IN THE HIGH COURT FOR THE STATE OF TELANGANA

***

CRIMINAL PETITION Nos.3988 of 2016 & 11942 of 2018
AND
WRIT PETITION No.2253 of 2018

Crl.P.No.3988 of 2016

Between:

Mr. Bibhu Prasad Acharya @ B.P. Acharya

.....Petitioner

and

The Directorate of Enforcement through its Assistant Director, rep. by its Special Public Prosecutor.

.....Respondent

Crl.P.No.11942 of 2018

Between:

Mr. Bibhu Prasad Acharya

.....Petitioner

and

The State of Telangana through the Directorate of Enforcement rep. by its Special Public Prosecutor.

.....Respondent

W.P.No.2253 of 2018

Between:

Adityanath Das, IAS

.....Petitioner

and

The Union of India and another

.....Respondents

Date of Judgment pronounced on : 21-01-2019

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

*** HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO**

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< GIST:

> HEAD NOTE:

! Counsel for the petitioners : Sri T. Pradyumna Kumar Reddy
Sri T. Nagarjuna Reddy

^ Counsel for the respondents : Sri PSP Suresh Kumar
Sri K. Manmadharao
Sri K. Lakshman

? Cases referred

1. 1984 (2) SCC 500=1984 SCC (Cri.) 277
2. 2015 (14) SCC 535
3. 1979 (4) SCC 229=AIR 1979 SC 1839
4. 2018 CrlLJ 721
5. In the 2005 amended section 45(1) clause (ii) (shown in bold italics supra) is struck down by the Apex Court in Nikesh Tarachand supra
6. 2011(3)ALT 443(DB)
7. 1994 3 SCC 299
8. 2000 (2) SCC 504
9. 1999 (3) ALT 533
10. 1994 (3) SCC 440
11. 2011 (3) ALT 443 (DB)
12. 2013 (7) SCC 439
13. 2018 Crl.L.J. 691
14. 2015 (16) SCC 1
15. 2001 (6) SCC 704
16. 2005 (8) SCC 370
17. AIR 1992 SC 604=1992 Supp (1) SCC 335
18. AIR 1981 SC 1395
19. 2018 (1) ALT (Crl.) 322
20. 2012 (3) SCC 64
21. 1993 (3) SCC 339
22. AIR 1959 SC 375
23. 2006 (13) SCC 252
24. 2001 (8) SCC 257
25. 2012 (6) SCC 228
26. 1976 (3) SCC 352

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.3988 of 2016 & 11942 of 2018
AND
WRIT PETITION No.2253 of 2018

COMMON ORDER:

1(a). The petitioner in Crl.P.No.3988 of 2016 by name Mr. BP Acharya, IAS Officer is A.18 in SC.No.92 of 2016 on the file of learned Metropolitan Sessions Judge, Hyderabad, now pending with Principal Judge for CBI Cases-cum-Special Court under PML Act, 2002 at Nampally, Hyderabad, which is in ECIR.No.9/HYZO/2011 of Directorate of Enforcement, taken cognizance for the offences allegedly committed under Sections 3, 4, 8(5) of the Prevention of Money Laundering Act (for short 'PML Act') in the prosecution maintained by the complainant Director of Enforcement through its Assistant Director, Ministry of Finance, Department of Revenue, Hyderabad. The prayer in the petition is to quash the proceedings in SC.No.92 of 2016 against him.

1(b). The petitioner in Crl.P.No.11942 of 2018 by name Mr. BP Acharya, IAS Officer is A.13 in SC.No.2 of 2018 on the file of learned Principal Judge for CBI Cases-cum-Special Court under PML Act, 2002 at Nampally, Hyderabad, which is in ECIR.No.9/HYZO/2011 of Directorate of Enforcement, taken cognizance for the offences allegedly committed under Sections 4 r/w 3 of PML Act in the prosecution maintained by the complainant Director of Enforcement through its Assistant Director, Ministry of Finance, Department of

Revenue, Hyderabad. The prayer in the petition is to quash the proceedings in SC.No.2 of 2018 against him.

1(c). The petitioner in W.P.No.2253 of 2018 by name Mr. Adityanath Das, IAS Officer is A.10 in SC.No.2 of 2017 on the file of learned Principal Special Judge for trial of CBI Cases-cum-Special Court under PML Act, 2002 at Nampally, Hyderabad, which is in ECIR.No.9/HYZO/2011 of Directorate of Enforcement, taken cognizance for the offences allegedly committed under Sections 4 r/w 3 of PML Act in the prosecution maintained by the complainant Director of Enforcement through its Assistant Director, Ministry of Finance, Department of Revenue, Hyderabad. The prayer in the petition is to quash the proceedings in SC.No.2 of 2017 against him.

