

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-04-2018

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

W.P.Nos.32848 and 32849 of 2016
and

W.M.P.Nos.28393 and 28394 of 2016 and 4516 and 4517 of 2017

Orders reserved on 19.04.2018	Orders pronounced on 24.04.2018
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Mrs.Nalini Chidambaram

..Petitioner in both WPs

vs

1.The Directorate of Enforcement,
Represented by its Director,
Government of India,
6th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi - 110 003.

2.The Assistant Director,
Enforcement Directorate,
CGO Complex,
3rd MSO Building,
6th Floor, DF Block,
Salt Lake,
Kolkata - 700 064.

3.Mr.Karnal Singh

.. Respondents in both WPs

W.P.No.32848 of 2016 is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to the letter having Ref.F.No.ECIR/KLZO/01/2013/2301, dated 7.9.2016 and summons having Ref.No.ECIR No.KLZO/01/2013/AD/AKS, dated 7.9.2016 issued by the second respondent in purported exercise of powers under Section 50(2) and (3) of the Prevention of Money Laundering Act, 2002 and quash the same.

W.P.No.32849 of 2016 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of

Mandamus, directing the respondents to forbear from taking any coercive steps or action or proceeding against the petitioner under any provision of the Prevention of Money Laundering Act, 2002 in connection with the professional fees received by the petitioner by cheques from (M/s.Saradha Realty India Ltd) on behalf of her client, after deduction of tax and which fees has been subjected to maximum rate of income tax at the hands of the petitioner.

For Petitioner in both Wps : Mr.Satish Parasaran,
Senior Counsel for Ms.C.Uma

For Respondents in both Wps :Mr.G.Rajagopalan, Additional
Solicitor General of India assisted by Ms.G.Hema, Special Public
Prosecutor, Enforcement Directorate.

C O M M O N O R D E R

The proceedings of the second respondent dated 7.9.2016 issued by the Assistant Director, Office of the Special Director, Eastern Region, Enforcement Directorate, Kolkata, rejecting the applications of the writ petitioner for authorising Shri N.R.R.Arun Natarajan as an authorised representative and the summons issued consequently in proceedings dated 7.9.2016 for the personal appearance of the petitioner by the second respondent are under challenge in W.P.No.32848 of 2016.

2. The relief sought for in WP No.32849 of 2016 is to direct the respondents to forbear from taking any coercive steps or action or proceeding against the petitioner under any provision of the Prevention of Money Laundering Act, 2002 in connection with the professional fees received by the petitioner by cheques from (M/s.Saradha Realty India Ltd) on behalf of her client, after deduction of tax and which fees has been subjected to maximum rate of income tax at the hands of the petitioner.

3. Pleadings of the petitioner:

The petitioner is a Senior Advocate having an active practice in the Supreme Court of India, High Court of Madras and other High Courts. The petitioner was the Standing Counsel for the Income Tax Department for 17 years. She had appeared in almost all the High Courts across the country. The petitioner has extensive practice and is practicing for almost 45 years uninterruptedly. The petitioner had been an assessee under the Income Tax for many years. In the course of her professional work in or about August, 2009, the petitioner was engaged by one Ms.Manoranjana Sinh as a Senior Counsel instructed by Mr.Krishna

Kumar, Advocate on record, New Delhi to appear in CP No.46(ND) of 2009 before the Company law Board, Delhi. Further, Ms.Manoranjana Sinh also engaged the petitioner as a Senior Counsel instructed by Mr.Siddharth Agarwal and Mr.Rajasekar Rao, Adovates on record, New Delhi in CS (OS) No.290 of 2009 before the Delhi High Court. The above cases were filed by Ms.Manoranjana Sinh against her estranged husband, Mr.Matang Singh, relating to a dispute concerning M/s.Positive Television and its group companies.

4. It was the case of Ms.Manoranjana Sinh that she had developed the TV business which was valued at more than Rs.200 crores and that she had a 50% share in the companies but her husband Mr.Matang Sinh had arbitrarily reduced her to a minority shareholder in the companies. Ms.Manoranjana Sinh paid a fees of Rs.1 lakh by cheque as retainer to the petitioner and informed the petitioner that she did not have adequate funds to pay any further fees but assured the petitioner that she would pay the fees of the petitioner in due course as and when she was able to raise the funds.

5. Ms.Manoranjana Sinh owned M/s.GNN Pvt Ltd., a media company running a private satellite TV channel in Guwahati, Assam. Ms.Manoranjana Sinh identified a Kolkata based businessman by name Mr.Sudipto Sen, who wanted to enter the media business in a big way. Mr.Sudipto Sen had agreed to invest in M/s.GNN Pvt Ltd and commenced negotiations with Ms.Manoranjana Sinh as a prelude to taking over M/s.Positive Television and its group companies as and when Ms.Manoranjana Sinh succeeded in the proceedings before the Company Law Board, New Delhi and the Delhi High Court in the above mentioned cases as he believed that M/s.Positive Television and its group companies had good potential.

6. On 6th June, 2010, a Memorandum of Understanding (MOU) was signed between M/s.GNN Pvt Ltd and M/s.Bengal Media Pvt Ltd, a company owned by Mr.Sudipto Sen. Under the said agreement, M/s.Bengal Media Pvt ltd., agreed to invest in M/s.GNN Pvt Ltd on the terms and conditions set out in the MOU. This was a framework agreement to be followed by a detailed shareholders agreement to be entered into between Ms.Manoranjana Sinh and Mr.Sudipto Sen.

7. Clause 15 of the MOU dated 6th June, 2010, reads as follows:-

"M/s.Bengal Media Pvt Ltd will assist Ms.Manoranjana Sinh in the ongoing litigation with Matang Sinh by coordinating with her lawyers."

8. In June, 2010, an agreement was signed between Ms.Manoranjana Sinh of M/s.GNN Pvt Ltd and M/s.Bengal Media Pvt Ltd. The said agreement, inter alia, contained the following

clause. Clause 5.2. of the June, 2010 agreement reads as follows:-

"5) Rights and Obligations of Buyer:

Investor (M/s.Bengal Media Pvt Ltd) hereby commits that it will professionally and legally assist Manoranjana in her personal litigation with Positive and other cases as the Investor wants to ensure 100% effective involvement of Manoranjana for the success of the business of the company."

9. As part of the agreement between Ms.Manoranjana Sinh and Mr.Sudipto Sen, wherein Mr.Sudipto Sen agreed to fund the legal expenses of Ms.Manoranjana Sinh in contesting the cases against her husband, it was mutually agreed between Ms.Manoranjana Sinh and Mr.Sudipto Sen that the professional fees of the petitioner, who was already appeared on behalf of Ms.Manoranjana Sinh before the Company Law Board, New Delhi and Delhi High Cour, would be paid by Mr.Sudipto Sen/his company. Accordingly, Mr.Sudipto Sen, through his real estate company, M/s.Saradha Realty India Ltd paid, from time to time, the professional fees of the petitioner on behalf of Ms.Manoranjana Sinh amounting to Rs.1 crore over a period of two accounting years. Every payment was made by means of cheque after deducting TDS and was made on behalf of Ms.Manoranjana Sinh for conference and advice, from time to time, in the ongoing litigation and for appearance on behalf of Ms.Manoranjana Sinh in the above mentioned cases. It is relevant to state that the fees of Mr.Krishna Kumar, the counsel on record was also paid by M/s.Saradha Realty India Ltd on behalf of Ms.Manoranjana Sinh. The professional fees thus received was accounted for in the books of account of the petitioner and applicable income tax at the maximum rate of 30% plus surcharges was paid on the said fees while filing the income tax returns.

10. It was decided that a detailed shareholders agreement will be entered between Ms.Manoranjana Sinh and Mr.Sudipto Sen. However, serious differences arose between Ms.Manoranjana Sinh and Mr.Sudipto Sen as a result of which Mr.Sudipto Sen stopped funding the TV business of Ms.Manoranjana Sinh. No agreement could be reached on the terms to be incorporated in the proposed shareholders agreement. Discussions were held by and between the two parties in the presence of the petitioner on several days, but no agreement could be arrived on the terms of the proposed shareholders agreement. At the request of Ms.Manoranjana Sinh, a Consultant, Mr.Mahadevan of Bengaluru, did a due diligence of some of the companies belonging to Mr.Sudipto Sen. Based on the said due diligence report, the petitioner gave her opinion and handed it over to Ms.Manoranjana Sinh. This is confirmed by Ms.Manoranjana Sinh in her press statement dated 23.4.2013 in

which she stated as follows:-

"I requested my lawyer and standing counsel Madam Nalini Chidambaram to do a due diligence on Saradha Group of Companies. She came back to me with a legal opinion which was sent to him as well in which she has asked him to close all collective investment schemes and seek a consent order from the SEBI."

11. Further professional fees of Rs.34,90,000/- after deducting tax was paid to the petitioner between 24.6.2011 and 31.3.2012 on various dates for negotiating and drafting the terms of the proposed shareholders agreement and for advising Ms.Manoranjana Sinh on several days during the negotiations/discussions between the parties.

12. It is further stated that the petitioner was never consulted by Mr.Studipto Sen on any matters relating to his businesses. Nor did the petitioner offer legal advice to Mr.Sudipto Sen on any of his businesses except for the opinion given to her client Ms.Manoranjana Sinh based on the due diligence report of Mr.Mahadevan. The professional services rendered by the petitioner were only vis-a-vis Ms.Manoranjana Sinh and her TV related businesses. Ms.Manoranjana Sinh in her statement to the press dated 25.4.2013 and in an email stated as follows:-

"Since my lawyer was Mrs.Nalini Chidambaram since long, I asked her to draft the agreement between Saradha and us. Ms.Chidambaram is my standing counsel and has worked as a legal advisor in her professional capacity. As per our agreement, her payment was made by Mr.Sen since in our agreement it was mentioned that all expenses towards legal fees and other litigation would be paid by him."

13. Meanwhile, it transpired that Mr.Studipto Sen started defaulting in payment of principal and interest to his depositors. Hence, it is learnt that the CBI registered a case against Mr.Studipto Sen for the offence of cheating under the IPC which is a scheduled offence within the meaning of the Prevention of Money Laundering Act, 2002. In the course of its investigation, the CBI took a statement from the petitioner on 20.9.2014 under Section 161 of the Criminal Procedure Code at her office in Chennai. CBI also sent letter dated 28.10.2014, directing the petitioner to produce under Section 91 Cr.P.C., the following documents:-

"1. Income Tax Returns of

M/s.N.C.Associates and Smt.Nalini Chidambaram for the financial year 2009-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013.

2. Profit and Loss Account and Balance Sheet in respect of M/s.N.C.Associates for the financial year 2009-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013.

3. Details of amount received from Saradha Group of Companies with dates, mode of receipts and reason for receipt."

14. The petitioner had submitted all the documents sought for by the CBI. The CBI issued another order dated 19.10.2015 to the petitioner under Section 91 Cr.P.C to produce further documents in connection with the fees received from M/s.Saradha Realty India Ltd., and documents pertaining to cases relating to Ms.Manoranjana Singh in which the petitioner had appeared. The petitioner produced all the documents sought for by the CBI by letter dated 31.10.2015. Further, the petitioner's authorised representative also appeared before CBI, Kolkata on 2.11.2015. Again another letter dated 5.11.2015 was sent to CBI providing further details.

15. While matters stood thus, on 3.2.2016, the second respondent issued a summons to the petitioner under Section 50 (2) and (3) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PMLA" or the "Act") and sought the following documents to be produced either personally or through authorised representative within seven days of receipt of the letter:-

- i) Copies of agreements entered between you or M/s.NC Associates and Smt.Manoranjana Singh or her entities,
- ii) Copies of agreements entered between you or M/s.NC Associates and Shri Studipto Sen or his entities,
- iii) Particulars of services rendered to Smt.Manoranjana Singh/her entities or Shri Sudipto Sen/his entities,
- iv) Particulars of payments received from Smt.Manoranjana Singh/her entities or Shri Studipto Sen/his entities."

