality by implementation of the same. Hence, the respondents herein are duty bound to allow the order of the ITAT which was implemented by the Id. A.O. The said finding of the ITAT, 'D' Bench, Chennai cannot be found fault with or reversed by this Court, since it is not a Forum to reopen the issue which already attained finality.

10. While countering the facts submitted on behalf of the writ petitioners, the respondents have stated that the writ petitioners have questioned the validity of the provisional attachments in PAO No.01 of 2013 dated 14.2.2013 under Section 5 (1) proviso and the complaint in O.C.No.178 of 2013 made on 27.2.2013 under Section 5(5) of the Prevention of Money Laundering Act, 2002 in the present writ petitions. This Court vide its order dated 2.4.2013, granted interim stay of ten weeks on the entire proceedings pursuant to the ECIR No.03 of 2012 including the PAO No.1 of 2013. The writ petitioners have not challenged other PAO Nos.2 of 2013 and 3 of 2013 issued by the first respondent and subsequently confirmed by the Adjudicating Authority as the writ petitioners were very well co-operating with the Adjudicating Authority. However, the writ petitioners preferred an appeal under Section 26 of the Prevention of Money Laundering Act, 2002, before the Appellate Tribunal and exhausted their statutory remedy. The confirmed adjudication order was upheld by the Appellate Tribunal with regard to PAO Nos.2 of 2013 and 3 of 2013. As the PAO No.1 of 2013 was challenged before this Court and an interim order was granted on 2.4.2013, the adjudication proceedings are still pending before the Hon'ble Adjudicating Authority. The writ petitioners can very well discharge their burden before the Adjudicating Authority under Section 24 of the Act that the acquired/possessed properties are not involved in money

laundering by way of showing the legal source of income under Section 8(1) of the Act. But instead of availing statutory remedy, the writ petitioners preferred the present writ petitions that too, during show cause notice stage, which are not maintainable in law and liable to be dismissed in limine.

11. In respect of the contentions of the respondents, they have referred the case of Raj Kumar Shivhare vs. Assistant Director, Directorate of Enforcement and Another in Civil Appeal No.3221 of 2010 (arising out of SLP (Civil) No.28877 of 2008) dated 12.10.2010, the Hon'ble Supreme Court of India held as follows:-

"34. When a statutory forum is created by law for redressal of grievance and that too in a fiscal Statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go bye by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating the aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.

35.No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since High Court itself is the Appellate Forum."

12. In the case of G.Srinivasan vs. The Chairperson, Adjudicating Authority under Prevention of Money Laundering Act, 2002 and others [decided on 1.4.2011 in WP No.530 of 2011], this Court held as follows:-

"15. In the present case, by attachment of property made by the second respondent, the petitioner is not bound to lose anything and he cannot be said to be prejudiced. On the other hand, by virtue of Section 5(3), every order of attachment made under Section 5(1) of the POMLA will lose its efficacy either after 150 days or after an order passed under Section 8(2) of the POMLA. Therefore, it is only the petitioner instead of approaching the first respondent

Adjudicating Authority who had initiated proceedings under Section 8(1), had rushed to this court. Even if the attachment is made final, under Section 26, an appeal lies to the Appellate Tribunal. Therefore, the petitioner must submit his explanation to the Adjudicating Authority and convince it that the amount sought to be attached was not obtained due to any money laundering and that it was the legally earned income. Even if he fails before the first respondent, there is time enough for challenging the same before the judicial appellate Tribunal constituted under Section 26 of the POMA. When the Act itself provides for an inbuilt remedy, it is not open to the petitioner to rush to this Court at the stage of provisional attachment, which is yet to be confirmed by the Adjudicating Authority.

13. In the case of Devas Multimedia Pvt Ltd vs. The Joint Director, ED, Bangalore [decided on 4.10.2017 in WP No.11544 of 2017], the Hon'ble High Court of Karnataka has strengthened that the provisions of the Prevention of Money Laundering Act, have a retrospective effect, held as follows:-

"28. In the instant case, as the adjudication process has not yet started and the matter is at the stage of show-cause notice and provisional attachment, it is not proper for this Court to express any opinion on this aspect of the matter. It is also evident from the show-cause notice that allegations of money-laundering are made in respect of transactions spanning over a period of time, even beyond the period when the amendment was brought about. This is evident from paragraphs 9.40 and 9.46 of the show- cause notice.

29. It is well established by catena of decisions of the Apex Court that High Court will not entertain a petition under Article 226 of the Constitution, if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken, itself contains a mechanism for redressal of the grievance. This principle is well enunciated in the case of NIVEDITA SHARMA VS.

CELLULAR OPERATORS OF INDIA & OTHERS - 2011 (14) SCC 337. In fact, the Apex Court in the case of SPECIAL DIRECTOR & ANOTHER VS. MOHD. GHULAM GHOUSE & ANOTHER - 2004 (3) SCC 440, has deprecated the practice of High Courts entertaining writ petitions questioning the legality of the show-cause notices, thereby stalling enquiries retarding investigative process initiated to find actual facts with the participation and in the presence of the parties unless the petitioner established absolute want of jurisdiction of authority to even investigate into facts. It is observed in this context that writ petitions should not be entertained and the petitioner should invariably be directed to respond to the show-cause notice.

30. It is necessary to notice that at the stage of provisional attachment under Section 5(1) of PML Act, a person interested in the enjoyment of the suspect immovable property is not deprived of its enjoyment. Taking over possession of the attached property would arise upon confirmation of the provisional attachment. On an analysis of several provisions of the Act in particular Section 5, Section 8 and Section 26, it becomes clear that the legislative intent underlying the sequential provisions for provisional attachment, confirmation of such attachment and eventual confiscation or for retention of a seized property and also providing remedy of appeal to the appellate authority, is to balance public interest with the individual interest of the person against whom allegations are made and action is initiated. A mechanism is provided under the Act for redressal of the grievance at different stages that is to say before the Adjudicating Authority at the first instance and latter before the Appellate Tribunal. It is only when a person is aggrieved by the order of the Appellate Tribunal that he may file an appeal to the High Court as per Section 42 of PML Act. When such is the mechanism provided for the effective redressal of the grievance within the four corners of the provisions of the PML Act, petitioner is not justified in rushing

to this Court at the stage of show-cause notice and the provisional order of attachment. Therefore, it is not appropriate for this Court to enter into various contentions urged by petitioner."

14. In respect of the question whether show cause notice issued to the writ petitioners are invalid as it presumes that the properties are involved in money laundering, the respondents have referred Sections 22, 23 and 24 of the Prevention of Money Laundering Act, 2002. While Section 22 presumes the validity of certain records, Section 23 deals with presumption in inter-connected transaction and Section 24(a) provides that the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money laundering.

15. As per the provisions of the Prevention of Money Laundering Act, 2002, it is for the writ petitioners to show before the Competent Authority that the proceeds of crime are not involved in money laundering on the facts and circumstances of the case. The show cause notice has been issued exactly in accordance with the provisions of the Prevention of Money Laundering Act, 2002 and therefore, it cannot be said that the show cause notices prejudices the issues. The writ petitioners are getting an opportunity to discharge their burden before the Adjudicating Authority (PMLA) under Section 8(1) and 24 of the Act.

16. In respect of jurisdiction of the authority is concerned, the Prevention of Money Laundering Act, 2002 has been enacted pursuant to an International Convention. Chapter-II of the Act, deals with offence of money laundering and Chapter-III of the Act, deals with attachment, adjudication and confiscation. The offence of money laundering is a new offence, which is of criminal nature whereas Chapter-III deals with attachment of the property pending trial and is of a civil nature. Reading of the various provisions of Chapter-III, including Section 11 of the Prevention of Money Laundering Act, 2002 would go to prove the same. The proceedings under Chapter-III are deemed to be judicial proceedings for the purpose of Sections 193 and 228 of the Indian Penal Code. At this juncture, Sections 8(3), 8(5), 8(6) of the Prevention of Money Laundering Act, before amendment 2013 of the Act and Sections 8(3), 8(5), 8(6), 8(7) of the Prevention of Money Laundering Act, 2002 after amendment clearly strengthened that the Act is a standalone enactment, differentiating the scheduled offence and money laundering offence and also the powers of Adjudicating Authority (PMLA) and the Special Court (PMLA), which are reproduced below:-

S.No.	Before PMLA (Amendment) 2012, - before 15.2.2013	After PMLA (Amendment) 2012, w.e.f. 15.2.2013
1.	Section 8(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property or record shall- (a) continue during the pendency of the proceedings relating to any scheduled offence before a Court; and (b) become final after the guilt of the person is proved in the Trial Court and order of such Trial Court becomes final.	Section 8(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under Section 17 or Section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall- (a) continue during the pendency of the proceedings relating to any offence under this Act before a Court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and (b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 or section 58-B or sub-section (2A) of Section 60 by the Special Court.
2.	Section 8(5) where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property or retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect.	Section 8(5) where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money laundering shall stand confiscated to the Central Government.

S.No.	Before PMLA (Amendment) 2012, - before 15.2.2013	After PMLA (Amendment) 2012, w.e.f. 15.2.2013
3.	Section 8(6) where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.	Section 8(6) where on conclusion of a trial under this Act, the Special Court finds that the offence of money laundering has not taken place or the property is not involved in money laundering, it shall order release of such property to the person entitled to receive it.
4.	- - -	Section 8(7) where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of Section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money laundering after having regard to the material before it.