2. SC.No.92 of 2016 is outcome of the private complaint of the Assistant Director, Directorate of Enforcement, Hyderabad referred supra under Section 200 Cr.P.C. r/w 45 of the PML Act with array of 19 accused by names Sri YS Jagan Mohan Reddy-A1, Sri V. Vijay Sai Reddy-A2, M/s. Jagati Publication Limited-A3, M/s. Janani Infrastructure Private Limited-A4, Sri M. Srinivasa Reddy-A5, M/s. Hetero Drugs Limited-A6, Ms/. Hetero Labs Limited-A7, M/s. Hetero Health Care Limited-A8, Sri K. Nityananda Reddy-A9, M/s. Aurobindo Pharma Limited-A10, M/s. APL Health Care Limited-A11, Sri P. Sarath Chandra Reddy-A12, M/s. Trident Life Sciences Limited-A13, Sri P.V. Ram Prasad Reddy-A14,

Sri K. Prasad Reddy-A15, Smt. K. Rajeswari-A16, Sri P.S. Chandramouli-A17, Sri B.P. Acharya-A18, petitioner and Sri Y.V. Lakshmi Prasad-A19. The alleged offences committed are under Section 3 punishable under Section 4 of the PML Act. So far as the petitioner-BP Acharya concerned, the private complaint taken cognizance supra against the 19 accused, private complaint at Para 9.7 speaks that:

"9.7. Shri B.P Acharya, in his statements dated 25.06.2012 and 21.07.2015 under Section 50 (2) & (3) of PMLA, 2002, *inter alia* stated that he worked as Managing Director of APIIC Limited, Hyderabad, which is a Public Sector undertaking of Government of Andhra Pradesh, during the period from 19.05.2005 to 24.12.2009 and his responsibilities includes the matters pertaining to Development of Industrial Infrastructure, Allotment of Lands to Industries, Promotion of Industrial Development in the State and other related matters; that he used to consult Executive Directors and other staff of APIIC Limited while discharging his duties as MD of APIIC Limited; that APIIC Limited is company formed by the Government of Andhra Pradesh to promote industrial development, promote and develop infrastructure for industry, etc.; that the day-to-day affairs of the company are being looked by the Managing Director with the help of the other staff; that MD reports to the Board of APIIC Limited on all matters; that he used to head the Board meetings as Chairman and Managing Director

of it; that Managing Director is nominated by the Government from the IAS officers from the rank of Principal Secretary level officers and the other directors of APIIC Limited are Principal Secretary (Finance), Principal Secretary (Industries), Principal Secretary (Roads & Buildings), Member Secretary (Pollution Control Board) apart from other non-official members; that as many as 105 proposals of SEZ were sent for approval of Government of India of which 74 were notified; that in the SEZ M/s. Aurobindo Pharma Limited and M/s. Hetero Drugs Limited applied for allotment as anchor clients; that other Pharma companies applied for lease too; that in Jadcherla about 950 acres was for SEZ; that the application for allotment of land was received on 17.11.2006 from M/s Hetero Drugs Limited and M/s. Aurobindo Pharma Limited and on the same day 'In Principle' offer letter was issued to them as the 10% of EMD was also paid by them. When enquired about development of Green Industrial Park / SEZ at Jadcherla, he stated that in Jadcherla is a backward area in Mahaboob Nagar District; that APIIC acquired 955 acre of land in 2004-05 under the Industrial Growth Centre Scheme of Government of India; that in collaboration with the Green Business Centre of Confederation of Indian Industries (CII), there was a proposal to locate eco-friendly non-polluting green industry in Jadcherla Area and it was called Green Industrial Park by APIIC; that, as the land was lying unutilized for a long time, a proposal was mooted by the Bulk

Drugs Manufacturers Association (BDMA) to APIIC to create an Industrial cluster for promoting export oriented non-polluting pharmaceutical formulation industry by developing a formulation SEZ at Jadcherla; that, accordingly, the proposal was sent by APPIC with the approval of the state Government for notification of SEZ by the Ministry of Commerce, Government of India; that Hyderabad, being the Bulk Drugs Manufacturing Hub of the country, there was a possibility of attracting large scale investments in this sector, thereby generating employment in this backward district of Mahaboob Nagar known for migration of labour and hence, such a proposal was considered appropriate and accordingly action was taken by APIIC to initiate the formalities for SEZ notification; that 954 acre land was earmarked from Green Industrial Park and out of which 250 acre of land for the SEZ in Jadcherla was acquired under the Land Acquisition Act at a rate of Rs.50,000/- per acre in 2004-05 by APIIC and the development of Infrastructure was yet to be started for SEZ when land was allotted to the first allottees. When enquired about procedure to be followed for allotment of lands by APIIC Limited to entrepreneurs either on outright sale basis or on lease basis along with relevant guidelines issued by Government of AP / APLLIC Limited, Shri Acharya stated that, normally, the allotments made by APIIC in Industrial Parks are on freehold basis wherein the land cost is collected upfront and after implementation of the project, Sale Deed is