16. Mr.N.R.R.Arun Natarajan, Advocate, the authorised representative of the petitioner, appeared in person before the second respondent on 11.2.2016 and submitted all the documents. Again another letter dated 18.2.2016 was given to the second respondent by the authorised representative in person along with documents. He submitted that no agreements had been entered

between the petitioner or M/s.NC Associates with Mr.Sudipto Sen or his entities. Further, the authorised representative submitted the details of professional services rendered by the petitioner to Ms.Manoranjana Sinh/her entities. It was further stated that no services rendered by the petitioner to Mr.Sudipto Sen/his entities. The details of payments received by the petitioner from Ms.Manoranjana Sinh and from Mr.Sudipto Sen/his entities, who had agreed to pay the fees of the petitioner on behalf of Ms.Manoranjana Sinh, were also submitted.

17. The petitioner further states that another order dated 4.3.2016 was issued to the petitioner by CBI under Section 91 Cr.P.C to produce certain documents either by the petitioner or through a responsible person. The documents were produced by the authorised representative of the petitioner on 14.3.2016. It is reliably learnt and believed to be true that CBI had filed the Final Report before the Designated Court in Kolkata in connection with the FIR registered against Mr.Sudipto Sen. The petitioner has not been named either as an accused or as a witness in the Final Report.

18. The second respondent issued another summons dated 4.3.2016 under Section 50(2) and (3) of the Act, asking for production of the following documents either personally or through authorised representative on 1.4.2016:-

"1.His/her passport, Adhaar Card, Voter ID Card, Pan Card or any other documents for identification.

2.ITRs for the period FY 2009-2010 to 2012-2013.

3.Particulars of her bank A/c (s) showing transactions between Ms.Manoranjana Sinh and Mr.Sudipto Sen.

4.Explanation of documents submitted on 19.2.2016."

19. The petitioner states that Mr.N.R.R.Arun Natarajan, the authorised representative of the petitioner, appeared in person on 1.4.2016 before the second respondent and submitted the reply dated 31.3.2016, enclosing all the documents sought for including the income tax returns of the petitioner for the financial year 2009-2010 to 2012-2013, certified copies of the ledgers of the years 2010-2011 and 2011-2012 showing the amounts received and the Tax Deduction Certificates issued by M/s.Saradha Realty India Ltd for the professional fees paid by M/s.Saradha Realty India Ltd on behalf of Ms.Manoranjana Sinh. The authorised representative also submitted a written reply during the hearing on 1.4.2016 stating that the petitioner was acting as counsel entered between Ms.Manoranjana Sinh and M/s.Bengal Media Pvt Ltd, the fees of the petitioner were paid

by M/s.Saradha Realty India Ltd., on 1.4.2016, the authorised representative was made to answer a questionnaire containing 30 questions and the answers were recorded by the second respondent. The authorised representative explained all the documents submitted on 19.2.2016.

20. The documents produced before CBI and the Directorate of Enforcement clearly establish that the amounts received from M/s.Saradha Realty India Ltd., by the petitioner were purely professional fees for the legal services rendered by the petitioner to Ms.Manoranjana Sinh in connection with her Media related business. Between CBI and the respondents, they have collected all the materials which indubitably established that the petitioner received legal fees on behalf of Ms.Manoranjana Sinh as per the terms of the MOU and the agreement between Ms.Manoranjana Sinh and M/s.Bengal Media Pvt Ltd/Mr.Sudipto Sen.

21. After a lapse of 4-1/2 months, the petitioner received another summons dated 17.8.2016 from the second respondent under Section 50 (2) and (3) of the Act. Unlike in the two earlier summonses when the petitioner was given the option to appear in person or through authorised representative, in the instant summons, the petitioner was directed to appear in person at the Kolkata Office on 2.9.2016, a Friday. The purpose of the summons is stated as "Explanation of submitted Documents". The third respondent leaked the issuance of summons to the Press and the Times of India published the news on 25.8.2016. The petitioner through her authorised representative, wrote to the second respondent by letter dated 29.8.2016, once again explaining all the submitted documents and also drew the attention of the second respondent to Section 160 Cr.P.C under which no woman may be called for questioning except at her place of residence. It is relevant to state that the petitioner resides in Chennai and in the summons dated 17.8.2016, the petitioner was summoned to appear before the second respondent in Kolkata. It was submitted that the summons directing the petitioner to appear in Kolkata in violation of Section 160 Cr.P.C., since the said Section also applied to officials of the Enforcement Directorate.

22. In view of Section 160 Cr.P.C., it submitted that the petitioner could not be summoned to Kolkata to give an explanation of the submitted documents. The authorised representative relied on a decision of the Division Bench of the Delhi high Court in Asmita Agarwal vs. The Enforcement Directorate [2002 CrL LJ 819] to establish that Section 160 Cr.P.C also applied to Officers of the Enforcement Directorate. The authorised representative also stated that he had already submitted all the documents sought in response to earlier summonses and had also given detailed explanation of all submitted documents to prove that all the amounts received by

the petitioner were towards fees for advising and for appearance on behalf of Ms.Manoranjana Sinh before the Company Law Board and Delhi High Court in connection with her Media related business and in Ms.Manoranjana Sinh's negotiations with Mr.Sudipto Sen. Despite this, after a lapse of nearly 4-1/2 months, the second respondent had issued a fresh summons directing the petitioner to appear in person to "explain the submitted documents". The authorised representative also pointed out that the petitioner had fully co-operated in the investigation being carried out by the respondents.

23. The petitioner was shocked to see a news item in screaming headlines in the Times of India news paper dated 12.9.2016 that Enforcement Directorate may issue a fresh summons to the petitioner and that Enforcement Directorate had rejected her contention on Section 160 Cr.P.C and wanted her to appear in Kolkata in person. This news appeared even before the petitioner received any fresh summons. The third respondent also leaked the information to the Press even before the petitioner received the summons.

24. On 13.9.2016, the petitioner received a letter dated 7.9.2016 along with the summons dated 7.9.2016 in exercise of powers under Section 50(2) and (3) of the Act, asking the petitioner to appear in person (the words "or through authorised representative" were struck off) on 23.9.2016, a Friday, as per the Schedule of summons dated 17.8.2016. The letter stated that the representation of the authorised representative to the summons dated 17.8.2016 was considered and rejected and directed the petitioner to appear in person on 23.9.2016. No reasons were assigned as to why the representation was rejected even though the authorised representative had relied on a Delhi High Court's judgment on Section 160 Cr.P.C, which is final and binding on the respondents. It is necessary to point out that the third respondent had leaked the rejection of the representation sent on behalf of the petitioner invoking Section 160 Cr.P.C to the Media even before the petitioner received the letter dated 7.9.2016, rejecting the representation dated 17.8.2016 along with the summons to appear in person on 23.9.2016. The schedule to the summons dated 17.8.2016 had asked the petitioner to "explain the submitted documents". Till the summons dated 17.8.2016, the petitioner was always asked to produce the documents and explain the submitted documents either in person or through authorised representative and the authorised representative had always appeared before the second respondent and produced all the documents and explained them. In response to the summons dated 4.3.2016, he had explained the submitted documents. Again in response to the summons dated 17.8.2016, the authorised representative had explained the submitted documents in writing by his letter dated 29.8.2016. He even offered to

appear in Kolkata once again to explain the submitted documents on behalf of the petitioner. Thus, it is strange that the respondents continue to ask the petitioner to appear in person and explain the submitted documents.

25. The petitioner further states that the repeated summonses seeking "explanation of submitted documents" when the authorised representative had already explained the submitted documents in writing, is uncalled for. Further, the direction to appear in person and not through an authorised representative and that too in Kolkata each time on a Friday (2.9.2016 and 23.9.2016 are both Fridays), reveal that the respondents are harbouring a malicious motive and a sinister design against the petitioner in violation of her fundamental and legal rights. It is significant to note that the summons dated 3.2.2016 and 4.3.2016 gave the petitioner the option of appearing through an authorised representative.

26. The petitioner further states that by no stretch of imagination can a lawyer be investigated under the PML Act, 2002, in connection with fees received for professional services. Such an investigation against a lawyer in respect of fees received by cheques and duly accounted for and disclosed in the returns of income tax is an unprecedented assault on the rights of lawyers and a grave threat to the independence of the profession. A lawyer may represent any person, even a person accused of a "scheduled offence" within the meaning of the PML Act, 2002. In fact, several persons accused of offences that are "scheduled offences" under PML Act, 2002 are presented by eminent lawyers. None of them had been investigated under PML Act, 2002 in respect of the professional fees received by him/her. It is only the petitioner, who had been singled out for investigation under PML Act, 2002. The respondents are acting with malice in fact and malice in law in issuing repeated summonses to the petitioner under PML Act, 2002.

27. The petitioner is a Senior Advocate, who has been a practicing lawyer for the past 48 years. The petitioner is aggrieved that despite co-operating in the investigation and producing all the documents that were summoned, both to CBI and the Directorate of Enforcement, and conclusively establishing that the amounts received by the petitioner by cheques after deduction of tax were only professional fees for legal services, which have been duly disclosed in the returns of income and tax paid, the respondents are continuing to harass the petitioner with ulterior motives and malice, in fact, and malice in law by issuing repeated summonses.

28. The learned Senior Counsel Mr.Satish Parasaran, appearing on behalf of the writ petitioner, contended that the

protections granted under Section 160 Cr.P.C., to be extended to the writ petitioner. When the required documents, as sought for by the respondents, were already submitted by the authorised representative of the writ petitioner there is no reason to issue further summons for the personal appearance of the writ petitioner.

29. Pleadings of the respondents:

Saradha Group of Companies, represented through its Director Shri Sudipto Sen, was a Chit Fund Company, collecting deposits from public at large in the States of West Bengal, Assam and Orissa. However, its business spread across 14 States of India. The modus operandi of business of this Company was to cheat the public at large during the years 2008-2009 to 2013-2014, by making a false promise of very lucrative returns against their investments. The quantum of total money collected by this group of company is about Rs.2,459/- crores out of which nearly Rs.1,983/- crores remains unpaid to the depositors till date excluding the interest amount. Although this group consists of 225 numbers of companies, but the proceeds of crime have been mobilised by four companies of the Group, namely, M/s.Saradha Realty India Limited, Saradha Tours and Travels Pvt Ltd, Saradha Garden Resort and Hotels Pvt Ltd., and Saradha Housing Pvt Ltd., and the details are as follows:-

Name of the company	FY in which funds have been mobilised	Total amount credited (in crore of Rs.)	Total amount outstanding (in crore of Rs.) [Excluding Interest]
Saradha Realty India Ltd (SRIL)	2008-2009 to 2012-2013	774	569
Saradha Tours and Travels Pvt Ltd (STTPL)	2009-2010 to 2012-2013	1,260	989
Saradhagarden Resort and Hotels Pvt Ltd (SGRHPL)	2012-2013 to 2013-2014 (till April, 2014)	294	294
Saradha Housing Pvt Ltd	2012-2013 to 2013-2014 (till April, 2014)	131	131
TOTAL		2,459	1,983

30. By failing to return the money due to the depositors, they committed offences under Section 420 of IPC, for which various cases were registered by the police across the State of

West Bengal. Offences under Section 420 of IPC is a scheduled offence under the PML Act, 2002 and thereby a case of money laundering was initiated against them by Enforcement Directorate at Kolkata vide ECIR No.KLZO/01/2013 dated 16.5.2013. During the course of the said investigation in Saradha Group of cases, it was learnt that certain payments were made by Shri Sudipto Sen out of funds of Saradha Group of Companies to Smt.Nalini Chidambaram. To ascertain the same, enquiries were caused with Smt.Nalini Chidambaram vide letter dated 3.2.2016 asking her to produce details regarding transaction with Sudipto Sen. Vide letters dated 18.2.2016, 14.3.2016 and 31.3.2016, Shri N.R.R.Arun Natarajan, the authorised representative of Smt.Nalini Chidambaram submitted his reply along with certain documents, which, inter alia, revealed that Mrs.Nalini Chidambaram was engaged as a Senior Counsel to appear on behalf of Mrs.Manoranjana Sinh in C.P.No.46(ND) of 2009 pending before the Company Law Board, Delhi and C.S. (O.S.) No.290 of 2009 pending before Delhi High Court in the cases filed by Mrs.Manoranjana Sinh against her estranged husband Mr.Matang Sinh relating to M/s.Positive Television Pvt. Ltd., and its group companies. It would not be out of place to state that this case has no relation with Saradha Group of Companies. No agreement was entered between Mrs.Nalini Chidambaram or M/s.NC Associates with Smt.Manoranjana Sinh or her entities or Sudipto Sen or his entities. No service was rendered by Mrs.Nalini Chidambaram, Senior Advocate to Shri Sudipto Sen or Saradha Group of Companies. Mrs.Nalini Chidambaram was instructed to appear in C.P. No.46 (ND) of 2009 before the Company Law Board, Delhi and C.S. (O.S.) No.290 of 2009 before the Delhi High Court by Ms.Manoranjana Sinh with Mr.Krishna Kumar, Advocate, who was the counsel on record.