(sub-sections 5,6 and 7 substituted for sub-sections 5 and 6, ibid, by virtue of above Amendment Act, 2012)

17. It is contended by the writ petitioners that the Central Offence was committed in 2005 and FIR was registered in 2009, charge sheet was filed in 2011 and the provisions of Section 420 of the Indian Penal Code was not part of the Schedule under the Prevention of Money Laundering Act, 2002 till 1.7.2009 and therefore, there is a violation of Article 20(1) of the Constitution and therefore, the proceedings under the Act, are not maintainable. In this context, it is submitted that the offence of money laundering is a continuing offence and it has

retrospective effect.

18. In the case of Devas Multimedia Pvt Ltd vs. The Joint Director, ED, Bangalore [decided on 4.10.2017 in WP No.11544 of 2017], the Hon'ble High Court of Karnataka has strengthened that the provisions of Prevention of Money Laundering Act, have a retrospective effect, held as follows:-

"25. It is not in dispute that Section 420 IPC has been included as a scheduled offence only in 2009, so also Section 120B IPC and Section 13 of the Prevention of Corruption Act. The question whether petitioner was involved in money laundering as provided under Section 3 of the PML Act has to be decided by the competent authority. What is the date of laundering in the facts of the present case and what process or activity by which illicit money was being projected as untainted in the facts and circumstances of the case has to be examined by the authorities. This again is an important fact which the authority has to examine. It becomes a mixed question of law and fact.

26. The Act seeks to prevent money laundering which in plain term means - preventing legitimization of money earned through illegal and criminal activities. Such actions of money laundering would wreck the economy of the nation as also the security and well being of its citizens. Commercial frauds associated with money laundering of higher magnitude would certainly affect economic fabric of the nation. Therefore, as per Section 5 of PML Act, the authority concerned is entitled to pass a provisional attachment order if he had reason to believe that any person is in possession of any proceeds of crime. Whether any person is in possession of proceeds of crime is a question of fact. At the stage when an order of provisional attachment is passed, the authority must have reason to believe that property in possession of person constitutes proceeds of crime involved in money laundering. This conclusion is reached before the process of hearing had begun without any participatory process of hearing. The parties may be

ultimately able to produce materials to disprove the assumption regarding involvement of property in money laundering. The process of provisional attachment being preemptive in nature is an urgency clause. The purpose of a provisional attachment order is to prevent a scenario where any proceedings under the PML Act might get frustrated if the property was not attached immediately. It would be always open to the affected person to place such materials as would convince the authorities that the property attached was not involved in money laundering or that it was not part of the proceeds of crime. Hence, at this stage, the contention urged by petitioner alleging that authorities have acted against the settled principles of law by retrospectively operating penal laws thereby violating Article 20(1) of the Constitution of India, cannot be accepted, at this stage. The said contention proceeds on the assumption that the act of money laundering had occurred in the year 2005 or prior to 2009. What shall happen if any person continues to derive the property or value of such property, no matter when the offence was inserted in the schedule? Whether proceedings can be initiated against such person at all are larger questions that can be examined based on relevant facts as and when they emerge during the course of adjudication."

19. In the case of R.Subramanian vs. The Assistant Director, Directorate of Enforcement, Chennai [decided on 18.8.2015 in WA No.764 of 2015], the Division Bench of this Court held as follows:-

"15. The matter involves a core question as to whether the relevant date is the date of acquisition of illicit money or the date on which such money is being processed for projecting it untainted. The question cannot be decided merely on the basis of the affidavit filed by the appellant. The respondent should be permitted to conduct investigation to arrive at a definite finding. The jurisdiction in a case of this nature is a mixed question of law and fact and the same cannot be decided on the basis

of half baked materials produced by the appellant. We are, therefore, of the view that the learned Single Judge was correct in dismissing the writ petition."

20. In the case of B.Rama Raju vs. Union of India [decided on 4.3.2011 in WP Nos.10765, 10769, 23166 of 2010], the Hon'ble Division Bench of High Court of Andhra Pradesh at Hyderabad held as follows:-

"133 (ii) On Issue - B : that the provisions of the second proviso to Section 5 are applicable to property acquired even prior to the coming into force of this provision (vide the second Amendment Act with effect from 6.3.2009); and even so is not invalid for retrospective penalisation."

21. In respect of retrospective effect of the provisions of the Prevention of Money Laundering Act, 2002 is pending before the Hon'ble Supreme Court of India and the Hon'ble Division Bench of High Court of Delhi. However, the Hon'ble Supreme Court of India has granted interim order in favour of the Directorate of Enforcement on the said issue of irrespective effect of the Prevention of Money Laundering Act, 2002, in the case of Directorate of Enforcement vs. Obulapuram Mining Company Pvt. Ltd in SLP (Crl.) No.4466 of 2017 dated 22.3.2017 and in the case of Directorate of Enforcement vs. Arun Kumar Mishra in SLP (Crl.) Nos.10018 and 10019 of 2015 dated 11.1.2016 and in the case of Adjudicating Authority (PMLA) and others vs. Ajay Kumar Gupta and others in SLP (Crl.) Diary No.4968 of 2018 (arising out of impugned final judgment and order dated 13.7.2017 in Crl.OP Nos.10500 of 2017 and 10497 of 2017 passed by this Court and also the judgment of Hon'ble Division Bench of High Court of Delhi in the case of Directorate of enforcement vs. Mahanivesh Oils and Foods Pvt Ltd (LPA No.144 of 2016) and C.M. No.8046 of 2016 dated 30.11.2016.

22. In respect of the question whether criminal proceedings initiated by the police is a bar for proceedings under the Prevention of Money Laundering Act, the provisions of PMLA, 2002 are independent and having self-contained code. Before Amendment Act, 2012, the proceedings of PMLA, 2002 were fully depending upon the scheduled offence. However, after Amendment Act, 2012, with effect from 15.2.2013, the amendments were made in Sections 5(1), 8(3), 8(5), 8(6), 8(7) and 8(8) of the Act, which are very well evident that the proceedings are independent from scheduled offence proceedings. It would not be out of place to humbly submit herein that the provision of Section 5(1)(b) that "such person has been charged of having committed a scheduled offence and" was deleted by the Amendemnt

Act, 2012, with effect from 15.2.2013. In the case of Samsuddin vs. Union of India, it has been held that the offence of money laundering is independent of scheduled offences and it has been further held that the time of commission of the scheduled offence is not relevant to the context of the prosecution under the Act.

23. The offence of money laundering is not covered under any other provisions of law. Section 3 enacted by 2002 Act is a new offence and stands by itself. Section 44(1)(c) of the Prevention of Money Laundering Act, 2002, it is provided that if the Court which takes cognizance of the scheduled offences is other than the Special Court under the PMLA, the Authority should move an application for transfer of the scheduled offence to the Special Court and the Special Court, on receipt of such case, proceed to deal with it from the stage at which it is committed. Therefore, it is clear from the provisions of the Act that the offence of money laundering stands by itself. As evident from Section 8(6) of the Act, the Court will release the property only if it is found on the conclusion of trial under PMLA that the offence of money laundering has not taken place or if the property is not involved in money laundering. Therefore, adjudication, prosecution, trial under PMLA is independent of scheduled offence. This is also clear in view of Section 24 of the PMLA, 2002, which deals with burden of proof as it clearly stated that the burden of proof relating to proceeds of crime involved in money laundering is on the accused whereas the burden of proof in the scheduled offences is on the prosecution. Therefore, though the ECIR may have been registered following a scheduled offence, the property in possession of the person, against whom allegations are made, is found to be involved in money laundering, then he can be punished independently of the scheduled offence. Therefore, mere stay of the predicate offence is not a ground for preventing the Directorate of Enforcement from proceeding under the PMLA, 2002.

24. In respect of provisional attachment, without prejudice to the stand already taken that the writ petitions are premature, the order of provisional attachment clearly indicates the material available on file as well as the reasons for attachment and also the possibility that the petitioners may dispose of the property to defeat the purpose of the Act. Therefore, the contention of the writ petitioners that there is no subjective satisfaction by the Authority is not correct. In any event, it is open to the petitioners to contend the same before the Adjudicating Authority and to establish that they are not in possession of any tainted property based on whatever documents that are available with them.

25. The writ petitioners can show their source of

income before the Adjudicating Authority under Section 8(1) of the Act. The writ petitioner in WP No.8383 of 2013 filed certain typed set of documents along with an affidavit explaining the source of her income to obtain the properties that were provisionally attached. It is pertinent to note that veracity of the documents and the affidavit are unknown and have to be proved by the writ petitioner. Further, the contents and the veracity of the documents being a disputed question of fact, cannot be adjudicated by this Court under Article 226 of the Constitution of India and the writ petitioner can appear before the third respondent in pursuance of the show cause notice, produce the said documents, offer explanation for the source of income to acquire the property and have the order of attachment set aside. The third respondent, being an Adjudicatory Authority, specifically constituted for the said purpose, is in a better position to decide on the facts being introduced by the writ petitioner. However, the writ petitioners approached this Court without opting for the mechanism provided under the Act. Therefore, the writ petitions are liable to be dismissed.