registered in the name of the allottee; that, in case of SEZs, this was not applicable; that as per Section 51(1) of SEZ Act, 2005, the provisions of the SEZ Act supersede all other acts and rules as the SEZ land cannot be allotted on freehold basis and it should be with the Developer; that in the present case, APIIC is the Developer and hence APIIC allotment regulations had to be modified accordingly; that for SEZs, it was decided to adopt the practice of collecting a lease premium initially to be paid Upfront by the Lessee and Annual Lease Rental thereon for a period of 33 years and this procedure was unanimously decided by the Board of APIIC Limited. when enquired about the procedure of fixation of price for allotment of lands in various industrial areas developed by APIIC Limited, Shri Acharya stated that the price fixation committee comprising senior officers of APIIC Limited headed by the Executive Director, is an internal committee appointed by the Managing Director of APIIC, to recommend benchmarks for price fixation, duly considering land cost, development cost of external & internal Infrastructure such as approach road, internal roads, water & power supply, effluent disposal, compound wall, etc.; that Price Fixation Committee is only a recommending body, the Board of APIIC has delegated full powers to the Managing Director regarding fixation of price for sale of land in the very first resolution passed in January, 1974; that more often than not, the Managing Director uses the price recommended

by price fixation committee as an indicative price and takes a decision about the price keeping in view several factors such as current state of development of internal/external infrastructure, importance of investment and the possibility of attracting further investments to the cluster; that as per the normal practice, in the rate recommended by price fixation committee, the land cost accounts for 30% and development cost of infrastructure contributes to 70% of the price fixed; that the price fixation committee recommended the rate of Rs.15 Lakh Per Acre in August 2006 in respect of Green Industrial Park where land can be allotted on Out-right sale or freehold basis and not for the formulation SEZ in which land can be allotted only on lease basis as per the SEZ Act, 2005; that for SEZs, it was decided to adopt the practice of collecting a lease premium initially to be paid upfront by the lessee and annual lease rental thereon for a period of 33 years and that this system was applicable to the allotments made to M/s Hetero Drugs Limited and M/s Aurubindo Pharma Limited at Jadcherla and the price recommended by the price fixation committee for the Green Industrial Park was not at all relevant or applicable; that the Plot Allotment Committee headed by the Managing Director takes a decision regarding allotment of Plots for Industrial Parks located in and around Hyderabad; that normally the allotment committee takes a decision considering the importance of the project, etc., but, this was not applicable to SEZs. When

enquired about as to whether any notification/ advertisement was published in newspapers regarding allotment of lands in Jadcherla, Shri Acharya stated that the development of SEZ was highlighted by APIIC in the advertisements issued on the occasion of the foundation day and other promotional programmes on SEZs and sufficient awareness was created all over the country about the new SEZ on formulation, first of its kind in India ; that BDMA also publicized it among its members asking them to seek allotment in this SEZ; that the applications of M/s Hetero Drugs Limited, M/s Aurobindo Pharma Limited were the first applications received for allotment of land by APIIC Limited duly fulfilling all the requisite conditions and hence they were treated as anchor investors; that the application of M/s Lee Pharma which was received afterwards was not accompanied by the mandatory Earnst Money Deposit (EMD) and even then, a decision was taken to offer the land at a lease premium of Rs.10 Lakh per Acre duly treating as early bird incentive; that the required payment was not made by M/s Lee Pharma and thus allotment was not finalised for the said company and other Pharma companies such as M/s Glochem applied for allotment apart from other companies; that the Plot Allotment Committee did not look into allotments in SEZs and thus there was no need to place the allotments to plot allotment Committee for the allotment of lands to M/s Hetero Drugs Limited and M/s Aurobindo Pharma Limited. When enquired

about basis for allotment of land of 75 Acre each to M/s Hetero Drugs Limited and M/s Aurobindo Pharma Limited without any justification for such huge lands, Shri Acharya stated that based on the investment plans presented by M/s Hetero Drugs Limited and M/s Aurobindo Pharma Limited, wherein they planned to invest around Rs.500 Crore each with global tie up, they had requested to allot 125 acre of land each in the 250 acre SEZ at Jadcherla; that, in order to maximize returns to APIIC by allotting to other investors in future at higher rate, a decision was taken to restrict the allotment to 75 acre of land to each which was quite justified in view of the environmental requirements of retaining open area, etc. When enquired about various steps taken in safeguarding the interest of M/s APIIC Limited as VC & MD of M/s APIIC Limited in allotment of land to M/s Hetero Drugs Limited and M/s Aurobindo Pharma Limited and transfer of lands to M/s Trident Life Sciences in SEZ, Jadcherla, Shri Acharya stated that all steps were taken to protect the interest of APIIC Limited and land leased could be resumed as per lease conditions if the lessee failed to implement the project. When enquired the persons who gave directions/suggestions for fixing the land cost @ Rs. 7 lakh per acre for allotment to M/s Hetero Drugs Limited and M/s Aurobindo Pharma Limited, Shri Acharya stated that based on the prevailing status of the development of infrastructure and the price of land available in the surrounding areas, the