31. Ms.Manoranjana Sinh paid a sum of Rs.1 lakh by cheque to Smt.Nalini Chidambaram as retainer and informed that she does not have funds to pay fees of Mrs.Nalini Chidambaram and assured Mrs.Chidambaram that she would pay the fees of Mrs.Chidambaram as and when she mobilised the funds. Shri Sudipto Sen was introduced to Ms.Manoranjana Sinh by a mutual friend and after discussion between the parties, Mr.Sudipto Sen decided to invest in the company M/s.GNN India Pvt Ltd., owned by Ms.Manoranjana Sinh running a private Satellite TV Channel from Guwahati. Based on the negotiations held between the parties, an MOU was signed between the parties dated 6.6.2010, which was a framework agreement to be followed by a detailed shareholders agreement. Another detailed agreement in June 2010 was signed between Ms.Manoranjana Sinh, M/s.GNN India Pvt Ltd and M/s.Bengal Media Pvt Ltd., a company of Sudipto Sen. Clause 15 of the MOU dated 6.6.2010 reads as "M/s.Bengal Media Pvt Ltd., will assist Ms.Manoranjana Sinh in the ongoing litigation with Matang Sinh by coordinating with her lawyer". Clause 5.2 of the June

agreement reads as "Investor (M/s.Bengal Media Pvt Ltd) hereby commits that it will professionally and legally assist Manoranjana Sinh in her personal litigation with Positive and other cases as the Investor wants to ensure 100% effective involvement of Manoranjana Sinh for the success of the business of the company".

32. Mr.Sudipto Sen, through his companies, paid to the petitioner Rs.1 crore spread over a period of 10 months by 10 cheques after deducting TDS of Rs.10 lakhs to Mrs.Nalini Chidambaram on behalf of Ms.Manoranjana Sinh. Under Clause 13 of the agreement dated June 2010 between GNN India Pvt Ltd., represented by its Director Ms.Manoranjana Sinh and Bengal Media Pvt Ltd., represented by its Director Mr.Sudipto Sen, Mrs.Nalini Chidambaram was appointed as an Arbitrator in case of dispute between Ms.Manoranjana Sing and Mr.Sudipto Sen. Professional fees of Rs.34,90,000/- after deducting tax of Rs.5 lakhs was paid to Mrs.Nalini Chidambaram between 24.6.2011 and 31.3.2012 in various instalments for settling the draft of the detailed shareholders agreement and for holding discussions for several days arriving at a settlement between the parties. But no mutually acceptable terms could be arrived.

33. In view of the above, it appears that Mrs.Nalini Chidambaram had received Rs.1,00,00,000/- (Rs.10,00,000/- as TDS) + Rs.39,90,000/- (Rs.5,00,000/- as TDS) = Rs.1,39,90,000/- (Rs.15,00,000/- as TDS) from Saradha Group of Companies claimed to have been received towards professional fees of Ms.Manoranjana Sinh and drafting of shareholders agreement. Whether the claim made by the petitioner in WP 32848 of 2016 in preceding paragraphs are correct or incorrect, will be known only after examining the petitioner in WP 32848 of 2016 in person and any order at this stage will seriously affect the course of investigation.

34. Mrs.Nalini Chidambaram was summoned under Section 50(2) and (3) of PML Act, 2002, on 4.3.2016 to appear in person or through authorised representative on 1.4.2016. Mrs.Nalini Chidambaram authorised Shri N.R.R.Arun Natarajan, Advocate to appear on her behalf. Accordingly, statement of Shri N.R.R.Arun Natarajan, the authorised representative of Mrs.Nalini Chidambaram was recorded on 1.4.2016, wherein, he reiterated the facts already submitted vide his above mentioned letters. During the course of statement, several new facts came out and certain contradictions emerged in the information provided on behalf of Mrs.Nalini Chidambaram and the statement given by Ms.Manoranjana Sinh. In particular, Ms.Manoranjana Sinh had stated that she had no idea that Smt.Nalini Chidambaram was paid by Shri Sudipto Sen on her behalf. Therefore, it was felt necessary to summon Smt.Nalini Chidambaram in person.

35. In view of the above factors, summons dated 17.8.2016 was issued to Mrs.Nalini Chidambaram for her appearance at Kolkata on 2.9.2016 to explain the document submitted. In reply, vide letter dated 29.8.2016, Shri N.R.R.Arun Natarajan, the authorised representative of Mrs.Nalini Chidambaram reiterated that the payments received by Mrs.Nalini Chidambaram from Shri Sudipto Sen were towards her professional fees and also submitted that he was fully competent to explain the documents and also requested that as per Section 160 of Cr.P.C., 1973, a woman cannot be required to attend an investigation at any place other than the place in which she resides. A judgment is also cited in the case of Asmita Agarwal vs. The Enforcement Directorate and Others dated 22.11.2001 passed by the Delhi High Court [2002 CrLJ 819].

36. The said representation of Shri N.R.R.Arun Natarajan on behalf of Mrs.Nalini Chidambaram was got legally examined and it was observed that the said judgment dealing with the provisions of Section 160 Cr.P.C., 1973 vis-a-vis Section 40 of FERA, 1973 is not at all applicable in view of the fact that exemption under Section 132 of Cr.P.C., 1908 which is enshrined in the case of Section 40 of FERA, 1973 is not at all covered under Section 50(2) and (3) of PML Act, 2002. It was also observed that "further, calling a person to adduce evidence is within the four corners of provisions of Section 50(2) and (3) of "PMLA". Besides the deeming fiction contained under sub-section (4) of Section 50 of the Act, makes such statement as admissible piece of evidence and statutory presumption as contained under Section 80 of the Indian Evidence Act, shall get attracted rendering such statement as truthful and voluntary and the aforesaid representation does not have any force of law and liable to be rejected forthwith as the same is causing impediments in the smooth sailing of investigation. It is so because under Section 63 of the Act, law provides imposition of penalty as well entailing launching of prosecution under Section 174 of IPC, 1860 for non-compliance of the summons issued under the Act." Therefore, another summons dated 7.9.2016, was issued to Mrs.Nalini Chidambaram, for appearance on 23.9.2016 in person at Kolkata under a forwarding letter dated 7.9.2016 rejecting the request made in the representation of Shri N.R.R.Arun Natarajan dated 29.8.2016.

37. The summons proceedings are the preliminary stage of investigation under the "PMLA" and every proceedings under Section 50(2) and (3) of the Act, shall be deemed to be a judicial proceedings within the meaning of Sections 193 and 228 of the IPC 1860. The petitioner in WP No.32848 of 2016 got an opportunity to appear before the summoning authority to adduce evidence as per the principles of natural justice. But instead

of co-operating with and appearing before the summoning authority, the present writ petition is filed questioning the issuance of summons under Article 226 of the Constitution of India, which is not maintainable in law and liable to be dismissed in limine.

38. It is further contended that the documents submitted by the authorised representative of Mrs.Nalini Chidambaram before the Assistant Director, Enforcement Directorate in WP No.32848 of 2016 do not contain any agreement by Mrs.Nalini Chidambaram with Shri Sudipto Sen for making payments on behalf of Ms.Manoranjana Sinh. The documents do not show any rates to be charged and any bills raised by Mrs.Nalini Chidambaram for which she claims to have received the amount totalling to Rs.1,24,90,000/- as professional fees and charges for drafting the agreements. Thus, it is necessary to question Mrs.Nalini Chidambaram to seek clarification on the above which could not be explained by her authorised representative. Under these circumstances, summons under Section 50(2) and (3) were issued for her appearance in person.

39. In respect of the activities of Ms.Manoranjana Sinhof Saradha Group of Companies, when Shri Sudipto Sen was advised to close all collective investment schemes and seek a consent order from SEBI and the said opinion was given by Mrs.Nalini Chidambaram. From this legal opinion, it appears that Mrs.Nalini Chidambaram had prior knowledge of the activities of Shri Sudipto Sen and his entity when she accepted payments from him also needs clarification from her. The professional fees of Rs.34,90,000/- received on various dates for negotiating and drafting the terms of the proposed shareholders agreement and for advising Ms.Manoranjana Sinh on several dates during the negotiation/discussions between the two parties needs clarification from Mrs.Nalini Chidambaram.

40. It is mentioned in the affidavit filed by Mrs.Nalini Chidambaram that the professional services rendered by her were only vis-a-vis Ms.Manoranjana Sinh and her TV related business. This needs clarification from Mrs.Nalini Chidambaram vis-a-vis documents submitted by her authorised representative. Her clarification is also needed on the issue of bills raised, rates charges, acknowledgment made in respect of amounts received from Shri Sudipto Sen.

41. Press release by Ms.Manoranjana Sinh dated 25.4.2013 wherein she had been allegedly stating that her lawyer Mrs.Nalini Chidambaram's payment will be made by Shri Sudipto Sen, since in their agreement, it was mentioned that all expenses towards legal fees and other litigation would be paid by Shri Sudipto Sen. However, Mrs.Nalini Chidambaram have no

such information. Ms.Manoranjana Sinh in her statement dated 19.5.2016 had stated that she did not have any idea that Mrs.Nalini Chidambaram was paid by Shri Sudipto Sen until she was told about this fact by CBI during the course of investigation. Thus, the contention of Mrs.Nalini Chidambaram is contradictory with the statement of Ms.Manoranjana Sinh dated 19.5.2016 for which she needs to be questioned.

42. Issuance of summons to the writ petitioner for her appearance before the second respondent is a Friday. The word 'Friday' does not contain any mala fide on the part of the Enforcement Directorate. It was ensured that sufficient time is provided to Mrs.Nalini Chidambaram, enabling her to appear in person for the purpose of questioning. Such allegations were never raised in the representation regarding issue of summons neither any adjournment was sought for.

43. Calling a person to adduce evidence is within the four corners of provisions of Section 50(2) and (3) of "PMLA". Besides, the deeming fiction contained under sub-section (4) of Section 50 of the Act, makes such statement as admissible piece of evidence and statutory presumption as contained under Section 80 of the Indian Evidence Act, shall get attracted rendering such statement as truthful and voluntary. Under Section 63 of the Act, law provides imposition of penalty as well as launching of criminal prosecution under Section 174 of IPC for non-compliance of the summons issued under the Act.

44. It is pertinent to mention that the provisions of Cr.P.C., 1973 are not applicable to Section 50(2) and (3) of "PMLA". Non-compliance of Section 50(2) and (3) of "PMLA" entails imposition of penalty under Section 63 of the Act. Besides, in terms of Section 174 of IPC, prosecution can be initiated against the defaulter for non-compliance of summons. Therefore, the allegations are absolutely misplaced and incorrect.

45. It is further contended in the affidavit of the Assistant Director, Enforcement Directorate that the investigation against a lawyer in respect of his/her fees received by cheques and duly accounted for and disclosed in the return of income tax is an unprecedented assault on the rights of lawyers and aggravates threat to the independence of profession, is not related to the fact of the recent case. Nobody even lawyers or advocates are above law. All are expected to cooperate in investigation and more-so lawyers having responsibility to help Enforcement Agencies in upholding the law, are expected to abide by the laws enacted by the Legislature. It is further contended that the Hon'ble Supreme Court of India in the case of Vineet Narain, had stated that 'be

you ever so high, law is above you'. The Directorate of Enforcement had been charged with a duty to investigate the offence of money laundering. The main object of "PMLA" is to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental thereto. Thus, the Directorate is required to try the proceeds of crime. The Hon'ble Division Bench of Andhra Pradesh High Court in the case of B.Ramalinga Raju vs. Union of India and Others [MANU/AP/0125/2011], held that the proceeds of crime wherever located are liable for attachment.