26. The learned counsel for the writ petitioners also submitted the legal contentions as follows:-

(i) The alleged scheduled offences as against one of the writ petitioners Rt.Rev.Dr.Manickam Dorai are under Section 120-B, 420 and 471 of IPC under the Prevention of Money Laundering Act, 2002.

(ii) The alleged offences were committed by one of the writ petitioners Rt.Rev.Dr.Manickam Dorai flowing out of a criminal complaint dated 14.11.2008 lodged by one E.Premkumar. Consequently, FIR No.1 of 2009 was registered on the file of the CBCID, Coimbatore and the pursuant charge sheet and C.C.No.158 of 2011 on the file of the Chief Judicial Magistrate, Coimbatore.

(iii) Therefore, it is very clear that alleged scheduled offences were committed by Rt.Rev.Dr.Manickam Dorai much prior to the date of criminal complaint dated 14.11.2008.

(iv) The IPC offences, particularly, offences under Sections 120-B, 427 and 471 of IPC were allegedly committed by Rt.Rev.Dr.Manickam Dorai were inserted as scheduled offences in Paragraph 1 of Part B of the Schedule in the PMLA 2002 only with effect from 1.6.2009 by Act 21 of 2009. Therefore, it is very clear that the alleged offences were committed prior to the crucial date 1.6.2009, namely, the date of insertion of IPC offences as scheduled offences in the PMLA, 2002.

(v) Therefore, in the absence of any scheduled offences under the PMLA, 2002 before 1.6.2009 which alone must be relatable to proceeds of crime, the alleged possession of property by the writ petitioner Mrs.Soodamani Dorai, which is not relatable to any scheduled offences even as on date of the said property on 27.4.2009 cannot be called as property purchased out of proceeds of crime and being projected as

untainted property, hence the same can not at all be attached.

(vi) Since, as stated supra and it is also borne out by records that the alleged scheduled offences are committed much prior to 14.11.2008, the date of criminal complaint and the subject matter of scheduled offences under the PMLA, 2002 were inserted with effect from 1.9.2009 by the Act 21 of 2009, which is ex post facto law is hit by the protection enshrined under Article 20(1) of the Constitution of India i.e., a Criminal Law cannot be applied retrospectively for the offences committed prior to the promulgation or amendment of the said Statute.

(vi) That apart, the respondents herein for registering ECIR No.3 of 2012 as against one of the writ petitioners Rt.Rev.Dr.Manickam Dorai, relied the source of information that being in FIR No.1 of 2009 and the charge sheet therein but the authority herein failed to note that the criminal proceedings in C.C.No.58 of 2011 arising out of FIR No.1 of 2009 was stayed by this Court in Crl.O.P.No.15098 of 2011 vide its order dated 9.9.2011 and the said Crl.O.P., is still pending on the file of this Court. Therefore, the information being relied for the registration of money laundering case as on the date was non est in law, in view of the stay granted by this Court. Hence, the case under the Act as against Rt.Rev.Dr.Manickam Dorai and the consequent provisional attachment etc., against Mrs.Soodamani Dorai also falls to the ground without any legs to stand.

27. The learned counsel for the writ petitioners submitted the following judgments for consideration:-

In the case of State of Maharashtra vs. Kaliar Koil Subramaniam Ramaswamy [(1977) 3 SCC 525] wherein in paragraph 6, the Hon'ble Supreme Court held as follows:-

"6. It appears that the Legislature thereafter thought it proper to do away with the rule of evidence provided by sub-section (3) of Section 5 and inserted the new clause (e) in sub-section (1) of Section 5 as one more category of the offence of criminal misconduct. But it cannot be gainsaid that the new offence, under the newly inserted clause (e), became an offence on and from December 18, 1964 by virtue of Section 6 of the Amending Act 40 of 1964. In this view of the matter, the High Court rightly held that "in the absence of any evidence on record to show that the appellant acquired or was found to be in possession of pecuniary resources or property disproportionate to his known sources of income after the coming into force of the Amending Act", he was entitled to the

protection of clause (1) of Article 20 of the Constitution which provides as follows:

"20. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

So when there was no law in force at the time when the accused was found in possession of disproportionate assets by the search which was made on May 17, 1964, under which his possession could be said to constitute an offence, he was entitled to the protection of clause (1) of Article 20 and it was not permissible for the trial court to convict him of an offence under clause (e) of sub-section (1) of Section 5 as no such clause was in existence at the relevant time. The accused could not therefore be said to have committed an offence under clause (e) of sub-section (1) of Section 5 read with sub-section (2) of that section."

28. In the case of G.P.Nayyar vs. State (Delhi Administration) [(1979) 2 SCC 593], wherein the Hon'ble Supreme Court in paragraph 7, held as under:-

"7. Mr R.K. Garg the learned counsel submitted that the provisions of Act 16 of 1967 by virtue of which the rule of evidence enacted in Section 5(3) is deemed to have always been in existence is violative of Article 20(1) of the Constitution. Article 20(1) of the Constitution is as follows:

"No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

Article 20(1) deals with ex post facto laws though that expression has

not been used in the Article. Usually, a law prescribes a rule of conduct by which persons ought to be governed in respect of their civil rights. Certain penalties are also imposed under the criminal law for breach of any law. Though a sovereign legislature has power to legislate retrospectively, creation of an offence for an act which at the time of its commission was not an offence or imposition of a penalty greater than that which was under the law provided violates Article 20(1). In the well-known case of Phillips v. Eyre [(1870) 6 QB 1, pp. 23 & 25] and also in the American case of Calder v. Bull [3 Dallas 386 : 1 Law Ed 648, 649] the principle underlying the provision has been fully discussed. All that Article 20(1) prohibits is ex post facto laws and is designed to prevent a person being punished for an act or omission which was considered innocent when done. It only prohibits the conviction of a person or his being subjected to a penalty under ex post facto laws. In Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [AIR 1953 SC 394 : 1953 SCR 1188 : 1953 SCJ 563 : 1953 Cri LJ 1480] the Court pointed out that

"what is prohibited under Article 20(1) is only conviction or sentence under an ex post facto law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a court different from that which had competence at the time cannot ipso facto be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular court or by a particular procedure, except insofar as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved."

Thus the appellant cannot object to

a procedure different from what obtained at the time of the commission of the offence. The offence that was committed was when Section 5(3) was in force and by Act 16 of 1967 the procedure is revived. It is not as if the procedure is brought into force for the first time.

"Where an Act is repealed and the repealing enactment is then repealed by another, which manifests no intention that the original Act shall continue repealed, the common law rule was that the repeal of the second Act revived the first ab initio. [Maxwell on the Interpretation of Statutes, 12th Edn. p. 19] "

There can be no objection in law to the revival of the procedure which was in force at the time when the offence was committed. The effect of the amendment is that sub-section (3) of Section 5 as it stood before the commencement of the 1964 Act shall apply and shall be deemed to have always applied in relation to trial of offences. It may be if by this deeming provision a new offence was created, then the prohibition under Article 20(1) may come into operation. But in this case, as already pointed out, what is done is no more than reiterating the effect of Section 6(1) of the General Clauses Act. Mr Garg, the learned counsel, submitted that by amending procedure drastically and giving it retrospective effect a new offence may be created retrospectively. It was contended that by shifting the burden of proof as provided for in Section 5(3) of the Prevention of Corruption Act, 1947, a new offence is created. It is unnecessary for us to consider the larger question as to whether in certain circumstances giving retrospective effect to the procedure may amount to creation of an offence retrospectively. In the present case the old procedure is revived and no new procedure is given

retrospective effect. The procedure given effect to is not of such a nature as to result in the creation of a new offence."

29. In the case of Soni Devrajbhai Babubhai vs. State of Gujarat [(1991) 4 SCC 298], wherein the Hon'ble Supreme Court in paragraphs 9 to 11, held as under:-

"9. It is clear from the above historical background that the offence of dowry death punishable under Section 304-B of the Indian Penal Code is a new offence inserted in the Indian Penal Code with effect from November 19, 1986 when Act 43 of 1986 came into force. The offence under Section 304-B is punishable with a minimum sentence of seven years which may extend to life imprisonment and is triable by Court of Session. The corresponding amendments made in the Code of Criminal Procedure and the Indian Evidence Act relate to the trial and proof of the offence. Section 498-A inserted in the Indian Penal Code by the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) is an offence triable by a Magistrate of the First Class and is punishable with imprisonment for a term which may extend to three years in addition to fine. It is for the offence punishable under Section 498-A which was in the statute book on the date of death of Chhaya that the respondents are being tried in the Court of Magistrate of the First Class. The offence punishable under Section 304-B, known as dowry death, was a new offence created with effect from November 19, 1986 by insertion of the provision in the Indian Penal Code providing for a more stringent offence than Section 498-A. Section 304-B is a substantive provision creating a new offence and not merely a provision effecting a change in procedure for trial of a pre-existing substantive offence. Acceptance of the appellant's contention would amount to holding that the respondents can be tried and punished for the offence of dowry death provided in Section 304-B of the Indian Penal Code with the minimum sentence of seven years' imprisonment for an act done by them prior to creation of the new offence of

dowry death. In our opinion, this would clearly deny to them the protection afforded by clause (1) of Article 20 of the Constitution which reads as under:

"20. Protection in respect of conviction for offences.— (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

10. In our opinion, the protection given by Article 20(1) is a complete answer to the appellant's contention. The contention of learned counsel for the appellant that Section 304-B inserted in the Indian Penal Code does not create a new offence and contains merely a rule of evidence is untenable. The rule of evidence to prove the offence of dowry death is contained in Section 113-B of the Indian Evidence Act providing for presumption as to dowry death which was a simultaneous amendment made in the Indian Evidence Act for proving the offence of dowry death. The fact that the Indian Evidence Act was so amended simultaneously with the insertion of Section 304-B in the Indian Penal Code by the same Amendment Act is another pointer in this direction. This contention is, therefore, rejected.