development wing of the office arrived at a reasonable lease the promoter of the original company, he marked their application to process accordingly; that, subsequently, when the proposal was put up after due scrutiny by the development wing, he cited the recent precedent M/s Zenotech in Bio Tech Park and asked to collect nominal processing fee, as per the practice followed by APIIC Limited, as per Circular No.347/DW/206 dated 29.06.2006 issued by APIIC wherein it was prescribed that land can be transferred within the family members or to subsidiaries by colleting nominal process fee; that, however, if the applicant had suppressed any facts or failed to submit any documents to the Zonal Manager who was asked by the Head Office to scrutinize the request before transfer of land, it is the responsibility of the Zonal Manager concerned (Shri YVL Prasad) to verify the same and in no way the Head Office or Managing Director is responsible for any lapse in this regard and that M/s Trident Life Sciences Limited was subsequently merged in M/s Aurobindo Pharma Limited. When enquired specifically about the remarks viz. 'Pl. process for change' on representation dated 02.11.2006 of Shri K Nityananda Reddy without obtaining any proof whether the proposed company M/s Trident Life Sciences Limited is a wholly owned subsidiary of M/s Aurobindo Pharma Limited or not", Shri Acharya stated that the role of the Head Office is to take a in-principle decision based on the application and the Zonal

manager is asked to scrutinize the documents before transfer of land. Shri Acharya finally stated that he does not have any idea about the investments made by M/s Hetero Drugs Limited/M/s Hetero Labs Limited in the group companies of Shri Y.S Jagan Mohan Reddy viz., M/s Janani Infrastrcture Private Limited in November, 2006 and December, 2006 till CBI registered the case."

2(a). The complaint thereafter in Para 14 as respective role of accused under PML Act concerned, at Clause (n) mentioned as follows:

"Shri B.P Acharya was the Vice Chairman and Managing Director of M/s APIIC Limited during the period from 2005 to 2009. Shri B.P Acharya, the then Vice Chairman & MD, M/s APIIC Limited, in conspiracy and connivance with Shri Y.S Jagan Mohan Reddy and other accused persons abused his official position and shown undue favours to M/s Aurobindo Group Companies and M/s Hetero Group companies. The favours extended by him are allotment of 150 Acres of land and transfer of 30.33 Acre land in the name of M/s Trident Life Sciences Limited from M/s Aurobindo Pharma Limited, by violating the existing norms, regulations and procedures and caused wrongful loss of Rs.21.50 Crore to M/S APIIC Limited. It is pertinent to mention that the Price Fixation Committee, which is the competent authority to fix the land prices, fixed the price as Rs.20.23 Lakh per acre, However, he reduced the price to Rs.7 Lakh per acre on his

own and allotted land of 150 acres at Jadcherla to companies of Aurobindo group and Hetero group at the reduced price of Rs.7 Lakh per acre.

Shri B.P Acharya also reduced the transfer price from Rs.500/sq.mtr to Rs.150/sq.mtr for transfer of 30.33 acre of land from M/s Aurobindo Pharma Limited to M/s Trident Life Sciences Limited at EPIP, Pashamylaram against which M/s Aurobindo Pharma Limited and M/s Hetero Drugs Limited and the persons related to the above companies paid bribe money in the guise of investments to the tune of Rs.10 Crore and Rs.19.5 Crore, respectively, in M/s Jagathi Publications Limited and M/s Janani Infrastructure Private Limited of Shri Y.S Jagan Mohan Reddy at a huge Premium.

M/s Trident Life Sciences Limited was not at all a subsidiary company of M/s Aurobindo Pharma Limited at the relevant point of time. After successful implementation of the plan of acquiring land at cheaper price, with the active connivance of Shri P. Sarath Chandra Reddy, 30.33 acres of land was transferred to M/s Trident Life Sciences Limited by M/s APIIC Limited without any application for such allotment. The actual allotment was done in favour of M/s Aurobindo Pharma Limited and subsequent to the allotment, violating the norms of allotment, the subject land was transferred in favour of M/s Trident Life Sciences Limited, which is *ex-facie* illegal. Hence, it is clear that Shri B.P. Acharya, being the VC & MD of M/s APIIC Limited has

conspired with the other accused and transferred the land in favour of M/s Trident Life Sciences Limited by violating the norms and procedures.

Thus, Shri B.P Acharya, directly involved in the offence of money laundering under section 3 read with Section 4 of the PMLA, 2002 by knowingly assisted M/s Aurobindo Group of Companies and M/s Hetero Group of Companies in the creation of proceeds of crime worth Rs. 21.50 Crore and by assisting the said companies to project/claim the said Proceeds of Crime as untainted. Further, he has not followed the established procedures in allocation of lands/transfer of lands and thereby facilitated the other accused persons in generation of proceeds of crime and causing loss to APIIC Limited. He is therefore guilty of the offence of money laundering under Section 3 of PMLA, 2002 punishable under Section 4 of PMLA, 2002."

2(c). Along with the complaint there are Annexures A & B of which Annexure-A contains 53 documents and Annexure-B mentions 9 witnesses. In none of the documents covered by Annexure-A there is any sanction order to prosecute the petitioner admittedly and there is no any witness according sanction much less any letter addressing for sanction by competent authority referred are filed.