46. Submissions of the Senior Counsel Mr.Satish Parasaran:

The learned Senior Counsel, appearing on behalf of the writ petitioner, emphasized that the respondents cannot insist for the personal appearance of the writ petitioner. By relying Section 160 of the Code of Criminal Procedure, the learned Senior Counsel contended that women cannot be compelled to appear in person for investigations and this apart, the authorised representative of the writ petitioner had already submitted the explanations and all the relevant documents sought for by the respondents. Thus, the personal appearance of the writ petitioner is unnecessary and the respondents are now acting with an ulterior motive in order to harass the writ petitioner or to arrest her. The impugned summons issued directing the writ petitioner to appear in person is in violation of Section 160 of the Code of Criminal Procedure. Proviso to Section 160 of the Code of Criminal Procedure, categorically enumerates that no women shall be required to attend at any place other than the place in which such women resides. Such being the definite provision of law, the respondents cannot seek for the personal appearance of the writ petitioner. The exemption granted under the Statute is absolute. Such concessions granted in the Criminal Procedure Code cannot be violated by the respondents. If at all, the respondents intend to get some clarification, then it is left open to them to approach the writ petitioner in a place where she resides. The intention of Section 160 of the Code of Criminal Procedure is to grant exemption and such an intention expressly made in the Code, cannot be interpreted otherwise.

47. At the outset, the learned Senior Counsel is of an opinion that if at all such an exemption to be diluted on account of the developments occurred in our Nation, the same is to be done only through the Parliament, this Court is bound by the exemption granted in the Code of Criminal Procedure. The learned Senior Counsel is of an opinion that the impugned summon states that the writ petitioner should appear on Friday. This creates a doubt in the mind of the writ petitioner and this apart, the respondents have fixed the date of investigation on

Friday, there is a possibility of arrest and therefore, the writ petitioner is constrained to move the present writ petition. The respondents are acting on certain personal motives and on certain political considerations. Thus, the impugned summon deserves to be quashed.

48. Submissions made by Mrs.Nalini Chidambaram (Petitioner-in-Person) :

The writ petitioner in person after the submission of the learned Senior Counsel, Mr.Satish Parasaran, made further submissions. The petitioner in person contended that the respondents lack jurisdiction even to issue the impugned summons. The petitioner in person is of an opinion that no F.I.R has been registered and therefore, no Scheduled Offence is established since the offence contemplated under the "PMLA" has not been established. Prima facie, the authorities competent under the "PMLA", lack jurisdiction for invoking the provisions of the "PMLA" against the writ petitioner. The party in person urged this Court to look into the provisions of Section 2(u) of "PMLA", which defines "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 of the value of any such property (or where such property is taken or held outside the country, then the property equivalent in value held within the country). Citing the above provision, the petitioner states that there is no registration of an F.I.R against the petitioner and there is no Scheduled Offence made out as required under the said provision. Thus, the authorities have no jurisdiction to issue any summons.

49. The party in person argued about the offence of Money-Laundering, which defines in Section (3) of the Act. Thereafter, the charge sheet filed by the Central Bureau of Investigation(CBI), Special Crime Branch, SIT, Kolkata dated 04.01.2016 was referred.

50. Relying on the said charge sheet filed before the Learned Additional Chief Judicial Magistrate, Alipur, Kolkata, West Bengal, the petitioner in person contended that the investigation conducted by the Central Bureau of Investigation (CBI), revealed that "M/s.Bengal Media Pvt. Ltd., will professionally and legally assist Smt.Manoranjana Sinh in her personal litigation with Positiv Television and Other personal cases. Investigation disclosed that Saradha Group paid Rs.1,00,00,000/- (Rupees One Crore Only) to Smt.Nalini Chidambaram, learned Senior Advocate on behalf of Smt.Manoranjana Sinh towards her legal expenses. Apart from the above, another Rs.34.90 lakhs were paid by Saradha Group to Smt.Nalini Chidambaram towards drafting the agreement. Investigation disclosed that "Saradha Group also paid for the

hotel bills and air tickets of Smt.Manoranjan Sinh on a number of occasions.”

51. Relying on the said findings of the Central Bureau of Investigation(CBI) in the charge sheet, the petitioner in person made a submission that no involvement of the petitioner has been ascertained even during the CBI enquiry and therefore, the respondents in these writ petitions cannot further probe into the matter. The respondents ought to have dropped all further proceedings in view of the findings of the CBI. It is confirmed during the investigation that the petitioner had received the said amount of Rupees one crore and thirty nine lakhs(Rs.1 crore and 39 lakhs only) towards the legal fees and for that, the petitioner had submitted all required documents and therefore, the respondents cannot be allowed to proceed further. The statement given by Mr.Sudipto Sen/accused, who was in custody at the time of deposing, cannot be taken as an admissible evidence for the purpose of involving the writ petitioner in the case. The statement given in the custody cannot be relied upon for the purpose of implicating the writ petitioner. Therefore, the present summons impugned in these writ petitions are liable to be quashed. The party in person, contended that even under Section 154 and 155 of the Code of Criminal Procedure, 1973, the respondents have not made out any prima facie case for the purpose of invoking the provisions of "PMLA". For all these reasons, the writ petitions deserve to be allowed.

52. Judgments relied on by Mrs.Nalini Chidambaram:

The High Court of Madhya Pradesh Bench at Indore in the case of Vijay Madanlal Choudhary vs. Union of India and Another [W.P.No.4336 of 2015 etc. decided on 20.10.2015), wherein in paragraph 21, held as under:-

"21. So far as the issue of investigation is concerned, the "PMLA" does not contain any provision parallel to Section 154 of the Cr.P.C. for registration of FIR, Section 157 of the Cr.P.C. relating to sending the report to the Magistrate, Section 167 Cr.P.C. relating to the procedure when investigation cannot be completed within 24 hours and Section 172 of the Cr.P.C. relating to maintaining the case diary. If the offence is registered against a person under the "PMLA" then the investigation is to be carried out by following some reasonable procedure. Such a course is also necessary keeping in view the issue of personal liberty and fair and proper investigation. The judgment of the Supreme Court in the matter of State of

Haryana and others Vs. Bhajan Lal and others, reported in (1992) Supp(1) SCC 335 also supports the petitioner's contention that unfettered power cannot be given in respect of investigation. Though in the said judgment it has been observed that the investigation of the offence is the field exclusively reserved for the police officers, but the said observation has been made in respect of offence registered under the IPC whereas in the present case the offence is registered under "PMLA". Under the provisions of "PMLA", the investigating officers are not the police officers but since for investigation of offence Provisions of Cr.P.C. are held to be applicable, therefore, they are required to follow the same. Keeping in view the provisions of Section 65 of "PMLA" and also the fact that there is no procedure prescribed in "PMLA" for investigation of the offence, I am of the opinion that the procedure which has been prescribed under the Cr.P.C. is required to be followed while investigating the offence under "PMLA".

53. The Gujarat High Court at Ahmedabad in the case of Foziya Samir Godil vs. Union of India [Special Criminal Application (Direction) No.1725 of 2014 with Special Criminal Application No.1748 of 2014 decided on 9.5.2014], wherein in paragraph-42, held as under:-

"42. However, so far as petitioner-Foziya Samir Godil is concerned, being a woman, it is rightly contended by the learned counsel for the petitioners that she is entitled to benefits of all the procedures applicable to the woman under the relevant law and to that extent, the respondents at the threshold shall have to comply with the provisions of law."

54. Relying on the said Gujarat High Court judgment, it is submitted that the Hon'ble Supreme Court of India in the case of Kusum Ingots and Alloys Ltd vs. Union of India and Another [(2004) 6 SCC 254], held that "the court must have the requisite territorial jurisdiction. An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether

interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act”.

55. Relying on the said proposition laid down by the Apex Court of India, it is contended that the Gujarat High Court judgment is binding on all the Constitutional Courts across the country and therefore, Section 160 Cr.P.C., is to be scrupulously applied in the case of the writ petitioner also.

56. The Delhi High Court in the case of Asmita Agarwal vs. The Enforcement Directorate [2002 CrI.LJ 819], in paragraphs 6 and 7, held as under:-

“6. Bare reading of the proviso makes it clear that if the attendance of the woman is required it shall be at her residence. Admittedly, the petitioner was summoned to produce documents. Reading of the summon dated 8th May, 1997 under Section 40 of the FERA shows she was only to produce documents. It appears she was summoned in connection with some on going investigation. She was to answer certain queries.

7. Contention of Mr. K.K. Sud, Addl. Solicitor General, that by directing to investigate her at her residence there has been a violation of the provision of FERA. We find no substance in this contention. Section 4 of the Code of Criminal Procedure deals with the trial of offence under the Indian Penal Code and other laws. Perusal of Sub Section 2 of Section 4 show that all offences shall be investigated, inquired into, tried, and otherwise dealt with under the same provision and the Code subject to the condition that if there is any enactment or a special Code regulating the manner or place of investigating, inquiring into, trying or otherwise then the Code will not apply. But as already pointed out above, FERA even though a special Code or enactment, nowhere provides as to where the investigation of woman is to be carried. Therefore, in the absence of any provision available in the special enactment, the provision of Code would apply as laid down under Section 4(2)

of the Code. In this respect reference can be made to the decision of the Supreme Court in the case of Directorate of Enforcement v. Deepak Mahajan (Supra). In this case Apex Court held that the operation of Section 4(2) of the code is straightaway attributed to the areas of investigation, enquiry and trial of offences under the special laws including the FERA and the customs. Section 4 is comprehensive and, that Section 5 is not in derogation of Section 4(2) of the Code. It only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2) of the Code. It has further been observed that the provision of the Code would be applicable to the extent in the absence of any contrary provision in the special Act or any other special provision excluding the jurisdiction or applicability of the Code. That reading of Section 2 of the Code r/w Section 26(B) which governs any criminal proceeding as regards the course of which an offence is to be tried and as to the procedure to be followed renders the provision of the Code applicable in the field not covered by the provision of FERA or Customs Act. Admittedly, Apex Court in Deepak Mahajan's case (Supra) was not dealing with the proviso of Section 160 Cr.P.C. but was dealing with the applicability of Section 167 of the Code to a case to be filed under FERA. It is not denied that Section 160 and Section 167 of the Code fall under the same Chapter i.e. Chapter XII under the title "information to the police and their power to investigate". It was while dealing with and interpreting Section 167 Cr. P.C. under Chapter XII the Apex Court made the observation in Deepak Mahajan's case (Supra). The fact of the matter is that once the special legislation or enactment like FERA is silent with regard to certain procedure like where to investigate a woman, one cannot but have to have recourse to the code. Admittedly FERA is silent in this respect regarding investigating a woman or a minor under the FERA, therefore, we are of the view that the provisions of Section 160 of the Code would apply in the facts of this case. It may,

however, be made clear that the petitioner will fully co-operate with the investigating officer."

57. The petitioner cited the judgment of Kerala High Court in the case of David Morise. V. State of Kerala(Kerala), reported in 2011(1)KLT 246: 2011(2) AICLR 247 : 2011(2) Crimes 602 : 2012(7) R.C.R.(Criminal)1648 : 2011(1) Cri.CC 736, and the paragraph 4 is extracted hereunder:

"4.Petitioner is, admittedly, a resident of Ernakulam. He is also working at Ernakulam. By virtue of the powers under Section 160 of Code of Criminal Procedure, Deputy Superintendent of Police, though, can require a person to attend his office, when petitioner is neither a resident within the limits of the Investigating Officer or the adjoining places, he cannot be directed to appear before him. In such circumstances, Annexure-3 notice can only be quashed. Petition is allowed. Annexure-3 notice is quashed. But, that does not mean that Investigating Officer cannot question the petitioner or record his statement. Investigation Officer has to approach the petitioner and record the statement."