11. It follows that the view taken by the High Court that the respondents cannot be tried and punished for the offence provided in Section 304-B of the Indian Penal Code which is a new offence created subsequent to the commission of the offence attributed to the respondents does not suffer from any infirmity. However, as earlier indicated, in case the accusation against the respondents discloses commission of any other more stringent pre-existing offence by the respondents than Section 498 2DA of the Indian Penal Code, the appellant would be entitled to raise that question and the court will then consider and decide it on that basis. No such argument having been advanced before us or any of the courts

below so far, the same does not arise for consideration in the present proceeding. With these observations, the appeal is dismissed."

30. In the case of Hirabhai Jhaverbhai vs. State of Gujarat [(2010) 6 SCC 688], the Hon'ble Supreme Court, in paragraphs 5 to 7, held as under:-

"5. This Court finds that after coming into force of the Code of Criminal Procedure (Amendment) Act, 2005 from 23-6-2006 the offence under Section 324 IPC is made non-compoundable. However, in this case the offence under Section 324 IPC was committed on 23-7-1986 on which date it was compoundable with the permission of the court. As the Code of Criminal Procedure (Amendment) Act, 2005 is not applicable to the facts of the case, the offence under Section 324 IPC would be compoundable with the permission of the court.

6. In view of the statement made by Respondents 2 to 4 in their affidavit and having regard to the facts and circumstances of the case, permission to compound the offence deserves to be granted to the original complainant and the injured.

7. Hence, the appeal is allowed. The two judgments impugned in the appeal are set aside. The injured complainant and two other injured are permitted to compound the offence punishable under Section 324 IPC. In view of sub-section (8) of Section 320 of the Code of Criminal Procedure, the composition of offence under Section 324 IPC shall have the effect of an acquittal of the appellant with whom the offence has been compounded."

31. In the case of Regional Provident Fund Commissioner vs. Hooghly Mills Co. Ltd. [(2012) 2 SCC 489], the Hon'ble Supreme Court of India, in paragraphs 24 and 25, held as under:-

"24. If we look at the modern legislative trend we will discern that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial statutes or social

welfare legislation, whereas penal statutes are sometime enacted providing for penalties for disobedience of laws making those who disobey, liable to imprisonment, fine, forfeiture or other penalty.

25. The normal canon of interpretation is that a remedial statute receives liberal construction whereas a penal statute calls for strict construction. In the cases of remedial statutes, if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted, but in cases of penal statutes if there is any doubt the same is normally resolved in favour of the alleged offender."

32. In the case of Harjit Singh vs. State of Punjab [(2011) 4 SCC 441], the Hon'ble Supreme Court, in paragraph 14, held as under:-

"14. Thus, it is evident that under the aforesaid notification, the whole quantity of material recovered in the form of mixture is to be considered for the purpose of imposition of punishment. However, the submission is not acceptable as it is a settled legal proposition that a penal provision providing for enhancing the sentence does not operate retrospectively. This amendment, in fact, provides for a procedure which may enhance the sentence. Thus, its application would be violative of restrictions imposed by Article 20 of the Constitution of India. We are of the view that the said Notification dated 18-11-2009 cannot be applied retrospectively and therefore, has no application so far as the instant case is concerned."

33. In the case of Ritesh Agarwal vs. SEBI [(2008) 8 SCC 205], the Hon'ble Supreme Court, in paragraph 25, held as under:-

"25. The question as to whether the provisions of the FUTP Regulations are attracted in this case may now be examined. The FUTP Regulations came into force for the first time on 25-10-1995. Would it apply in a case where the cause of action arose prior thereto? Ex facie, a penal statute will not have any retrospective effect or retroactive operation. If commission of fraud was

complete prior to the said date, the question of invoking the penal provisions contained in the said Regulations including Regulations 3 to 6 would not arise. It is not that Parliament did not provide for any penal provision in this behalf. If the appellants have violated the provisions of the Companies Act, they can be prosecuted thereunder. If they have violated the provisions of the SEBI Act, all actions taken thereunder may be taken to their logical conclusion. A citizen of India has a right to carry on a profession or business as envisaged by Article 19(1)(g) of the Constitution of India. Any restriction imposed thereupon must be made by reason of a law contemplated under clause (6) thereof. In the absence of any valid law operating in the field, there would not be any source for imposing penalty. A right to carry on trade is a constitutional right. By reason of the penalty imposed, the Board inter alia has taken away the said constitutional right for a period of ten years which, in our opinion, is impermissible in law as the Regulations were not attracted."

34. In the case of Biswanath Bhattacharya vs. Union of India [(2014) 4 SCC 392], the Hon'ble Supreme Court, in paragraph 25, held as under:-

"25. Article 20 contains one of the most basic guarantees to the subjects of the Republic of India. The Article insofar as is relevant for our purpose stipulates two things:

(i) That no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence; and

(ii) That no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

It is a well-settled principle of constitutional law that sovereign legislative bodies can make laws with retrospective operation; and can make laws whose operation is dependent upon facts or events anterior to the making of the law.

However, criminal law is excepted from such general rule, under another equally well-settled principle of constitutional law i.e. no ex post facto legislation is permissible with respect to criminal law. Article 20 contains such exception to the general authority of the sovereign legislature functioning under the Constitution to make retrospective or retroactive laws."

35. In the case of Obulapuram Mining Company Pvt. Ltd. vs. Joint Director, Directorate of Enforcement [ILR 2017 KAR 1846 (DB)], the Hon'ble High Court of Karnataka, in paragraphs 5, 10, 11, 12, 17 and 18, held as under:-

"5. Mr.Nandrajog, submits that those offences were included as scheduled offences only on June 1, 2009. He draws our attention to page 225 of the paperbook to show that the alleged offences were allegedly committed between June 21, 2007 and May 15, 2009. Therefore, he submits that all the offences were allegedly committed prior to the coming into operation of the amendment to the PML Act.

10. It can be seen from the records that all the offences allegedly committed by the writ petitioner were earlier to the insertion of the provision in the schedule of the Prevention of Money Laundering (Amendment) Act, 2009, and as such, they have no application.

11. Therefore, the Enforcement Case Information Report and the order of attachment are without jurisdiction and are liable to be quashed. As we have, already, held that the writ petitioner cannot be prosecuted for the offences alleged, as they are not the scheduled offences under the PML Act. Those offences under the Mines and Geology (Development and Regulation) Act, 1957, the Forest (Conservation) Act, 1980, the Indian Penal Code and the Prevention of Corruption Act, 1988, were included in the PML Act declaring them as scheduled offences only with effect from June 1, 2009. Hence, the Enforcement Directorate could not have invoked the provisions of the PML Act with retrospective effect.

12. The petitioner cannot be tried and punished for the offences under the PML Act

when the offences were not inserted in the schedule of offences under the PML Act. This would deny the writ petitioner the protection provided under Clause (1) of Article 20 of the Constitution of India. Article 20(1) of the Constitution of India prohibits the conviction of a person or his being subjected to penalty for ex-post facto laws. Consequently, the order of attachment is, also, liable to be set aside.

17. In addition to the aforesaid submissions, Mr Nandrajog, Learned Senior Advocate appearing for the writ petitioners in all these writ petitions, submits that till date, no proceeding was advanced against the writ petitioners far less to say about any conviction against the writ petitioners. He submits that in the absence of conviction, there could not have been a final order of attachment.

18. Once an FIR or a report is filed in the predicate offence, an ECIR can be registered and a provisional attachment order can be passed by the Enforcement Department. However, without the conviction/judicial conclusion of the trial proceedings, any order confirming the attachment and confiscation could not be passed."

36. In the case of M/S Mahanivesh Oils & Foods Pvt. Ltd vs. Directorate Of Enforcement [decided on 25.01.2016 in W.P. (C) 1925/2014 & CM No.4017/2014], wherein the Hon'ble High Court of Delhi, in paragraphs 20, 21, 22, 29 and 34, held as under:-

"20. Thus, a conjoint reading of Section 5(1) read with Section 2(u) of the Act clearly indicates that the power to attach is only with respect to the 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 such property.

21. Thus, plainly, the occurrence of a scheduled offence is the substratal condition for giving rise to any proceeds of crime and consequently, the application of Section 5(1) of the Act. A commission of a scheduled offence is the fundamental pre-condition for any proceeding under the Act as without a scheduled offence being committed, the question of proceeds of crime

coming into existence does not arise.