2(d). The contentions in the quash petition No.3988 of 2016 to quash the proceedings in SC.No.92 of 2016 by impugning said private complaint taken cognizance supra are

that: Only on the basis of the case registered by CBI, ACB, Hyderabad Branch vide FIR.No.RC.19(A)/2011-CBI-HYD on 17.11.2011, for offences punishable under Sections 420, 409, 477-A r/w 120-B and Sections 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act against Mr. Y.S. Jagan Mohan Reddy and others and in as much as the offence of Money Laundering under Section 3 of P.M.L. Act, 2002 is commissioned since the offences alleged under Sections 120-B r/w 420 IPC and Section 13 of the Prevention of Corruption Act are scheduled offences under P.M.L. Act, vide., enforcement case information report, E.C.I.R.No. ECIR/09/HYD/2011 to register on 30.08.2011 against all those accused for investigation under the provisions of the P.M.L. Act that was initiated by the Directorate of Enforcement; and for that there is no basis as there is no worth allegation against the petitioner Sri BP Acharya as A.18, for he being a public servant at the relevant time of the transactions and was working as the Vice Chairman & Managing Director of APIIC. The allegation that in pursuance of so called conspiracy with other accused, made allotment of land to M/s. Aurobindo Group of Companies and M/s. Hetero Group of companies to an extent of 75 acres each in Special Economic Zone at Zedcherla without placing the same before the allotment committee and said allotment was done at the rate of Rs.7,00,000/- per acre instead of Rs.15,00,000/- per acre and also approved the transfer of lands to the

subsidiaries of the companies without proper verification as said companies being subsidiaries of the allottees and as such caused wrongful loss to the State Exchequer is untenable and he is innocent and falsely implicated.

2(e). Further, there is no sanction obtained from the Government to prosecute him and there is contravention of Section 197 Cr.P.C. for he is a public servant, IAS Officer and even presently working as the Principal Secretary to the Government, for the State of Telangana, Hyderabad, that all the transactions that are subject matter of the charges made against him are relating to the discharge of his official duties and even in the cases of allegations of official duties being performed in derogation of the same, the protection U/Sec. 197 Cr.P.C is applicable. It is also referred for that purpose Sec. 65 of the P.M.L. Act reads as 'The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act and thereby contending as mandatory to obtain sanction under Section 197 Cr.P.C. to prosecute and also referred Section 71 of the P.M.L. Act which says that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, but in so far as obtaining of sanction concerned, the PMLA does not contain any provision

parallel to Section 197 of Cr.P.C and thus the procedure laid by the Cr.P.C. shall be followed and same was also considered by the High Court of Madhya Pradesh in **Vijay Mandanlal Choudhary Vs. Union of India & others**. It is also contended that in the parallel proceedings initiated against the petitioner-BP Acharya and others for offences punishable under IPC, the Government after careful consideration of the report of C.B.I has come to a conclusion that there is no financial misappropriation or financial gain or corruption by the petitioner and the State Government refused the sanction of prosecution U/Sec. 197 Cr.P.C. and as on today, no sanction has been obtained from the Government to prosecute the petitioner under Sections 3, 5, 8(5) of the P.M.L. Act and the cognizance ought not to have been taken against the petitioner. Therefrom from want of sanction and the State Government vide. Lr.No.59/SC.D/A1/ 2012-10, dated 08.10.2013, conveyed the fact of refusal of sanction under Section 197 Cr.P.C. to the Secretary, DoPT, while recommending the same to the Government of India to refuse sanction of prosecution under the Prevention of Corruption Act. The Apex Court in **Prof. N. K. Ganguly Vs. C.B.I, New Delhi**, by referring to a plethora of judgements has held that 'When the alleged offences are committed in the discharge of official duty, previous sanction U/Sec. 197 of Cr.P.C is required before taking cognizance and for passing an order of issuing summons consequence thereto. In **Baijnath Gupta**

Vs. State of Madhya Pradesh, the Apex Court held that 'It is the quality of the act that is important and if it falls within the scope and range of his official duties, the protection contemplated by Sec. 197 of Cr.P.C will be attracted. Therefrom it is contended that taking of cognizance against the petitioner and issuing summons is unsustainable and liable to be quashed.

2(f). The counter filed in opposing the quash petition and seeking to vacate the stay by the Assistant Director, Directorate of Enforcement, Hyderabad, as the investigating officer in the subject case from his acquainted with the facts by referring to the facts supra and in impugning the quash petition by seeking its dismissal are that: The petitioner cannot take shelter under Section 197 Cr.P.C. as all the provisions of Cr.P.C. are not applicable to the proceedings initiated by Enforcement Directorate under PML Act and the provisions of PML Act are independent and Cr.P.C. provisions are only to aid the PML Act and that too for proper and smooth continuation of proceedings initiated under PML Act and if the legislature intended to have sanction before prosecution such provision might have been specifically provided under PML Act and when once legislature not provided such procedure of sanction it cannot be substituted and that too the provisions of PML Act have overriding effect over other laws including Cr.P.C. under Section 71 of the Act and as per Section 65 of the Act only those provisions of

Cr.P.C. which are in aid will apply and not entire Cr.P.C. provisions as PML Act is a self contained code and what is not there in the Act thereby cannot be supplemented and as such there are no grounds to quash the proceedings on the alleged ground of want of sanction under Section 197 Cr.P.C. to the prosecution or to take cognizance from the complaint filed and the contention that the State Government rejected sanction in so far as CBI case concerned is no way relevant to the prosecution under PML Act since same is independent and that too as submitted supra no sanction to prosecute is required under Sections 3 & 4 of PML Act and the contra contentions in the quash petition are incorrect and not sustainable and the judgments referred supra in the quash petition no way applicable to the prosecution on private complaint under PML Act and thereby the quash petition is to be dismissed by vacating the interim stay of the Sessions Case proceedings.