In respect of the above cited judgment, the same relates to Section 160 of Code of Criminal Procedure and the same cannot be relied upon in respect of the investigations to be conducted under the provisions of "PMLA".

58. In the case of Nandini Satpathy, Vs. P.L.Dani and another, reported in (1978) 2 SCC 424 and the paragraph 76 is extracted hereunder:

"76. Why do we? To serve the ends of justice. When a woman is commanded into a police station, violating the commandment of Section 160 of the Code, when a heavy load of questions is handed in, some permissible, some not, where the area of constitutional protection against self-incrimination is (until this decision) blurred in some aspects, when, in this Court, counsel for the accused unreservedly undertakes to answer in the light of the law we here lay down, when the object of the prosecution is to compel contrite compliance with Section 161 Cr.P.C abandoning all contumacy and this is achieved by the undertaking, when the pragmatic issues involved are so complex that effective barricades against police pressure to secure self-incrimination need more steps as indicated in our judgment, we hold that persistence in the prosecution is seeming homage to the rule of law and

quashing the prosecution secures the ends of justice – the right thing to do is to quash the prosecution as it stands at present. We regret that this dimension of the problem has escaped the Executive's attention for reasons best left unexplored.”

59. The said judgment is also irrelevant in respect of the facts and circumstances of the writ petitioner. In para 76, the Hon'ble Supreme Court of India made certain observations in general in respect of Section 161 of Cr.P.C and there cannot be any comparison in respect of the specialized investigations to be conducted under the provisions of the Money-Laundering Act, which came into force with effect from the year 2003. Thus, those judgments characterizes certain general circumstances cannot be fitting with the facts and circumstances of the present case, which dealt with under the provisions of “PMLA”.

60. In respect of the applicability and provisions of the Cr.P.C., the writ petitioner cited the judgment of the Hon'ble High Court of Delhi in the case of Rajbhushan Omprakash Dixit V. Union of India and another, in W.P.(Crl)363 of 2018 & Crl.M.A.2151 of 2018 dated 19.03.2018. The said judgment deals with Chapter XII of the Cr.P.C applied to “PMLA”. This Court is not having any different opinion in respect of the offences made therein. However, in respect of the present case, the summons issued for investigation under Section 50(2) is under challenge. In the case before the Delhi High Court, a complaint was registered and the accused was taken into custody. The challenge before the Delhi High Court was the non bailable warrant dated 24th January 2018. Therefore, the circumstances under which the applicability of the Criminal Code of Procedure with “PMLA” made by the Delhi High Court in the case cited supra, cannot have any implications and the present writ petitions are filed, challenging the very issuance of summons by the respondents under Section 50(2) of “PMLA”.

61. All these judgments referred by the writ petitioner are not having any relevance with reference to the facts and circumstances stated in the present writ petitions.

62. Submissions made by Mr.G.Rajagopalan, Additional Solicitor General of India:

In reply, the learned Additional Solicitor General of India, strenuously contended that the said Mr.Sudipto Sen, is not an accused in the proceedings initiated under “PMLA”. The investigations are in progress and pending. Under these circumstances, the petitioner cannot be allowed to go into the merits and the demerits of the case details. It is for the petitioner to submit all these informations to the investigating officers, who are competent to look into the matter for the

purpose of taking a decision. Once, the investigating authorities pressed the law into motion, then all concerned should cooperate to cull out the truth and to clarify certain documents in relation to the transactions, which all are sought to be clarified. As of now, no complaint is registered. In the absence of registration of a complaint under the Act, no cause of action would arise for the writ petitioner to move the present writ petition under Article 226 of the Constitution of India. In the absence of a complaint, the writ petitioner cannot refer all these provisions for the purpose of quashing the summons, which were issued under the provisions of the Act and the authorities competent are empowered to call any person for the purpose of clarifications and for verification of documents. It is the duty of all the citizens concerned to cooperate for such investigations conducted under the provisions of the Act and the very object of the Act is to prevent such evil offences of Money-Laundering. The investigation under the "PMLA" need not be compared nor akin to that of Police investigation. The statements made by the persons, are binding under the provisions and, these documents and records and clarifications sought for are only for the purpose of ascertaining the truth behind the alleged offences of Money-Laundering, if any made out. Thus, she cannot advance an argument by comparing the procedures and methods adopted during the Police investigation. The "proceeds of crime" are to be secured and thereafter, a complaint is to be registered, if the offences contemplated under the "PMLA" is established.

63. The learned Additional Solicitor General of India, further, urged this Court that the first summon was issued to the writ petitioner on 04.03.2016 and the writ petitioner through her authorized agent Mr.N.R.R.Arun Natarajan, submitted a reply on 14.03.2016. Thereafter, on 31.03.2016, another reply was given by the authorized agent of the writ petitioner. Subsequently, another summon was issued on 17.08.2016, which is the impugned proceedings in the present writ petitions. When the summoning officer found that personal appearance of the writ petitioner is required for certain explanations of the submitted documents, the writ petitioner cannot take a stand that she cannot be summoned at all. When the writ petitioner had already submitted certain documents and explanations responding to the earlier summons issued on 04.03.2016, it is the duty of the writ petitioner to ensure further clarifications or verifications in respect of the documents and explanations submitted by her. The second summon issued on 17.08.2016(impugned order) is a consequential summon issued for the purpose of personal appearance in order to get certain clarifications and explanations in relation to the documents already submitted by the writ petitioner through her authorized agent.

64. The learned Additional Solicitor General of India referred Section 2(c) of the Code of Criminal Procedure, which defines "cognizable offence" means an offence which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

65. Citing the above provision, the learned Additional Solicitor General of India, contended that even arrest can be made without warrant, if a cognizable offence is made under any other law. Therefore, the respondents after investigation, if came to the conclusion that a cognizable offence is made out, then they can invoke the said powers. Section 19 of "PMLA" enumerates power to arrest, which reads as under:

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

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

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

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court.

66. Section (50) (2) empowers the authorities "to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under the Act". Thus, the writ petitioner cannot go beyond the scope of these provisions and emphasize this Court by stating that the respondents lack jurisdiction or she has already been exonerated by the CBI in the charge sheet filed before the learned Additional Chief Judicial Magistrate, Alipur, Kolkata, West Bengal. Those reports are irrelevant as far as the offence of Money-Laundering

contemplated under the provisions of "PMLA". It is a distinct one and the offence of Money-Laundering is defined under Section (3) of the Act. Therefore, an independent investigations are required under the provisions of the Act for the purpose of ascertaining the offences relating to the Money-Laundering. There cannot be any comparison in respect of the CBI enquiry regarding other offences and specifically, in respect of the offences under the "PMLA". Section (3), which defines Offence of Money-Laundering and Section (4), which stipulates Punishment for Money-Laundering. Thus, a separate and independent investigation are contemplated and the authorities competent are bound to proceed under the provisions of the Act for the purpose of ascertaining, whether any offence of Money-Laundering under the Act is committed or not.

67. The learned Additional Solicitor General of India cited Section(71) of the "PMLA", which states that Act to have overriding effect. Accordingly, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore, being a Special Act, the "PMLA" alone will prevail over in respect of the offences in relation to Money-Laundering. Thus, the Special Act will prevail over in all respects, more specifically, the "PMLA" and the respondents by invoking provisions of the "PMLA", issued summons for clarifications and verifications of certain documents by the writ petitioner in person and therefore, the writ petitioner is liable to cooperate for the investigation to be continued and concluded by the respondents in all respects under the provisions of the Act. Even without arriving a conclusion by the competent authorities, the writ petitioner has moved these writ petitions prematurely and by challenging the very summon issued by the competent authorities under the provisions of "PMLA". Thus, the writ petitions deserve to be rejected on the ground of maintainability, as premature and even on merits.

68. Judgments relied on by the respondents:

The Hon'ble Supreme Court of India in the case of State of Haryana and Others vs. Bhajan Lal and Others [1992 Supp (1) SCC 335], in paragraph 108, held as under:-

"108. No doubt, there was no love lost between Shri Bhajan Lal and Dharam Pal. Based on this strained relationship, it has been then emphatically urged by Mr K. Parasaran that the entire allegations made in the complaint due to political vendetta are not only scurrilous and scandalous but also tainted with mala fides, vitiating the entire proceedings. As it has been repeatedly

pointed out earlier the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case, that is on November 21, 1987. The evidence has to be gathered after a thorough investigation and placed before the court on the basis of which alone the court can come to a conclusion one way or the other on the plea of mala fides. If the allegations are bereft of truth and made maliciously, we are sure, the investigation will say so. At this stage, when there are only allegations and recriminations but no evidence, this court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available. Therefore, we are unable to see any force in the contention that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides. Even assuming that Dharam Pal has laid the complaint only on account of his personal animosity, that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. In this connection, the following view expressed by Bhagwati, C.J. in Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288, 318 : 1987 SCC (Cri) 82] may be referred to : (SCC p. 318, para 16)

"It is a well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant."

Beyond the above, we do not wish to add anything more."

69. The order passed by single Bench of this Court in the case of R.Subramanian vs. Associate Director, Directorate of Enforcement [W.P.No.10633 of 2015 decided on 27.4.2015], in paragraphs 8, 9 and 10 read as under:-

"8. The respondent, in exercise of powers under Section 50(2) and (3) of the Money Laundering Act, has issued summons dated

25.03.2015, calling upon the petitioner to appear along with documents as per the annexure. It is relevant to extract Section 68 of the Money Laundering Act, which reads as under:

"68. Notice, etc., not to be invalid on certain grounds.- No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of the Act."

9. As per the said provision, no notice, summons, order, document or other proceeding..... issued or taken in pursuance of any of the provisions of shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons.....is in substance and effect in conformity with or according to the intent and purpose of the Act. The reasons for introducing Money Laundering Act is that the money laundering causes serious threat not only to the financial systems of the country, but also their integrity and sovereignty and the object of the Act is to prevent money laundering and provide for confiscation of property, derived from income involved in money laundering or materials connected or incidental thereto. Therefore, the points urged by the petitioner are unsustainable. Even in the impugned summons, it has been indicated that every proceeding under Section 50(2) and (3) of the Money Laundering Act shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and if a person fail to give evidence as mentioned in the schedule, he shall be liable to penal proceedings under the Act.

10. Any statement obtained from the

petitioner does not infringe the constitutional guarantee of protection against self-incrimination under Article 20(3) of the Constitution of India, as held so by the Hon'ble Supreme Court of India in C.Sampath Kumar v. Enforcement Officer [(1997) 8 SCC 358]. It cannot be said that the respondent lacks jurisdiction to issue summons or has no authority of law to issue summons for the purpose of aiding investigation under the provisions of Money Laundering Act. This Court, on a careful consideration of the materials, is of the view that the writ petition lacks merit."

70. The Hon'ble Division Bench of this Court in the case of R.Subramanian vs. Associate Director, Directorate of Enforcement [W.A.No.764 of 2015 decided on 18.8.2015], in paragraphs 14 and 15 read as under:-

"14. The learned counsel for the appellant placed heavy reliance on the decision of Supreme Court in Ritesh Agarwal v. SEBI (2008) 8 SCC 205 in support of his contention that a penal statute will not have any retrospective effect or retrospective operation. There is no dispute with the legal position. However, in this case, the respondent is yet to decide the issue as to whether the Act of money-laundering was complete before making Section 420 of IPC as a Scheduled Offence. The matter requires collection of materials and factual analysis.

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."

71. ISSUES:

1) Whether the writ petitions challenging the summons issued by the Enforcement Directorate under the provisions of Section 50 (2) and (3) "PMLA" are maintainable or not?

2) Whether the Courts can entertain the merits of the issues, when the investigation or interrogation by the Enforcement Directorate is in progress?

3) Whether the provisions of Section 160 Cr.P.C., can be applied scrupulously in all cases of women in relation to the investigation and interrogation by the Enforcement Directorate more so under PMLA?

4) Whether the "PMLA" will have the overriding effect with reference to the provisions under Cr.P.C., in the matter of issuance of summons, proceeding with the investigation and summoning a person to appear in person under PMLA?

5) Whether the writ petitioner is entitled for any other relief based on any distinct circumstances or as an exceptional case?