22. In view of the above, the contention that the Act is completely independent of the principal crime (scheduled offence) giving rise to proceeds of crime is unmerited. It is necessary to bear in mind that the substratal subject of the Act is to prevent money-laundering and confiscate the proceeds of crime. In that perspective, there is an inextricable link between the Act and the occurrence of a crime. It cannot be disputed that the offence of money-laundering is a separate offence under section 3 of the Act, which is punishable under Section 4 of the Act. However as stated earlier, the offence of money-laundering relates to the proceeds of crime, the genesis of which is a scheduled offence. In the aforesaid circumstances, before initiation of any proceeding under Section 5 of the Act, it would be necessary for the concerned authorities to identify the scheduled crime. The First Proviso to Section 5 also indicates that no order of attachment shall be made unless in relation to a scheduled offence a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 or a complaint has been filed by a person authorised to investigate the scheduled offence before a Magistrate or Court for taking cognizance of the scheduled offence. Thus, in cases where the scheduled offence is itself negated, the fundamental premise of continuing any proceedings under the Act also vanishes. Such cases where it is conclusively held that a commission of a scheduled offence is not established and such decision has attained finality pose no difficulty; in such cases, the proceedings under the Act would fail.

29. The Act is a penal statute and, therefore, can have no retrospective or retroactive operation. Article 20(1) of the Constitution of India expressly forbids that no person can be convicted of any offence except for the violation of a law in force at the time of the commission of the act charged as an offence. Further, no person can be inflicted a penalty greater than what

could have been inflicted under the law at the time when the offence was committed. Clearly, no proceedings under the Act can be initiated or sustained in respect of an offence, which has been committed prior to the Act coming into force. However, the subject matter of the Act is not a scheduled offence but the offence of money-laundering. Strictly speaking, it cannot be contended that the Act has a retrospective operation because it now enacts that laundering of proceeds of crime committed earlier as an offence. In *The Queen v. The Inhabitants of St. Mary, Whitechapel* (1848) 12 QB 120, the Court pointed out that "The Statute which in its direct operation of prospective cannot be properly be called a retrospective statute because a part of the requisites for that action is drawn from the time antecedent to its passing". Thus, with effect from 1st June, 2009 laundering proceeds of crime under Section 420 of the IPC is enacted as an offence of money-laundering punishable under Section 4 of the Act. It is important to note that the punishment under Section 4 of the Act is not for commission of a scheduled offence but for laundering proceeds of a scheduled crime. The fact that the scheduled crime may have been committed prior to the Act coming into force would not render the Act a retrospective statute as only the offence of money-laundering committed after the enforcement of the Act can be proceeded against under the Act.

34. In the circumstances, it cannot be readily accepted that any offence of money-laundering had been committed after the Act coming into force. This Act cannot be read as to empower the authorities to initiate proceedings in respect of money-laundering offences done prior to 01.07.2005 or prior to the related crime being included as a scheduled offence under the Act."

37. In the case of *Shri Ajay Kumar Gupta vs Adjudicating Authority (PMLA)* [decided on 13.7.2017 in CrI.O.P.Nos.10497 and 10500 of 2017], wherein this Court, in paragraphs 6, 7, 9, 10, 11, 12, 13, 14, 15 and 16, held as under:-

"6. In the light of the above submissions, now the point that arise for consideration in these Criminal Original Petitions is:

whether the order of Provisional Attachment made and the Original Complaint filed before the Adjudicating Authority, under the Prevention of Money Laundering Act, 2002, by the second respondent are in accordance with law or liable to be quashed?

7. It is not disputed that the 1st petitioner was charge sheeted by the CBI, Anti Corruption Branch for the alleged possession of assets and pecuniary resources and the 2nd petitioner was prosecuted for abetment in the above offence. It is also not in dispute that the alleged offences against the petitioners 1 and 2, related to the period from 01.05.1997 to 30.06.2005 and 3rd and 4th petitioners have not been made as accused in the charge sheet filed by the 3rd respondent before the XIV Additional Special Judge for CBI Cases. Further, it is also not in dispute that in C.C.No.18 of 2009 trial also commenced and 74 witnesses were examined. The provisional Attachment Order was passed by the 2nd Respondent on 07.04.2017 to attach the properties of the petitioners including 3rd and 4th petitioners, in whose name the properties were shown to the value of Rs.5,61,039.36 in the form of some Fixed Deposits, Kisan Vikas Patras, Savings Bank Account and PPF, etc., It is also not in dispute that based on the charge sheet filed by the CBI Anti Corruption Branch, an Enforcement Case Information Report No.CZO/08/2015 dated 20.02.2015 was registered by the Directorate of Enforcement, Chennai and filed before Adjudicating Authority under the Prevention of Money Laundering Act, 2002. Accordingly Provisional Attachment Order passed under the Prevention of money Laundering Act attaching all properties of the petitioners, in fact, which also subject matter of CBI Case. It is relevant to mention Section 5 of the Prevention of Money Laundering Act, 2002:

5. Attachment of property involved in money-laundering.-

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

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

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

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be or a similar report or complaint has been made or filed under the corresponding law of any other country:

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

(2) The Director, or any other officer not below the rank of Deputy Director, shall,

immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

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

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

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

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

9. On a careful perusal of the above section after amendment, it makes it clear that even any person having been convicted for an offence and any person is in possession of any proceeds of crime, the Director or any other officer not below the rank of Deputy Director authorised by him has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money laundering is not attached immediately, the non attachment of the property is likely to frustrate any proceedings under the said Act. Though there are two provisions subsequently amended, what is required is that, the attaching officer has reason to believe the reasons

and such belief to be recorded in writing and the other condition is charged offence must be a scheduled offence. Similarly Section 8 also amended under the Amended Act of 2009. As per the amendment, even if the case instituted in respect of scheduled offence results in acquittal of the accused, a person could still be prosecuted under Section 3 and 4 of the Prevention of Money Laundering Act. In nut shell, this amendment has made the Prevention of Money Laundering Act an independent Act. Section 5 clearly stipulated that there is a requirement of law that before any attachment, reasons in writing to be recorded by the officer concerned. It is to be noted that in this case, admittedly the offence is related to the check period from 01.05.1997 to 30.06.2005 and even at that time, the Prevention of Money Laundering Act was not in force and came into force only on 1.7.2005 and the Section 13 of the Prevention of Corruption Act was included in the schedule, in the year 2009.

10. In this regard it is useful to refer the judgment of the Division Bench of Karnataka High Court in the case of M/s Obulapuram Mining Company Pvt. Ltd., vs. Directorate of Enforcement in W.P.Nos.5962 of 2016, 11442 of 2016 and 11440-11441 of 2016 the Division Bench held as follows:

"It can be seen from the records that all the offences allegedly committed by the writ petitioner were earlier to the insertion of the provision in the schedule of the Prevention of Money Laundering (Amendment) Act, 2009 and as such, they have no application."

11. Therefore, the Enforcement Case Information Report and the order of attachment are without jurisdiction and are liable to be quashed. As we have, already, held that the writ petitioner cannot be prosecuted for the offences alleged, as they are not the scheduled offences under the PML Act. Those offences under the Mines and Geology (Development and Regulation) Act, 1957, the Forest (Conservation) Act,

1980, the Indian Penal Code and the Prevention of Corruption Act, 1988, were included in the PML Act declaring them as scheduled offences only with effect from June 1, 2009. Hence, the Enforcement Directorate Could not have invoked the provisions of the PML Act with retrospective effect.

12. The petitioner cannot be tried and punished for the offences under the PML Act when the offences were not inserted in the schedule of offences under the PML Act. This would deny the writ petitioner the protection provided under Clause (1) of Article 20 of the Constitution of India. Article 20(1) of the Constitution of India prohibits the conviction of a person or his being subjected to penalty for ex-post facto laws. Consequently, the order of attachment is, also, liable to be set aside.

In the case of Mahanivesh Oils & Foods Pvt. Ltd., V. Directorate of Enforcement in W.P.(C)1925/ 2014 and C.M.No.4017/2014 the Delhi High Court has held thus:

19. Section 2(u) of the Act defines proceeds of crime and reads as under:-

"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;"

20. Thus, a conjoint reading of 5(1) read with Section 2(u) of the Act clearly indicates that the power to attach is only with respect to the 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 such property.

21. Thus, plainly, the occurrence of a scheduled offence is the substratal condition for giving rise to any proceeds of crime and consequently, the application Section 5(a) of the Act. A commission of a scheduled offence is the fundamental pre-condition for any proceeding

under the Act as without a scheduled offence being committed, the question of proceeds of crime coming into existence does not arise.

22. In view of the above, the contention that the Act is completely independent of the principal crime (scheduled offence) giving rise to proceeds of crime is unmerited. It is necessary to bear in mind that the substratal subject of the Act is to prevent money-laundering and confiscate the proceeds of crime. In that perspective, there is an inextricable link between the Act and the occurrence of a crime. It cannot be disputed that the offence of money-laundering is a separate offence under Section 3 of the Act, which is punishable under Section 4 of the Act. However as stated earlier, the offence of money-laundering relates to the proceeds of crime, the genesis of which is a scheduled offence. In the aforesaid circumstances, before initiation of any proceeding under Section 5 of the Act, it would be necessary for the concerned authorities to identify the scheduled crime. The First Proviso to Section 5 also indicates that no order of attachment shall be made unless in relation to a scheduled offence a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 or a complaint has been filed by a person authorised to investigate the scheduled offence before a Magistrate or Court for taking cognizance of the scheduled offence. Thus, in cases where the scheduled offence is itself negated, the fundamental premise of continuing any proceedings under the Act also vanishes. Such cases where it is conclusively held that a commission of a scheduled offence is not established and such decision has attained finality pose no difficulty; in such cases, the proceedings under the Act would fail.