3. SC.No.2 of 2018 is outcome of the private complaint of the Assistant Director, Directorate of Enforcement referred supra under Section 200 Cr.P.C. r/w 45 of the PML Act with array of 17 accused by names Sri YS Jagan Mohan Reddy-A1, Sri V. Vijay Sai Reddy-A2, Sri I.Syam Prasada Reddy-A3, M/s. Indu Projects Limited-A4, Ms/. Indu Techzone Private Limited-A5, M/s. SPR Properties Private Limited-A6, Ms/. Walden Properties Private Limited-A7, M/s. Bhoomi Real Estates Investments Private Limited-A8, M/s. Carmel Asia

Holdings Private Limited-A9, Sri Nimmagadda Prasad-A10, M/s. G2 Corporate Services LLP (formerly known as M/s G2 Corporate Services Limited)-A11, Smt. P.Sabita Reddy-A12, Sri B.P. Acharya-A13, Sri D. Paradhasarhi Rao-A14, Sri C.V. Koteswara Rao-A15, M/s. Veen Promoters Private Limited-A16 and M/s. Beta Avenues Private Limited-A17. The alleged offences committed are under Section 3 punishable under Section 4 of the PML Act. So far as the petitioner-BP Acharya concerned, the private complaint at Para 33 speaks that:

"33. Shri B.P. Acharya, IAS, in his statement dated 03.08.2015 given under Section 50 (2) & (3) of PMLA, 2002, inter-alia stated that a decision was taken by the Government to develop IT SEZs near the new International Airport at Shamshabad and accordingly a proposal was sent by the APIIC to Government of India for in-principle approval to develop IT SEZ on 1582.28 acres available in Mamidipally and Raviryala Villages, Saroor Nagar Mandal, Ranga Reddy District; that in the 34th meeting of Consultative Committee on IT Industry (CCITI) held on 21.12.2005, under the Chairman ship of Principal Secretary, IT&C Department, which was not attended by him, a decision was taken to identify M/s Indu Projects and 3 other developers to develop IT SEZ in that area; that CCITI is a high level coordination committee constituted since 1999 onwards, that is headed by Principal Secretary, IT&C Department, to decide different issues relating to IT Industry, including coordination with

various departments to ensure rapid growth of IT Industry in the state; that normally, APIIC is represented in the meeting by the Chief Engineer and Project Manager, Infocity Project unit, in APIIC; that allotments to IT developers were decided by CCITI; that the members of CCITI include the Principal Secretary (IT&C), Secretaries of other Government departments like Finance, Revenue, etc., including representative from APIIC; that based on the decision taken by CCITI on 21.12.2005 and the application forwarded by the Government to APIIC, the request for allotment for 250 acres was processed; that the developer and the extent of land to be allotted were decided by the Government and APIIC had no direct role in the matter; that in a meeting conducted by the then Late Dr. Y.S. Raja Sekhar Reddy, Chief Minister of Andhra Pradesh, the decision was taken that, "as regards the cost of land for allotment In Hardware park area, VC & MD or APIIC seated that the present rate being charged by APIIC is RS.26 lakh Per acre (for developed plots). Considering the fact that Internal infrastructure need not be developed by APIIC for allotment to be made to developers and major companies where more than 100 acres of land allotted, it was decided to charge a rate of Rs.20 Lakh per acre for the present"; that, as per Clause 1.3 of the MOU entered into between M/S Indu Tech Zone private Limited and APIIC, as approved by the Council of Ministers, it was stipulated that the Government of Andhra Pradesh and APIIC agreed to transfer, vest and

convey the project land to the company as per provisions, terms and conditions and rules & regulations of Government of India, SEZ Act, 2005, as applicable; that as per Clause 2 of the MoU, the terms for transfer of land shall be subject to the provisions of SEZ Act, 2005 and rules thereon; that Clause 2.14 Of the MoU that the developer shall obtain all clearances under SEZ rules, which would be facilitated by the Government; that the very purpose of taking of the project was to facilitate notifications of IT SEZs near the new International Airport so as to attract investments and the Government as well as its nodal agency (APIIC) were expected to achieve SEZ status for this area as early as possible; that Rule 7 (1) of the Government of India, SEZ rules, stipulates that the developer shall furnish a certificate to Government of India from the state government or its authorised agency stating that the developers have legal possession and irrevocable rights to develop the said area; that the project could have been a non starter and the very purpose of MoU would have been defeated without transferring the land to developer; that Clause 5(3) of the MoU regarding Sale Deed for the project land has to be interpreted with reference to Clauses 1.3 and 2.14 of the MoU that make the terms of transfer of land subject to SEZ Rules and also the overriding effect of the SEZ Act, 2005 under Section 51; the proposal of M/s Indu Tech Zone Private Limited for permission for investment in the project was scrutinised by the technical