72. The Prevention of Money Laundering Act, 2002 was introduced as its statement of objects and reasons mentioned, to make money laundering an offence and to attach property involved under money laundering, so that serious threat to the financial system of India is adequately dealt with. It is worth setting out the statement of objects and reasons of the Act in full.

73. STATEMENT OF OBJECTS AND REASONS OF PMLA:

It is being realised, world over, that money laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threats are outlined below:— (a) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence. (b) the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money-laundering. (c) the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of the important heads are—

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

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

(iii) confiscation of the proceeds of crime;

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

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

(d) the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, inter alia, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

(e) the United Nations in the Special Session on Countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.

74. In view of an urgent need for the enactment or a comprehensive legislation inter alia for preventing money-laundering and connected activities confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money-laundering, etc., the Prevention of Money-Laundering Bill, 1998 was introduced in the Lok Sabha on the 4th August, 1998. The Bill was referred to the Standing 5 Committee on Finance, which presented its report on the 4th March, 1999 to the Lok Sabha. The recommendations of the Standing Committee accepted by the Central Government are that (a) the expressions "banking company" and "person" may be defined; (b) in Part I of the Schedule under Indian Penal Code the word offence under section 477A relating to falsification of accounts should be omitted; (c) 'knowingly' be inserted in clause 3(b) relating to the definition of money-laundering; (d) the banking companies, financial institutions and intermediaries should be required to furnish information of transactions to the Director instead of Commissioner of Income-tax (e) the banking companies should also be brought within the ambit of clause II relating to obligations of financial institutions and intermediaries; (f) a definite time limit of 24 hours should be provided for producing a person about to be searched or arrested person before the Gazetted Officer or Magistrate; (g) the words "unless otherwise proved to the satisfaction of the authority concerned" may be inserted in clause 22 relating to presumption on interconnected transactions; (h) vacancy in the office of the Chairperson of an Appellate Tribunal, by reason of his death, resignation or otherwise, the senior most member shall act as the Chairperson till the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill the vacancy, enters upon his office; (i) the appellant before

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

75. In addition to above recommendations of the standing committee the Central Government proposes to (a) relax the conditions prescribed for grant of bail so that the Court may grant bail to a person who is below sixteen years of age, or woman, or sick or infirm, (b) levy of fine for default of non-compliance of the issue of summons, etc. (c) make provisions for having reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property so as to facilitate the transfer of funds involved in money laundering kept outside the country and extradition of the accused persons from abroad. 4. The Bill seeks to achieve the above objects."

76. Though the Act was passed by Parliament in the year 2002, it was brought into force only on 1.7.2005. Some of the important provisions, with which we are directly concerned, are set out hereinbelow:

"Section 2. Definitions.—(1) In this Act, unless the context otherwise requires,—

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

(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country; (x) "Schedule" means the Schedule to this Act; (y) "scheduled offence" means—

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule."

77. Section 3. Offence of money-laundering.— Whosoever

directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with 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.

78. Section 4. Punishment for money-laundering.— Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine: Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

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

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

(a) any person is in possession of any proceeds of crime; 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 that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property 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 9 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 subsection (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 subsection (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

80. CHAPTER IV OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

Section 12. Reporting entity to maintain records.—

(1) Every reporting entity shall—

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;

(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients. (2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section

(1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(5) The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter.]

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

- (a) Director or Additional Director or Joint Director,
- (b) Deputy Director,
- (c) Assistant Director, and
- (d) such other class of officers as may be appointed for the purposes of this Act.

82. Section 50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:— (a) discovery and inspection; (b) enforcing the attendance of any person, including any officer of a [reporting entity], and examining him on oath; (c) compelling the production of records; (d) receiving evidence on affidavits; (e) issuing commissions for examination of witnesses and documents; and (f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director

shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.

83. Section 51. Jurisdiction of authorities.—(1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this Act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities. (2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:— (a) territorial area; (b) classes of persons; (c) classes of cases; and (d) any other criterion specified by the Central Government in this behalf.

84. Section 65. Code of Criminal Procedure, 1973 to apply.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

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

86. Reasons and Conclusions:

In respect of the provisions of "PMLA", Section 50(2) unambiguously enumerates that the Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

87. Sub-clause (3) stipulates that all the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

88. Section 50(1)(b) stipulates that enforcing the attendance of any person, including any officer of a reporting

entity and examining him on oath.

89. The very object of the provision is unambiguously enumerated in the said provisions.

90. Section 50 of the "PMLA" states that the Director for the purpose of Section 12 shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of the matters stipulated. Therefore, enforcing the attendance of any person is certainly permissible for the purpose of proceeding investigation. Sub-clause (2) also clarifies the same.

91. Sub-clause (3) to Section 50 states that the persons who received such summons from the competent authorities under the "PMLA" is bound to attend in person. However, the authorised agents are also permitted to attend the investigation on behalf of the person against whom such summon was issued. However, if the competent authorities under the "PMLA" is of an opinion that personal appearance is required for the purpose of seeking certain specific clarifications, then the scope of the Act is wide and the authorities competent are empowered to issue summons for the personal appearance of a person to participate in the investigation process.

92. The "PMLA", being a Special Act, has provided certain mandatory provisions in order to ensure the effective investigation of the offence of money laundering. The statement of objects and reasons enumerated in the aforementioned paragraphs unambiguously portrays that such an attendance of the persons are required for personal investigation, so also the authorities competent under the "PMLA" is empowered to do so. Therefore, during the course of investigation, if the authorities are of an opinion that certain personal clarifications are required by person against whom summons are issued, then they are empowered to secure such personal appearance of such persons. In extraordinary cases, where the authorities of an opinion that such personal appearance is not strictly required, then they are at liberty to waive the personal appearance. However, in the present case on hand, the authorities competent insisted for the personal appearance of the writ petitioner Mrs.Nalini Chidambaram on certain specific grounds. Certain specific instances and the factual circumstances based on the documents are put forth even in the counter-affidavit filed in this writ petition for the purpose of obtaining clarifications from the writ petitioner Mrs.Nalini Chidambaram.

93. The learned Senior Counsel for the writ petitioner Mr.Satish Parasaran relying on Section 160 of the Criminal

Procedure Code had stated that women cannot be compelled to appear in person for such investigations and therefore, the very compulsion put forth by the second respondent for the personal appearance of the writ petitioner is directly in violation of Section 160 of the Code of Criminal Procedure Code, 1973.

94. Section 160 of the Code of Criminal Procedure Code is extracted as under:

"160. Police officer's power to require attendance of witnesses. (1) Any police officer, making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case ; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence."

95. A reading of the proviso clause, this Court is of an opinion that the privilege has been given to the aged persons and for a woman and mentally or physically disabled persons are provided to avoid any personal inconvenience or hardship to such persons. Such a special provision made for the purpose of avoiding certain hardships cannot be applied in a straight jacket formula. Certain concessions provided in the Criminal Procedure Code, which is to be construed that the same is to be applied only in genuine cases, where it is not actually possible for a person to travel for a long distance and participate in the investigation proceedings. Thus, the factual circumstances are also to be looked into in such cases. The very intention of the Legislation with reference to Section 160 of the Code of Criminal Procedure Code is that the aged persons, women or mentally or physically retarded disabled, cannot be compelled to travel for a long distance for the purpose of investigation. In such cases alone, the authorities can take a decision to investigate or interrogate such persons in their place of residences.

96. In all the cases of aged person, women, if the authorities have to come over to the residences of the witnesses for the purpose of obtaining statement, this Court is afraid that the very ingredients in Section 160 of the Code of Criminal Procedure is not only abused and will become impracticable. Our great Nation, being a vast country, wherein large number of crimes relating to money laundering and other offences are being committed, it may not be possible for the Enforcement Directorate to travel all over the country, in each and every case for the purpose of recording the statement from the witnesses, and it is not the intention of the Legislation.

97. Such provisions granting certain special concessions are to be interpreted constructively and in a pragmatic manner. Constructive interpretation of such provisions are mandatory. The concept of constructive interpretation is that certain factual circumstances with reference to the provisions are alone to be taken into account for the purpose of granting the relief in a particular case. Therefore, the proviso clause in Section 160 of the Code of Criminal Procedure is not for the purpose of granting an absolute exemption of personal appearance to all the persons across the country, who has attained the age of 65 years or women or a mentally and physically disabled. Even in case of physical disabled category, there are certain facts to be ascertained before securing the personal appearance. In some cases of differently abled persons, personal appearance can be insisted upon. It is not as if there is a total exemption of personal appearance as provided under Section 160 of the Cr.P.C.

98. Constructive interpretation is a method of legal interpretation that aims to find a normative unity in the diversity of rules that characterise a legal system. It is about finding the interpretation of a rule that fits in with the current legal system and is most justified according to ideals of fairness, justice, procedural due process and integrity. "Constructive Interpretation is a matter of imposing purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong".

99. Law as integrity holds that when 'hard cases' come in front of a Court, the Court has an obligation to recognise legal rights and duties on the assumption that they were all created by the community as an institution. Further, a concept of law can only be said to be true if it imbibes the principles of justice, fairness and procedural due process, a Judge when deciding any new case shall enforce these as it would ensure that every person has a fair and just standing in front of the same standard.

100. Dworkin holds that the inclusion of these principles will result in the finest constructive interpretation of the community's legal practice. Law as integrity states that the law must speak with one voice, so Judges must assume that the law is structured on coherent principles about justice, fairness and procedural due process, and that in all fresh cases which comes before them, Judges must enforce these so as to make each person's situation fair and just by the same standard that is to say, treat every equally.

101. Difference between liberal and constructive interpretation is that liberal interpretation is used to advance the object for which the Statute was enacted irrespective of the changes that happen in the society or without having regard to the compatibility in the existing legal system while, constructive interpretation is adopted to give the Statute the best possible colour keeping in mind the changes that occur. Constructive Interpretation is the most suitable and appropriate kind of interpretation that is beneficial to the society at large. Liberal Interpretation is used only for remedial Statutes, while constructive interpretation can by and large be used for any Statute to make it more fit and proper in the current legal system.

102. Under these circumstances, this Court is of an opinion that based on the gender, the exemption cannot be sought for in a routine manner. Undoubtedly, Section 160 Cr.P.C., provides an exemption to women from participating in the investigating process, and cannot be called to participate in the investigation process in the Office of the Investigating Authorities. In normal circumstances, every such exemption can never be construed as an absolute prohibition. The exemptions are not mandatory, and subject to the facts and circumstances of each case.

103. The language used in proviso to Section 160 of the Criminal Procedure Code is that no woman shall be required to attend any place than that the place in which such women resides. The word employed in the Statute is "no woman shall be required". Thus, it is not, as if, there is a total and absolute exemption of appearance before the Investigating Officer. Adopting the principles of constructive interpretation, this Court is of an opinion that "not required" means only in certain circumstances and not always. Therefore, the exemption is not absolute and certainly subject to certain facts and circumstances. Such facts and circumstances are to be assessed by the Investigating Officer. In case where a woman is sick and unable to move from one place to another place and bedridden, then the Investigating Officer shall not direct the woman to travel for a long distance and give evidence or statement. In

such cases alone, the proviso clause can be invoked by the authorities as well as by the person, who is incapable of travelling or otherwise incapable of attending the office of the Investigating Officers. Thus, such factual circumstances are to be assessed before granting the benefit of proviso clause to Section 160 Cr.P.C. The language employed in the proviso itself is unambiguous that exemption is not absolute and subject to certain qualifications. Such qualifications are to be determined on ascertaining the facts and circumstances in each case.

104. In the present case on hand, the writ petitioner is a Senior Advocate actively practicing before the Hon'ble Supreme Court of India as well as before various High Courts across the country. Such being the voluntary statement of the writ petitioner, this Court has no reason to believe that such an exemption to be extended to the writ petitioner for the purpose of her non-participation in the investigation process, by appearing in person.

105. Taking another view of the matter, Section 5 of the Code of Criminal Procedure stipulates the Saving Clause which reads as under:-

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

106. It is enumerated that in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred. Therefore, when there is a Special Act in force in respect of the offence of money laundering, then certain general procedures contemplated under the Criminal Procedure Code need not be applied in that particular case.