29. The Act is a penal statute and, therefore, can have no retrospective or retroactive operation. Article 20(1) of the Constitution of India expressly forbids that no person can be convicted of any offence except for the violation of a law in force

at the time of the commission of the act charged as an offence. Further, no person can be inflicted a penalty greater than what could have been inflicted under the law at the time when the offence was committed. Clearly, no proceedings under the Act can be initiated or sustained in respect of an offence, which has been committed prior to the Act coming into force. However, the subject matter of the Act is not a scheduled offence but the offence of money-laundering. Strictly speaking, it cannot be contended that the Act has a retrospective operation because it now enacts that laundering of proceeds of crime committed earlier as an offence. In *The Queen v. The Inhabitants of St. Mary, Whitechapel* (1848) 12 QB 120, the Court pointed out that "The Statute which in its direct operation of prospective cannot be properly be called a retrospective statute because a part of the requisites for that action is drawn from the time antecedent to its passing". Thus, with effect from 1st June, 2009 laundering proceeds of crime under Section 420 of the IPC is enacted as an offence of money-laundering punishable under Section 4 of the Act. It is important to note that the punishment under Section 4 of the Act is not for commission of a scheduled offence but for laundering proceeds of a scheduled crime. The fact that the scheduled crime may have been committed prior to the Act coming into force would not render the Act a retrospective statute as only the offence of money-laundering committed after the enforcement of the Act can be proceeded against under the Act.

34. In the circumstances, it cannot be readily accepted that any offence of money-laundering had been committed after the Act coming into force. This Act cannot be read as to empower the authorities to initiate proceedings in respect of money-laundering offences done prior to 01.07.2005 or prior to the related crime being included as a scheduled offence under the Act.

12. From the above judgments and also the fact that the offences allegedly

committed by the first and second petitioners prior to 1.7.2005, the Prevention of Money Laundering Act was not in force. Even after 1.7.2005, the offences were not included in the scheduled offences till 1.6.2009. Since the charge sheet dated 13.1.2009, even on that date, Prevention of Corruption Act has not included in the scheduled list of offences. Therefore, this court is of the view that if retrospective effect is given to any statute of any penal nature, it will be directly in conflict with the fundamental rights of the citizen enshrined in Article 20(1) of the Constitution of India. Admittedly, 2nd respondent filed the case only based on the charge sheet of the CBI, who have not conducted any enquiry on their own. In fact, all the documents are original documents of the alleged proceeds of crime, which are in the custody of the CBI Court. When the entire documents are in the custody of the Court, there cannot be any reason to believe that the properties will be dealt with in any other manner. The impugned order was as if 1st petitioner not able to offer any satisfactory explanation during examination. Therefore, the attachment officer has passed an order without a reason to believe that the proceeds of crime are likely to be transferred or disposal. In the absence of any sufficient reason, arriving to such conclusion by mere reproducing the words reason to believe it cannot be stated that the order has been passed after considering the entire gamut of materials. Admittedly, in this case, entire documents are available and the properties are in the custody of the court. Therefore, the order of attachment is not maintainable.

13. Similarly, the charge sheet was filed on 13.1.2009 under Section 13 of Prevention of Corruption Act, but this section was included in the list of Scheduled Offences under Prevention of Money Laundering Act is only on 1.6.2009. Therefore subsequent amendment cannot be given any retrospective effect. It is also categorically held by the Karnataka High

Court in M/s Obulapuram Mining Company Pvt. Ltd.case, referred above. The Delhi High Court in Arunkumar Mishra v. Directorate of Enforcement case in Crl.M.C.No.5508 of 2014 has held as follows:

21. It is settled principle of law that the provisions of law cannot be retrospectively applied, as Article 20(1) of the Constitution bars the ex-post facto penal laws and no person can be prosecuted for an alleged offence which occurred earlier, by applying the provisions of law which have come into force after the alleged offence.

14. Though the learned Special Public Prosecutor for Enforcement Directorate appearing for Respondents 1 and 2 relied upon the citations of the Honourable Supreme Court, on a careful perusal, the judgments are not with regard to the applicability of Scheduled offences of the Money Laundering Act. Therefore, the authorities cited by the learned counsel for respondents is no way helpful to the respondents, to establish their case.

15. In view of the above, the Provisional Attachment Order No.09/2017 dated 7.4.2017 in ECIR/CEZO/08/2015 and the Original Complaint in O.C.No.855 of 2017 are quashed. The point is answered accordingly.

16. In the result, the petitions are ordered as prayed for. Connected M.Ps are closed."

38. In the case of Narbada Prasad vs. Chhaganlal [AIR 1969 SC 395], wherein the Hon'ble Supreme Court, in paragraph 5, held as under:-

"5.
...There was no compliance with the provisions of Section 33(5) of the Representation of the People Act and there was no power in the court to dispense with this requirement. It is a well-understood rule of law that if a thing is to be done in a particular manner it must be done in that manner or not at all. Other modes of compliance are excluded....."

39. In the case of Chief Information Commr. vs. State of Manipur [(2011) 15 SCC 1], wherein the Hon'ble Supreme Court, in paragraph 40, held as under:-

"40. It is well known that when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time-honoured principle as early as from the decision in Taylor v. Taylor [(1875) 1 Ch D 426 (CA)] that where a statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden. This principle has been followed by the Judicial Committee of the Privy Council in Nazir Ahmad v. Emperor [(1935-36) 63 IA 372 : AIR 1936 PC 253 (2)] and also by this Court in Deep Chand v. State of Rajasthan [AIR 1961 SC 1527 : (1961) 2 Cri LJ 705], AIR at para 9 and also in State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)] reported in AIR at para 8."

40. In the case of Kalabharati Advertising vs. Hemant Vimalnath Narichania [(2010) 9 SCC 437], wherein the Hon'ble Supreme Court, in paragraphs 25 and 26, held as under:-

"25. The State is under obligation to act fairly without ill will or malice— in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide ADM, Jabalpur v.

Shivakant Shukla [(1976) 2 SCC 521 : AIR 1976 SC 1207] , S.R. Venkataraman v. Union of India [(1979) 2 SCC 491 : 1979 SCC (L&S) 216 : AIR 1979 SC 49] , State of A.P. v. Goverdhanlal Pitti [(2003) 4 SCC 739 : AIR 2003 SC 1941] , BPL Ltd. v. S.P. Gururaja [(2003) 8 SCC 567] and W.B. SEB v. Dilip Kumar Ray [(2007) 14 SCC 568 : (2009) 1 SCC (L&S) 860] .)

26. Passing an order for an unauthorised purpose constitutes malice in law. (Vide Punjab SEB Ltd. v. Zora Singh [(2005) 6 SCC 776] and Union of India v. V. Ramakrishnan [(2005) 8 SCC 394 : 2005 SCC (L&S) 1150].)"

41. In the case of Oryx Fisheries (P) Ltd. vs. Union of India [(2010) 13 SCC 427], wherein the Hon'ble Supreme Court, in paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35 and 40, held as under:-

"27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

29. In the instant case from the underlined [Ed.: Herein italicised.] portion of the show-cause notice it is clear that the third respondent has demonstrated a totally closed mind at the stage of show-cause notice itself. Such a closed mind is

inconsistent with the scheme of Rule 43 which is set out below. The aforesaid Rule has been framed in exercise of the power conferred under Section 33 of the Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature.

30. Rule 43 of the MPEDA Rules provides as follows:

"43. Cancellation of registration.— Where the Secretary or other officer is satisfied that any person has obtained a certificate of registration by furnishing incorrect information or that he has contravened any of the provisions of this rule or of the conditions mentioned in the certificate of registration, or any person who has been registered as an exporter fails during the period of twelve consecutive months to export any of the marine products in respect of which he is registered, or if the Secretary or other officer is satisfied that such person has become disqualified to continue as an exporter, the Secretary or such officer may, after giving the person who holds a certificate a reasonable opportunity of making his objections, by order, cancel the registration and communicate to him a copy of such order."

31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.

34. A somewhat similar observation was made by this Court in *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant* [(2001) 1 SCC 182 : 2001 SCC (L&S) 189]. In that case, this Court was dealing with a show-cause notice-cum-charge-sheet issued to an employee. While dealing with the same, this Court in para 25 (SCC p. 198 of the Report) by referring to the language in the show-cause notice observed as follows:

"25. Upon consideration of the language in the show-cause notice-cum-charge-sheet, it has been very strongly contended that it is clear that the officer concerned has a mindset even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete."

After para 25, this Court discussed in detail the emerging law of bias in different jurisdictions and ultimately held in para 35 (SCC p. 201 of the Report), the true test of bias is:

"35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom—in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained:" (emphasis supplied)

35. Going by the aforesaid test any man

of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show-cause notice itself.

40. In *Kranti Associates* [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below: (SCC pp. 510-12)

"(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial

opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor(1987) 100 Harv. L. Rev. 731-37.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] , EHRR at p. 562, para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 : 2001 ICR 847 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions

judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

42. In the case of Siemens Ltd. vs. State of Maharashtra [(2006) 12 SCC 33], wherein the Hon'ble Supreme Court, in paragraphs 9 and 10, held as under:-

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2006) 12 Scale 262] , but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India [(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686] .) It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.

10. The said principle has been followed by this Court in V.C., Banaras Hindu University v. Shrikant [(2006) 11 SCC 42 : (2006) 6 Scale 66] , stating: (SCC p. 60, paras 48-49)

"48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.