staff of APIIC under the guidance of Shri D. Pardhasaradhi Rao, Project Manager, IPU, APIIC and it was certified that it would not amount to any change in the associates of the company as per the MoU with the Government; that based on the above, the Executive Director and Project Manager, IPU categorically clarified that the agreement did not violate any terms of the MoU; that based on the information furnished to him, he did not see any valid ground to disagree with the proposal; that as an abundant precaution, he specifically asked to the staff concerned to mark a copy of the NOC to be given by APIIC to the Government, so as to keep IT&C Department informed about the decision taken; that a letter was issued by the Project Manager, IPU on 17.01.2008 duly endorsing a copy to Secretary, IT&C department; that based on the proposal received from M/S Indu Tech Zone Private Limited, to assign developing rights of 100 acres to M/S SPR Properties Private Limited, an associate company of M/S Indu Tech Zone Private Limited and with common management control, the connected file was scrutinised by the technical staff of IPU, APIIC and its head the Project Manager, scrutinised the proposal and certified that the above proposal was in conformity with Clause 12 of the sale agreement executed, which was as per the Clause 2.7 of the MoU with the Government; that he did not find any valid ground to reject the proposal; that the request only to accord permission to assign development rights of a part of the project land to

an associate company, while the entire land continued to be allotted/hold by the developer as per the terms of the MoU with Government and that the obligations of the developer as per the MoU were not compromised in any manner."

3(a). So far as coming to the role of the individual accused mentioned in Para 79, the petitioner role is mentioned at clause (m) as follows:

"Shri B.P Acharya was the Vice Chairman and Managing Director of M/s APIIC Limited during the period from 2005 to 2009. Shri B.P Acharya, the then Vice Chairman & MD, M/s APIIC Limited, in conspiracy and connivance with Shri Y.S Jagan Mohan Reddy and other accused persons abused his official position and shown undue favours to Indu Group Companies. The favours extended by him are allotment of 250 Acres of land for SEZ project to M/S Indu Tech Zone Private Limited, a group company of Indu group headed by Shri I. Syam Prasad Reddy, by violating the existing norms, regulations and procedures and caused wrongful loss to M/S APIIC Limited as well as to the Government of Andhra Pradesh to the tune of Rs,80 Crore/- by decreasing the Land cost from Rs.1 Crore to Rs.20 Lakh per acre. It is pertinent to mention that the directions of Shri B.P Acharya to handover physical possession of lands before entering into the Sale Agreement without obtaining any permission/prior approval of the Government of Andhra Pradesh is in violation of the

Cabinet Decision and the conditions of the MOU approved by the Cabinet.

Shri B.P Acharya also permitted to register land of 250 Acres in the name of M/s Indu Tech Zone L.imited before the implementation of the Project against the norms of APIIC Limited and also permitted to transfer of 100 acres of land from M/s Indu Techzone Private Limited to M/s SPR Properties Private Limited by violating the conditions of MOU. Shri B.P Acharya also willfully ignored the facts such as M/s Indu Projects Limited did not meet eligibility criteria for allotment of lands, SEZ status, etc., on its own and without any representation from other consortium members forwarded the application of M/s Indu Tech Zone Limited for granting SEZ status notification to the Secretary, IT&C department for onward submission to the Board of Approvals. He also permitted to enter into Sale Agreement cum GPA without obtaining agreement by consortium members of M/s Indu Projects Limited with M/s Indu Tech Zone Limited by APIIC Limited.

Thus, Shri B.P Acharya, indirectly involved in the offence of money laundering under Section 3 read with Section 4 of the PMLA, 2002 by knowingly assisted Indu Group of companies in the creation of huge proceeds of crime and by assisting the said companies to project/claim the said Proceeds of Crime as untainted. Further, he has not followed the established procedures in allocation of lands/transfer of

lands and thereby facilitated the other accused persons in generation of proceeds of crime and causing loss to APIIC Limited. He is therefore guilty of the offence of money laundering under Section 3 of PMLA, 2002 punishable under Section 4 of PMLA, 2002."

3(b). The complaint contains list of 64 documents and list of 6 witnesses. In none of the documents, there is no any sanction order to prosecute the petitioner admittedly and there is no any witness according sanction much less any letter addressing for sanction by competent authority referred are filed.