107. The Special Act in the present case, namely, the "PMLA", has got its own objects and purpose. The nature of offences under the "PMLA" is distinct and the course and the method of investigation to be adopted may be slightly different from that of the regular offences. Prudent and intelligent way of investigations may be required for the purpose of culling out the truth in respect of the offence of money laundering under the provisions of the "PMLA". Certain specialised way of understanding the nature of the transactions are also to be taken note of. Indian Parliament keeping in mind these specialised nature of the offences and the investigations

required, made a specific provision in Section 50 that the attendance of a person, if necessary, can be secured. No such exemptions are provided under the "PMLA" for such persons or for women. Therefore, the application of the Criminal Procedure Code, more specifically, Section 160, cannot be mandatory in respect of the offences prescribed under the "PMLA". In other words, the provisions of "PMLA" will have overriding effect that of the general provisions provided under the Code of Criminal Procedure, 1973.

108. Section 5 of the Code of Criminal Procedure stipulates that when there is a Special Law and the Act in respect of certain offences then that alone should be applied and the procedures contemplated under the Code of Criminal Procedure, cannot be applied overriding the effect of special enactment.

109. Let us now look into Section 65 of "PMLA". Section 65 specifically states that the Code of Criminal Procedure, 1973 shall apply, in so far as they are not in consistent with the provisions of the Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

110. Section 65 categorically enumerates that if the provisions of Code of Criminal Procedure shall apply in so far as they are not in consistent with the provisions of "PMLA". Therefore, the intention of the Legislation is that certain provisions enumerated in the "PMLA" to be applied strictly and scrupulously with reference to the offences committed under the "PMLA". In such circumstances, no person can claim any privilege or advantage from and out of the procedures contemplated under the Code of Criminal Procedure. Even Section 65 speaks about the investigation. Therefore, in respect of the investigation, the Code of Criminal Procedure need not be applied in the event of specific provisions under the "PMLA". In the present case on hand, the summons are issued under Section 50(2) and (3) of the "PMLA". Section 50(2) of the "PMLA" categorically enumerates that the Assistant Director shall have power to summon any person whose attendance he considers necessary.

111. The counter-affidavit filed on behalf of the respondents categorically enumerates that the presence of the writ petitioner Mrs. Nalini Chidambaram is required for the purpose of getting certain specific clarifications in relation to certain monetary transactions and the documents submitted. The reasons for securing the personal appearance are also enumerated in the counter-affidavit. On a perusal of the whole counter-affidavit filed on behalf of the respondents, this Court is of an opinion that, when the Investigating Officer is of an opinion that personal clarifications are required in respect of

written statements and the documents filed, then the Court would not enter into the arena of such clarifications to be obtained from the person in order to ensure free and fair investigations.

112. Section 71 of the "PMLA" deals with the Act to have overriding effect. Section 71 enumerates that the provisions of this Act shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus, the provisions of the "PMLA", and the procedures contemplated for the purpose of investigation or prosecution are also to be followed under the provisions of the "PMLA".

113. In respect of the writ petitioner, the investigation is in progress with reference to the allegations which attracts the provisions under the "PMLA". Thus, the procedures contemplated for the purpose of summoning the witnesses are to be followed only with reference to Section 50(2) and (3) of the "PMLA". The request for personal appearance made by the authorised representative of the writ petitioner has been rejected on the ground that the documents and the explanations given by the authorised representative were not satisfactory and in relation to certain specific financial transactions, the personal clarification of the writ petitioner in person is required. When the Investigating Authorities are of the opinion that such clarifications are required for the purpose of ascertaining the truth behind the financial transactions, this Court cannot have any other contrary opinion in respect of such clarifications or explanations to be obtained from the writ petitioner in person in respect of the financial transactions, statements made and the documents filed.

114. As rightly pointed out, no person can seek exemption in a routine manner. Exemptions from personal appearance can be granted only on exceptional circumstances, where the authority or the Court is of an opinion that such personal appearance would cause greater injustice or hardship for such person. In normal circumstances, all the citizen of this great Nation are bound to extend co-operation for such investigation as a dutiful citizen. Whenever a citizen receives the summon for the purpose of investigation to cull out certain truth regarding the offence of money laundering, then, such person is bound to appear in person to explain to the authorities competent the truth or otherwise. If the authorities are of the opinion that such person is incapable of attending the process of investigation in person, then they are empowered to grant exemption in a particular manner by ascertaining the facts and circumstances and grant such exemption in a judicious manner. The authorities are also not empowered to grant such exemptions in a routine manner. They are bound by the provisions of "PMLA". The very

purpose and the object of the Act is to ensure that the offence of money laundering is prevented in the manner stipulated under the provisions of the Act. Therefore, it is not automatic or as a matter of routine in respect of grant of exemptions from personal appearance of the witnesses for investigation or interrogation.

115. At the outset, this Court is of an opinion that the provisions of the "PMLA" will prevail over as the same is the Special Act enacted for the purpose of dealing with the offences of money laundering. When there is a specific provision for personal appearance, then the only course would be to assist the competent authorities for the purpose of conducting the investigation in the manner prescribed under the Act.

116. The learned Senior Counsel, appearing on behalf of the writ petitioner, states that the writ petitioner, being a woman, cannot be compelled for personal appearance and the women in this country are vulnerable and therefore, the authorities cannot insist a woman for personal appearance in order to proceed with the investigation.

117. In the present case on hand, even in the affidavit filed in support of the writ petition, the writ petitioner Mrs. Nalini Chidambaram, in paragraph 2, categorically stated that she is a Senior Advocate, having an active practice in the Supreme Court of India, High Court of Madras and other Courts. The writ petitioner was the Standing Counsel for the Income Tax Department for 17 years. She appeared in almost all the High Courts in India. The writ petitioner has an extensive practice and is practicing for almost 48 years uninterruptedly. When the petitioner describes her position and status not only as a Senior Advocate, but also appearing in all High Courts, including the Supreme Court of India, then this Court has to draw the factual inference that the writ petitioner can never said to be incapable of attending or participating for the effective investigation of the case being undertaken by the respondents under the provisions of the "PMLA".

118. When the writ petitioner has described her status and capacity as a Senior Advocate, this Court expects that as a responsible and dutiful citizen of this great Nation, the writ petitioner would participate in the process of investigation in order to cull out the truth.

119. The learned Senior Counsel, appearing on behalf of the writ petitioner, states that the investigations are almost in final shape, if so the writ petitioner has to cooperate with for the investigation. Looking into the nature of the allegations set out in the case under the "PMLA", the same is running to

several thousands of crores and therefore, the writ petitioner, being a dutiful citizen has to cooperate for an effective investigation of such offences alleged to have been committed under the "PMLA", which is against the interest of the economic growth of our great Nation.

120. The writ petitioner has raised an apprehension that she may be arrested during the course of investigation and that is the reason why the second respondent has directed the writ petitioner to appear in person on a Friday. The learned Additional Solicitor General of India Mr.G.Rajagopalan, clarifies this point by stating that the Investigating Authorities have no such intention at all. Everything is in a premature stage. Nobody can presume the result of the investigation both the writ petitioner as well as the respondents. All these aspects are to be decided only after the completion of the investigation and after arriving a concrete conclusion based on the evidences and the documents.

121. The learned Additional Solicitor General of India has stated that in the event of consent by the writ petitioner to participate in the process of investigation, then he would request the respondents to fix any other day other than a Friday. Therefore, the date fixed on Friday has no significance and no relevance at all. It is a mere apprehension based on imagination and therefore, such apprehensions can never be entertained in a writ petition, wherein the very issuance of summon is questioned. The writ petition is not only premature and the writ petitioner has not made out any cause of action for the purpose of entertaining the present writ petition and the writ petitions are liable to be dismissed in limine as not maintainable.

122. This Court would like to cite the judgment of the Three Judges Bench rendered in the case of Poolpandi etc. vs. Superintendent, Central Excise and Others etc. ect. [AIR 1992 SC 1795], His Lordship L.M.Sharma, J., speaking for the Bench held in paragraph as under:-

"11. We do not find any force in the arguments of Mr Salve and Mr Lalit that if a person is called away from his own house and questioned in the atmosphere of the Customs office without the assistance of his lawyer or his friends his constitutional right under Article 21 is violated. The argument proceeds thus : if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering questions it amounts to mental torture. We are unable to agree. It is true

that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice. Mr Salve was fair enough not to pursue his argument with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the 'just, fair and reasonable test' we hold that there is no merit in the stand of appellant before us."

123. The observations made by the Three Judges Bench are categorical in nature. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. Therefore, it is the subjective satisfaction of the Investigating Authorities. If the Investigating Authorities are of the opinion that the personal investigations and clarifications are imminent through personal appearance of the writ petitioner, then the same is to be done in the manner known

to law. Under those circumstances, the writ petitioner cannot seek an exemption merely citing general exemptions granted under Section 160 of the Code of Criminal Procedure, 1973.

124. The general exemptions are granted under the Code of Criminal Procedure in order to ensure that certain genuine cases wherein such personal appearances of such classified persons are not possible, then the provision may be invoked. Such general provisions are not made in order to defeat the very purpose and the object of the course of investigations. Such proviso clauses are provided granting certain exemptions to a particular class or category of persons in order to ensure that the fundamental rights ensured under the Constitution to the citizens of this great Nation are protected under Article 21, which ensures not only life but also a decent life. When the Supreme Court has elaborated the scope and meaning of Article 21, so as to ensure a decent life to the citizen, then the same is to be preserved in all respects. Whether the circumstances, arises, when the authorities competent should be prevented from exercising an excessive power than it is required for the purpose of protecting the fundamental rights enshrined under Article 21 of the Constitution of India. However, under the guise of protection granted under Article 21 of the Constitution, the course of investigation in a case under the PMLA cannot be paralised.

125. Always the rights, privileges and duties are corresponding in nature. Whenever a citizen claims rights, the duties are also to be dealt with correspondingly. The right and duties are inseparable. The rights and duties are co-related terms. When the rights are claimed, then the duties or its violations are also to be considered, while ensuring certain rights in certain circumstances with reference to the investigations.

126. The Hon'ble Supreme Court of India in the case case of Nimesh Tarachand Shah vs. Union of India and Others [2018 CrI.LJ 721], in classic terms enumerated these principles in paragraph-19 with reference to the case of Maneka Gandhi vs. Union of India [1978 (1) SCC 848], and the case of Rajeshkumar, held as under:-

"19. Article 21 is the Ark of the Covenant so far as the Fundamental Rights chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights chapter (along with Article 20) that cannot be suspended even in an emergency (See

Article 359(1) of the Constitution). At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India (1978) 1 SCC 248. Thus, in Rajesh Kumar (supra) at 724-726, this Court held:

"56. Article 21 as enacted in our Constitution reads as under:

"21. Protection of life and personal liberty.-No person shall be deprived of his life or personal liberty except according to procedure established by law."

57. But this Court in Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] held that in view of the expanded interpretation of Article 21 in Maneka Gandhi [(1978) 1 SCC 248], it should read as follows: (Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580], SCC p. 730, para 136)

"136. ... 'No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law.' In the converse positive form, the expanded article will read as below:

'A person may be deprived of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law.'"

58. This epoch-making decision in Maneka Gandhi [(1978) 1 SCC 248] has substantially infused the concept of due process in our constitutional jurisprudence whenever the court has to deal with a question affecting life and liberty of citizens or even a person. Krishna Iyer, J. giving a concurring opinion in Maneka Gandhi [(1978) 1 SCC 248] elaborated, in his inimitable style, the transition from the phase of the rule of law to due process of law. The relevant statement of law given by the learned Judge is quoted below: (SCC p. 337, para 81)

"81. ... 'Procedure established by law', with its lethal potentiality, will reduce life and liberty to a precarious plaything if we do not ex necessitate import into those weighty words an adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head. Can the sacred essence of the human right to secure which the struggle for liberation, with 'do or die' patriotism, was launched be sapped by formalistic and pharisaic prescriptions, regardless of essential standards? An enacted apparition is a constitutional, illusion. Processual justice is writ patently on Article 21. It is too grave to be circumvented by a black letter ritual processed through the legislature."