49. In K.I. Shephard v. Union of India [(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686] this Court held: (SCC p. 449,

para 16)

'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.' "

(See also Shekhar Ghosh v. Union of India [(2007) 1 SCC 331 : (2006) 11 Scale 363] and Rajesh Kumar v. D.C.I.T. [(2007) 2 SCC 181 : (2006) 11 Scale 409])."

43. In the case of Syed Mohideen v. Government of Tamil Nadu [(1985) 2 LLN 379 (FB)(Mad.)], wherein the Hon'ble Full Bench of this Court, in paragraph 23, held as under:-

"23. While referring to the exception to the rule of stare decisis, it is observed in Precedent in English Law by Rupert Cross, 1961 Edn., page 130, as follows:

"No doubt any Court would decline to follow a case decided by itself or any other Court (even one of superior jurisdiction), if the judgment erroneously assumed the existence or non-existence of a statute, and that assumption formed the basis of the decision. This exception to the rule of stare decisis is probably best regarded as an aspect of a broader qualification of the rule, namely, that Courts are not bound to follow decisions reached per incuriam."

The proposition that a decision per incuriam need not be followed as a binding precedent is well established. If authority is needed for this proposition, we may refer to the decision of the Court of Appeal in Young v. Bristol Aeroplane Company, Ltd. [(1944) 2 All E R. 293], where Lord Greene, M.R. observed as follows:

"Where the Court has construed a statute or a rule having the force of a statute, its decision stands on the same footing as any other decision on a question of law. But where the Court is satisfied that an earlier decision was given in ignorance of the terms of a statute or a rule having the force of a statute, the position is very different. It cannot, in our opinion, be right to say that in such a case the Court is entitled to disregard the statutory provision and is bound to follow a decision of its own given

when that provision was not present to its mind. Cases of this description are examples of decisions given per incuriam."

44. In the case of Philip Jeyasingh vs. The Joint Registrar of Co-operative Societies, Chidambaranar Region, Tuticorin [(1992) 1 LW 216 (FB) (Mad.)], the Hon'ble Full Bench of this Court, in paragraph 41, held as under:-

"41. A Full Bench of this Court has in Syed Mohideen v. Govt. of Tamil Nadu and another relied on the principle of per incuriam anobserved as follows:

"23. While referring to the exception to the rule of stare decisis, it is observed in 'Precedent in England Law' by Rupert Cross, 1961 Edition, at page 130, as follows:

"No doubt any court would decline to follow a case decided by itself or any other court (even one of superior jurisdiction), if the judgment erroneously assumed the existence or non-existence of a statute, and that assumption formed the basis of the decision. This exception to the rule of stare decisis is probably best regarded as an aspect of a broader qualification of the rule, namely, that courts are not bound to follow decisions reached per incuriam. The proposition that a decision per incuriam need not be followed as a binding precedent is well established".

45. The learned counsel for the writ petitioners mainly contended that only by virtue of an amendment which came into force with effect from 1.6.2009 (Act 21 of 2009), the case was registered against the writ petitioners. However, the entire alleged transactions are the basis for registration of a case by the respondents falls before the issuance of the amendment and therefore, the very registration of the case is non est in law. The alleged offences, if any, committed prior to the legislation cannot be taken as a ground for registering the case. The proceeds of crime contemplated under the Prevention of Money Laundering Act, 2002 is the vital factor and in the present case, the proceeds of crime does not fall under the Prevention of Money Laundering Act, 2002, when the alleged offences were committed by the writ petitioners. Thus, the very registration of a case under the Prevention of Money Laundering Act, 2002, is unsustainable.

46. In this context, the learned counsel for the writ

petitioners urged this Court that the respondents have no jurisdiction and this apart, the Income Tax Appellate Tribunal adjudicated the issues connected with the present writ petitions and the writ petitioners were exonerated. Pursuant to the order passed by the Income Tax Appellate Tribunal, which was implemented by the Id.AO, the writ petitioners were not found fault with the allegations. Thus, the findings made in the Income Tax Appellate Tribunal order ought to have been considered by the respondents at the time of registering the case under the Prevention of Money Laundering Act, 2002.

47. In this regard, the judgments cited above by the learned counsel for the writ petitioners are also on the same legal issues. Thus, applying the principles laid down in the judgments cited by the learned counsel for the writ petitioners, the writ petitions are to be allowed.

48. The learned Additional Solicitor General of India, Mr.G.Rajagopalan, disputes the contentions raised on behalf of the writ petitioners in entirety. The learned Senior Counsel referred Section 3 of the Prevention of Money Laundering Act, 2002, which denotes the offence of money laundering and the said provision reads as under:-

"3. Offence of money-Laundering.- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected 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."

49. Chapter III deals with attachment, adjudication and confiscation. Section 5 of the Act, deals with attachment of property involved in money laundering. Section 5(1)(b) of the Act, reads as under:-

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

(a)

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

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

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or Court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

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

50. Section 5(5) of the Act, is extracted hereunder:-

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

51. Section 8 of the Prevention of Money Laundering Act, 2002, enumerates adjudication. Section 8(1), (2) and (3) of the Act, read as under:-

"8. Adjudication.- (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of

section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

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

(2) The Adjudicating Authority shall, after-

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

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

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-

section (1) of section 5 or retention of property or record seized or frozen under Section 17 or Section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall-

(a) continue during the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

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

52. With reference to Section 8, it is categorically stated that if the Adjudicating Authority has reason to believe that any person has committed an offence under Section 3 or is in possession of proceeds of crime. Thus, the possession of proceeds of crime, as on the date of registration of a case is made out, then the respondents are empowered to register a case under the Prevention of Money Laundering Act, 2002.

53. Section 8(2) of the Act, states that the Authorities Competent in the event of any information or a reason to believe that any person has committed an offence under Section 3 or is in possession of proceeds of crime, they are entitled to follow the procedure by registering the complaint. This apart, Section 3 of the Act, also states that the proceeds of crime, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering. Thus, even in case where the alleged offences were committed prior to the amendment, then also if the proceeds of crime is in possession of the alleged offenders are in use, then also the Authorities Competent are empowered to register the case under the Prevention of Money Laundering Act, 2002.

54. Section 24 of the Act, denotes burden of proof. Sub-clause (a) states "in the case of a person charged with the offence of money-laundering under Section 3, the Authorities or the Courts shall, unless the contrary is proved, presume that such proceeds of crime are involved in money- laundering". Thereafter, Section 26 deals with the Appellate Tribunal. Section 42 of the Prevention of Money Laundering Act, 2002, provides an appeal to High Court (CMA). Any person aggrieved by

any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order.

55. At the outset, the learned Senior Counsel, is of an opinion that certain mixed questions of facts can never be adjudicated at this point of filing of these writ petitions. Thus, the writ petitions are premature and it is only that the writ petitions are filed at the initial stage and the authorities have not yet come to the conclusion that the writ petitioners have committed an offence punishable under the provisions of the Prevention of Money Laundering Act, 2002. If the authorities arrived a conclusion that there is a reason to believe that the writ petitioners are in possession or use of the proceeds of crime, then they are empowered to initiate prosecution under the Prevention of Money Laundering Act. The very initiation cannot be questioned at this stage in view of the fact that the writ petitioners are not having sufficient opportunity to establish their case before the Authorities Competent and that they are not having any such possession or use of such proceeds of crime. Under these circumstances, the writ petitions cannot be entertained.

56. Considering the facts and circumstances of the present writ petitions, this Court is of an opinion that the very maintainability of the writ petitions are to be adjudicated at the first instance. Undoubtedly, the Authorities Competent must be allowed to exercise their powers under the provisions of various Statutes, if they have a reason to believe that some alleged offences are committed by any person. This apart, the legal principles are now settled by the Constitutional Courts across the country as well as the Apex Court that the mixed question of facts and certain disputed factual circumstances can never be considered by the High Courts under Article 226 of the Constitution of India, during the initial stage when the enquiry and investigations are in progress. These principles are to be adopted even while admitting of such writ petitions for hearing. As this point is a vital one and the Courts cannot allow such litigants to prolong and protract the matter with a motive to escape from the clutches of law.

57. The growing practice amongst the litigants are that even the litigations can be developed at the initiate stage of initiation of proceedings by the Competent Authorities, so as to prolong the same, gain time and dilute the proceedings in order to escape from the clutches of law. Such an attitude of the litigants can never be encouraged by the Courts. Prima facie, the maintainability of the writ petitions are to be considered at the first instance.

58. In the present cases, the writ petitions are pending for about six years. The authorities competent are unable to proceed with the matter. The writ petitioners are also unable to submit their defence statements in the manner prescribed under the provisions of the Prevention of Money Laundering Act, 2002. Such situations are certainly to be averted and the persons against whom such proceedings are initiated must be allowed to submit the facts and defence before the Competent Authorities, enabling the authorities to arrive a conclusion whether there is any offence is made out or proceeds of crime are in existence.

59. No writ proceedings can be entertained against a show cause notice and the attachment order, which was issued only for the purpose of commencing the investigation and the process under the provisions of the Prevention of Money Laundering Act, 2002. A writ proceeding can be entertained if the show cause notice and the attachment order had been issued without any jurisdiction or competency or on mala fides or if the same are issued in violation of the statutory provisions. Even in case of raising an allegation of mala fides, the authorities against whom such an allegation is raised to be impleaded as party respondents in their personal capacity. In the absence of any one of these legal grounds, no writ proceedings can be entertained against the show cause notice in a routine manner as the Judicial Review against the show cause notices are certainly limited.

60. Though the writ petitioners have raised that the alleged proceeds of crime and the offences committed by the writ petitioners were prior to the amendment issued in the Prevention of Money Laundering Act, 2002, this Court is of an opinion that such contentions are untenable in view of the fact that the provisions of the Prevention of Money Laundering Act, 2002 categorically enumerates that the proceeds of crime, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering. This apart, Section 8 also contemplates offence under Section 3 or is in possession of proceeds of crime. Thus, it is not as if the date of occurrence which is relevant. If the proceeds of crime is not the possession of the alleged offenders, then also the authorities under the Act, are empowered to register a case under the provisions of the Prevention of Money Laundering Act, 2002.

61. However, the facts regarding the possession of proceeds of crime or its use or concealment or acquisition, are to be decided only by adjudicating the facts and circumstances and by verifying the documents and other relevant records. Thus,

the institution of the proceedings by the respondents under the provisions of the Prevention of Money Laundering Act, 2002, cannot be found fault with. The very arguments advanced on behalf of the petitioners deserve no merit consideration in view of the fact that the provisions of the Act, is unambiguous in respect of institution of the proceedings under the Prevention of Money Laundering Act. It is not as if the date on which the offence is committed. It is the date on which the case is registered. If the authorities have any reason to believe that the alleged offender is in possession of the proceeds of crime or in use of the proceeds of crime or its concealment, then also the provisions of the Act, attracts and there is no infirmity in respect of the actions initiated by the respondents under the provisions of the Prevention of Money Laundering Act, 2002.

62. It is made clear that the very initiation under the Prevention of Money Laundering Act, 2002 is not akin to that of the initiation of criminal proceedings under the Indian Penal Code. The Prevention of Money Laundering Act, 2002 is a Special Act contemplating an administrative procedure at the initiation stage and thereafter prosecution. The Act has got certain special purposes and therefore, the initiation of proceedings under the Prevention of Money Laundering Act, 2002 can never be compared with the initiation of criminal proceedings under the Indian Penal Code. The enactment is a distinct one wherein separate procedures are contemplated in order to protect the interest of the alleged offenders also. The authorities under the Prevention of Money Laundering Act, 2002 cannot jump into the conclusion that the offenders are arrested at the first instance. An administrative procedure of verifying the records, recording statements of the offenders and other persons are provided under the Act. The method of adjudication, investigations are absolutely different and distinct and no way connected with the regular criminal cases registered under the Indian Penal Code either by Central Bureau of Investigation or by the other Investigation Agencies. Thus, the initiation of action under the Prevention of Money Laundering Act, 2002 cannot have any implications in respect of the registration of other cases under the Indian Penal Code or under any other Penal Laws.

63. In this view of the matter, the very comparison made by the writ petitioners in respect of the Income Tax proceedings are unconnected. The income tax proceedings are undertaken under the provisions of the Income Tax Act. Even if some findings are to be relied upon by the writ petitioners, the same are to be done only by participating in the adjudication process to be conducted by the respondents under the provisions of the Prevention of Money Laundering Act, 2002. However, this Court cannot compare the findings of the order passed by the

Income Tax Appellate Authority under the Income Tax Act and the initiation of proceedings under the Prevention of Money Laundering Act, 2002.

64. It is left open to the writ petitioners to submit their respective statements before the respondents, explaining all such situations and the documents relied upon by them for the purpose of establishing their case. Contrarily, those material facts, which all are displayed and not verified by the competent Investigating Authorities, can never be considered by this Court for the purpose of quashing the entire proceedings instituted under the Prevention of Money Laundering Act, 2002.

65. The procedures contemplated under the Prevention of Money Laundering Act, 2002, is that the authorities must have reason to believe for initiation of proceedings. Thereafter, various procedures are contemplated providing opportunity to the alleged offenders to submit their statements, documents etc., before the Competent Authorities. Thus, the proceedings are administrative in nature. Thus, the proceedings contemplated only to cull out the truth relating to the offence of money laundering, can never be construed as a penal action at the initial stage. Thus, the administrative procedures contemplated are for the purpose of finding out the truth behind the transactions. If the authorities come to the conclusion that the offence of money laundering is made out, then only they are empowered to proceed further against the alleged offenders. However, while undertaking the process of investigating the truth behind the allegation of money laundering, the High Court cannot entertain the writ petition, so as to quash the entire institution of the proceedings, and accordingly, the authorities must be allowed to investigate freely and fairly and by following the procedures contemplated under the Prevention of Money Laundering Act, 2002.

66. This apart, the appeal provisions are available under the Statutes, as discussed above, Section 26 provides an appeal to the Appellate Tribunal. Section 42 provides an appeal to the High Court (CMA). There is a comprehensive procedure for preferring an appeal to the PMLA Appellate Tribunal and thereafter to the High Court, the present writ petitions cannot be entertained at all. The writ petitioners are bound to exhaust the alternate remedies provided under the Statutes. The question raised before this Court by the respondents that the writ petitions are premature and further, the writ petitioners have not exhausted their remedies available under the provisions of the Act and further the writ petitions are filed at the commencement of the administrative procedure, this Court has passed an order on these aspects. In the case of Hyundai Motor India Limited vs. The Deputy Commissioner of Income Tax and

Others {MANU/TN/3622/2018}, the relevant paragraphs 19, 20, 21 and 22 are extracted hereunder:-

"19.Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures contemplated under the rules constituted thereon. While entertaining a writ petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered. If the writ petitions are entertained in a routine manner, by not allowing the competent Appellate authority to exercise their powers under the provisions of the statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to elaborate the legal principle settled in respect of the separation of powers under the Constitution of India.

1. Madras Bar Association vs. Union of India (UOI) (25.09.2014 - SC) : MANU/SC/0875/2014 If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional

structure. (These cannot be catalogued but can only be illustrated):

- (1) The supremacy of the Constitution.
- (2) Republican and Democratic form of government and sovereignty of the country.
- (3) Secular and federal character of the Constitution.
- (4) Demarcation of power between the Legislature, the executive and the judiciary.
- (5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.
- (6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973 : (1973) 4 SCC 225].

That separation of powers between the legislature, the executive and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said:

It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) : MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian

Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs- legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.

Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs--legislature, executive and judiciary-- is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality Under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality Under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State

legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aligned.

In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

(vi) If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law.

20. This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the

appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.

21. Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

22. When an effective alternative remedy is available, a writ petition cannot be maintained

1. In *City and Industrial Development Corporation v. Dosa Aardeshir Bhiwandiwalla and Ors.* MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

2. *Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors.* (07.02.2011 - SC) : MANU/SC/0103/2011 It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available

if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.*; *Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories.*)

3. Commissioner of Income Tax and Ors. v. Chhabildass Agarwal, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case*, *Titaghur Paper Mills case* and other similar judgments that the High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C. (30.01.2018 - SC) : MANU/SC/0054/2018 The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was

placed on United Bank of India vs. Satyawati Tandon and others, 2010 (8) SCC 110, and General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Iqbal and others, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

5. State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd. reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of

India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089, Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition."

67. In view of the fact that the complex facts and circumstances raised in these writ petitions, cannot be adjudicated by this Court at this stage, the writ petitioners have challenged the very show cause notice and the attachment order passed. The writ petitioners are bound to submit their statements, documents to the respondents to establish their innocence at the first instance, so as to avoid further proceedings under the provisions of the Prevention of Money Laundering Act, 2002. Equally, the respondents are also bound to follow the procedures contemplated under the Act, by providing a reasonable opportunity to the writ petitioners to submit their

defence and establish their case before the Competent Authorities.

68. The judgments cited by the learned counsel for the writ petitioners with reference to the merits of the case deserves no consideration in view of the fact that this Court has considered the ground of maintainability of the writ petitions with reference to the PMLA Act and with reference to the stage in which the present writ petitions are filed. Thus, all those judgments referred by the learned counsel for the writ petitioners have no relevance with reference to the grounds considered in the present writ petitions.

69. Accordingly, this Court has no hesitation in coming to the conclusion that the present writ petitions are not only premature and the complex facts and circumstances now raised by the writ petitioners, cannot be adjudicated in view of the fact that the writ petitioners have not exhausted the appeal remedies provided under the Statutes and not participated in the administrative procedures contemplated under the provisions of the Prevention of Money Laundering Act, 2002, establishing their innocence or otherwise before the Competent Authorities. Such administrative procedures contemplated cannot be construed as akin to that of the criminal proceedings initiated under the Indian Penal Code.

70. This being the view of the Court, the writ petitioners, being failed to establish any legally acceptable ground, so as to interfere with the impugned orders passed by the respondents under the provisions of the Prevention of Money Laundering Act, 2002. Thus, both the writ petitions stand dismissed. The respondents shall proceed against the writ petitioners under the provisions of the Prevention of Money Laundering Act, 2002, without causing any undue delay. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

Svn

To

1.The Joint Director of Enforcement (PMLA),

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+2cc to Mr.Rajnish Pathiyil, Advocate SR.No.68825

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WPs 8383 & 8384 of 2013

RJ (CO)

GMV (02/11/2018)

सत्यमेव जयते

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