59. Immediately after the decision in Maneka Gandhi [(1978) 1 SCC 248] another Constitution Bench of this Court rendered decision in Sunil Batra v. Delhi Admn. [(1978) 4 SCC 494 : 1979 SCC (Cri) 155] specifically acknowledged that even though a clause like the Eighth Amendment of the United States Constitution and concept of "due process" of the American Constitution is not enacted in our Constitution text, but after the decision of this Court in Rustom Cavasjee Cooper [(1970) 1 SCC 248] and Maneka Gandhi [(1978) 1 SCC 248] the consequences are the same. The Constitution Bench of this Court in Sunil Batra [(1978) 4 SCC 494 : 1979 SCC (Cri) 155] speaking through Krishna Iyer, J. held: (Sunil Batra case [(1978) 4 SCC 494 : 1979 SCC (Cri) 155] , SCC p. 518, para 52) "52. True, our Constitution has no 'due process' clause or the Eighth Amendment; but, in this branch of law, after Cooper [(1970) 1 SCC 248] and Maneka Gandhi [(1978) 1 SCC 248], the consequence is the same."

60. The Eighth Amendment (1791) to the Constitution of the United States virtually emanated from the English Bill of Rights (1689). The text of the Eighth Amendment reads, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted". The English Bill of Rights drafted a century ago postulates, "That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".

61. Our Constitution does not have a similar provision but after the decision of this Court in Maneka Gandhi case [(1978) 1 SCC 248] jurisprudentially the position is virtually the same and the fundamental respect for human dignity underlying the Eighth Amendment has been read into our jurisprudence.

62. Until the decision was rendered in Maneka Gandhi [(1978) 1 SCC 248], Article 21 was viewed by this Court as rarely embodying the Diceyan concept of the rule of law that no one can be deprived of his personal liberty by an executive action unsupported by law. If there was a law which provided some sort of a procedure it was enough to deprive a person of his life or personal liberty. In this connection, if we refer to the example given by S.R. Das, J. in his judgment in A.K. Gopalan [AIR 1950 SC 27 : (1950) 51 Cri LJ 1383] that if the law provided the Bishop of Rochester "be boiled in oil" it would be valid under Article 21. But after the decision in Maneka Gandhi [(1978) 1 SCC 248] which marks a watershed in the development of constitutional law in our country, this Court, for the first time, took the view that Article 21 affords protection not only against the executive action but also against the legislation which deprives a person of his life and personal liberty unless the law for

deprivation is reasonable, just and fair. And it was held that the concept of reasonableness runs like a golden thread through the entire fabric of the Constitution and it is not enough for the law to provide some semblance of a procedure. The procedure for depriving a person of his life and personal liberty must be eminently just, reasonable and fair and if challenged before the court it is for the court to determine whether such procedure is reasonable, just and fair and if the court finds that it is not so, the court will strike down the same.

63. Therefore, "law" as interpreted under Article 21 by this Court is more than mere "lex". It implies a due process, both procedurally and substantively."

127. This Court would like to cite the judgment of the Hon'ble Supreme Court of India in the case of Gautam Kundu vs. Manoj Kumar, Assistant Director, Eastern Region, Directorate of Enforcement (Prevention of Money Laundering Act) Government of India [AIR 2016 SC 106], His Lordship Pinaki Chandra Ghose J., while speaking for the Bench in respect of the "PMLA" made findings as under:-

"28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of "PMLA" are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that "PMLA" deals with the offence of money-laundering and Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. "PMLA" is a special statute enacted by Parliament for dealing with money-laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any

conflict.

29. Section 45 of "PMLA" starts with a non obstante clause which indicates that the provisions laid down in Section 45 of "PMLA" will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of "PMLA" imposes the following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule to "PMLA": (i) That the prosecutor must be given an opportunity to oppose the application for bail; and (ii) That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

30. The conditions specified under Section 45 of "PMLA" are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of "PMLA". Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of "PMLA" shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. "PMLA" has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of "PMLA" will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."

128. It is unambiguously made clear that the provisions of the "PMLA" shall have overriding effect notwithstanding anything

inconsistent therewith contained in any other law for the time being in force. "PMLA" has overriding effect and the provisions of the Code of Criminal procedure would apply only if they are not inconsistent with the provisions of the PMLA. The case of Gautam Kundu (supra) also subsequently referred in the case of Nimesh Tarachand Shah (supra) so that the conditions stipulated in Section 45 of the "PMLA" was struck down by the Supreme Court. The other provisions of the Code were not only upheld and it is clarified in those two decisions by the Hon'ble Supreme Court of India that the provisions of the "PMLA" will prevail over the procedures contemplated under the Code of Criminal Procedure and it is further emphasised that the Code of Criminal Procedure would apply only if they are not inconsistent with the provisions of this Act (PMLA).

129. In the present case on hand, at the first instance, the Agent of the writ petitioner Shri.N.R.R.Arun Natarajan was permitted to submit his documents and explanations. the respondents had scrutinised all the documents submitted by the authorised agent of the writ petitioner. Thereafter, the authorities came to the conclusion that further clarifications in respect of certain financial transactions are required and the same must be obtained from the person. In other words, the respondents are of an opinion that certain financial transactions are to be explained by the writ petitioner in person, so as to ascertain the facts and circumstances led to such financial transactions. When such an opinion is formed by the Investigating Authorities, the writ petitioner cannot say that the personal appearance cannot be insisted upon.

130. The writ petitioner is seeking exemption only on the ground that a woman is exempted from personal appearance under Section 160 of the Code of Criminal Procedure. By citing the general provisions of Section 160 Cr.P.C., the writ petitioner cannot seek absolute exemption for personal appearance in the investigation process. Except by claiming that women are exempted under Section 160 of the Code of Criminal Procedure, the facts regarding the position, status and capacity of the writ petitioner to travel and provide informations to the authorities are not denied. The writ petitioner, being a Senior Advocate and having active and lucrative practice in various High Courts and before the Supreme Court of India, cannot say that she is not capable of personally appearing before the authorities concerned for the purpose of investigation. More-so, this Court expect that the respected Senior Advocate like the writ petitioner, should not shy away from co-operating for an effective investigation of such offences committed under the provisions of the "PMLA". The offences of money laundering is affecting the economic growth of our great Nation. The magnitude of the alleged money laundering in the present case is

running to several thousand crores and therefore, certainly it is required for the persons like the writ petitioner, who is of high status, has to co-operate and participate in the investigation process and, so that the entire scenario leading to various facts can be ascertained by the authorities for the purpose of effective prosecution of cases before the Competent Court of Law.

131. This Court is aware of the fact that in certain circumstances, the women in this country are vulnerable. However, we are a fast growing developing Nation, wherein women empowerment is provided in all walks of life and we are consistently promoting such an empowerment of women in this great Nation. Undoubtedly, now the women are standing on par with the men in all walks of life. Women in this great Nation are performing their talents on par with their counterpart men in various fields, including in Defence Services, i.e., Air-Force, Navy and Army. When the women Flying Officers of the Indian Air-Force are able to perform on par with their male colleagues, then this Court is of an opinion that in no circumstances with reference to the current day developments of our great Nation, women can never be underestimated or blindly considered as vulnerable. May be in certain circumstances in certain areas, women are vulnerable, however, not in all circumstances in all areas. Therefore, this Court has to consider the position, status and the capacity of a woman for the purpose of granting any exemption from participating or for personal appearance in investigation of such cases.

132. When such is the current position, the spirit of Section 160 cannot be interpreted so as to nullify or paralise an effective investigation process of cases under PMLA. In all respects, the Courts also should ensure that such investigations or prosecutions are done in accordance with the procedures contemplated under such Special Acts, and to see that a meaningful investigations and prosecutions are done and the cases are disposed of in accordance with law.

133. No writ can be entertained against the summons issued for the personal appearance of a person in order to give evidence or statement. The writ petition against such summons issued under the provisions of the Special Act, namely, "PMLA" can be entertained only on exceptional circumstances. Judicial review in this regard are certainly limited. The Constitutional Courts have to ascertain the facts and the circumstances for the purpose of granting any such exemption, and the same cannot be granted otherwise under the provisions of the "PMLA". In the present case on hand, the respondents have explained the instances and the circumstances under which they have insisted upon the personal appearance of the writ petitioner for further

clarification. It is further recorded that the statements/explanations and the documents submitted by the authorised representative of the writ petitioner Shri N.R.R.Arun Natarajan were not satisfactory and certain ingredients are to be ascertained only by getting a personal statement from the writ petitioner in relation to the financial transactions. Therefore, this Court is of an opinion that there is no irregularity or illegality in respect of insisting the writ petitioner for personal appearance for the purpose of seeking certain clarifications so as to cull out the truth in relation to the financial transactions and the documents filed by the writ petitioner before the Enforcement Directorate through her authorised Agent.

134. This Court is of an opinion that the writ petitioner based on mere apprehension, cannot be permitted to move this writ petition that the respondents are having certain personal motive. Absolutely, there is no materials on record to show that there are personal motive against the writ petitioner. The personal motives or the mala fide intention are to be substantiated with sufficient materials. A mere statement made in an affidavit that the authorities are having certain personal motive or mala fide intention can never be accepted for the purpose of granting the relief in a writ petition, more specifically, in the nature of a case like on hand. However, the writ petitioner has not substantiated the allegations of mala fides, except by stating that the writ petitioner was directed to appear before the Investigating Authorities on a Friday, so that they are having an idea to arrest the writ petitioner. Such apprehensions can never be entertained in a writ petition under the given circumstances.

135. If there are sufficient materials to proceed against the writ petitioner and if the Investigating Authorities are having enough materials to proceed against a person in a manner known to law and by adhering to the provisions of law, then they are duty bound to do so as the law so warrants. Thus, these are all the decisions to be taken only after completing an effective investigation. The investigation process should not be hampered at this stage. The decisions in this regard are to be taken only after the completion of the investigation by the competent authorities by strictly following the provisions of law. The Courts cannot presume that what possible actions could be taken by the competent authorities at this stage, even before the completion of the investigation. Thus, this Court is of a strong opinion that interference at this stage in respect of the facts and the circumstances of the present case on hand, is certainly unwarranted.

136. In respect of the arguments made by the petitioner in

person, this Court is of an opinion that Section 2(u) of the "PMLA", defines "Proceeds of Crime". The "Proceeds of Crime" can be identified only after the completion of the investigation and after the registration of a complaint by the respondents. The very definition proceeds by stating that "Proceeds of Crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity. When the respondents are in the process of verification of the documents and the clarifications in respect of the statements given by the writ petitioner, the Court cannot come to a conclusion that there is no "Proceeds of Crime" against the writ petitioner. The "Proceeds of crime" has to be concluded only after the completion of the investigation and after filing the complaint under the "PMLA". Thus, the very contention deserves no merit consideration.

137. This Court is of an opinion that Section 50(2) states that "the Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have the power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation. The word "person" employed in Section 50(2) has to be understood with reference to the definition provided under Section 2(s) of "PMLA". Section 2(s) defines "person" includes-

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;

138. Therefore, the writ petitioner cannot say that the authorities are incompetent to summon any person. In fact, the respondents are empowered to summon any person defined under Section 2(s) of the Act for the purpose of conducting investigations. Such persons summoned are duty bound to respond to the summons and in failure, they are empowered to initiate further prosecution against the person, to whom the summon was issued.

139. Thus, every person summoned under PMLA is duty bound to appear before the competent authorities. Non appearance will lead to further prosecution under the provisions of law.

140. Decision:

Thus, the respondents are directed to issue fresh summons,

fixing a date for the purpose of continuing the investigation and proceed with the same in accordance with law. Accordingly, the writ petitions are devoid of merits and stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

Svn/kak/Svn

To

1.The Director,
The Directorate of Enforcement,
Government of India,
6th Floor, Lok Nayak Bhawan,
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2.The Assistant Director,
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+3cc to Mr.C.Uma, Advocate SR.No.30159, 27861, 27860

सत्यमेव जयते

W.P.Nos.32848 & 32849 of 2016

NM(CO)
GN(02/05/2018)

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