3(c). The contentions in the quash petition and to avoid repetition of same grounds raised by the selfsame petitioner in SC.No.92 of 2016 also herein and by additionally saying as per the expression of the Apex Court in **A.R. Anutaly Vs. Ramdas Srinivas Nayak**[1] expounding the application of Cr.P.C. with regard to special enactment by interpreting Section 4(2) Cr.P.C. held that "In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Cr.P.C. **In other words, Cr.P.C. is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various**

[1] 1984 (2) SCC 500=1984 SCC (Cri.) 277

designations". It is also contended in relation to search, seizure and arrest PML Act provides for prescribed procedure under Sections 16, 17 & 19 of the Act respectively, however there is no specific or separate procedure for taking cognizance and conducting trial thereby provisions of Cr.P.C. to be followed with the procedure thereunder. It is also contended that the Apex Court three Judge Bench in **State of UP Vs. Paras Nath Singh**, it was observed that so far as the public servants concerned, cognizance of any offence by any Court is barred by Section 197 Cr.P.C. unless sanction is obtained from competent authority if the offences alleged to have been committed was in discharge of official duties. No Court thereby shall take cognizance of any such offence except with previous sanction which is mandatory.

3(d). In addition to what is referred supra in the previous counter affidavit with vacate petition in Crl.P.No.3988 of 2016, the further contest in opposing the quash petition is that by reiteration of the contentions are untrue and untenable and no sanction is required to launch the prosecution and to take cognizance for the offences by the Special Court under PML Act and Section 197 Cr.P.C. has no application and a combined reading of Section 4(2) & 5 of Cr.P.C. makes it clear for the PML Act is a complete code providing the procedure and as per Section 44(1)(b) of the Act if at all any sanction is required to prosecute for the offences under the Act legislature would have incorporated the

conditions of Section 197 Cr.P.C. and so far as the money laundering concerned, whosoever directly or indirectly attempts to indulge or knowingly assist or knowingly is a party or he is actually involved in any process or activity connected proceeds of crime and as per Section 4 whoever commits the money laundering offence shall be punishable and it does not distinguish private party and pubic servant from the use of every person including in Section 3 of the Act of whoever commits the offence and person in Section 2(1)(s) of the Act includes an individual and as such there is bar under PML Act to prosecute public servant and unlike under Section 19 of PC Act without sanction and the provisions of the Act as per Section 71 of the Act got overriding effect over the Cr.P.C. provisions including Section 197 Cr.P.C. and the Special Court can take cognizance for money laundering where the complaint filed in writing by competent authority under Section 44(1)(b) of the Act and 2nd proviso of Section 45 from once prima facie case made out cognizance can be taken for the offence under Section 3 of the Act and it is not provided therein of requirement of sanction similar to Section 197 Cr.P.C. It is also contended that the judgments placed reliance in the quash petition have no application to the case on hand. The expressions placed reliance are as follows:

"In **VC Chinnappa Goudar Vs. Karnataka State Pollution Control Board**[2] (Crl.A.No.755 of 2010) the Apex Court held that:

> "As rightly pointed out by the learned senior Counsel Under Section 48, the guilt is deemed to be committed the moment the offence under the 1974 Act is alleged against the Head of the Department of a Government Department. It is a rebuttable presumption and under the proviso to Section 48, the Head of the Department will get an opportunity to demonstrate that the offence was committed without his knowledge or that in spite of due diligence to prevent the commission of such an offence, the same came to be committed. It is far different from saying that the safeguard provided under the proviso to Section 48 of the 1974 Act would in any manner enable the Head of the Department of the Government Department to seek umbrage Under Section 197 Code of Criminal Procedure and such a course if permitted to be made that would certainly conflict with the deemed fiction power created Under Section 48 of the 1974 Act.
>
> 9. In this context, when we refer to Section 5 Code of Criminal Procedure, the said Section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Code of Criminal Procedure would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. There is no specific provision providing for any sanction to be secured for proceeding against a public servant under the 1974 Act. If one can visualise a situation where Section 197 Code of Criminal Procedure is made applicable in respect of any prosecution under the 1974 Act and in that

[2] 2015 (14) SCC 535

process the sanction is refused by the State by invoking Section 197 Code of Criminal Procedure that would virtually negate the deeming fiction provided Under Section 48 by which the Head of the Department of Government Department would otherwise be deemed guilty of the offence under the 1974 Act. In such a situation the outcome of application of Section 197 Code of Criminal Procedure by resorting to reliance placed by Section 4(2) Code of Criminal Procedure would directly conflict with Section 48 of the 1974 Act and consequently Section 60 of the 1974 Act would automatically come into play which has an over riding effect over any other enactment other than the 1974 Act.

10. In the light of the said statutory prescription contained in Section 48, we find that there is no scope for invoking Section 197 Code of Criminal Procedure even though the Appellants are stated to be public servants."

It is further respectfully submitted that, in the case of **Rohtas Vs. State of Haryana & Another**[3], the Apex Court held that:

"... It will thus be seen that Section 5 carves out a clear exception to the provisions of the trial of an offence under 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..."

It is further respectfully submitted that, in the case of **State of Madhya Pradesh Vs. Awadh Kishore Gupta and Ors** (1 Appeal (crl.) 292 of 1997), the Apex Court held that,

[3] 1979 (4) SCC 229=AIR 1979 SC 1839

> "...It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court... "

It is further respectfully submitted that, in the case of **State of Bihar Etc. Vs. P.P. Sharma, IAS and Another** (1991 AIR 1260, 1991 SCR (2) 1), the Apex Court held that:

> "The object behind prior sanction is to prevent malicious, vexatious and unnecessary harassment to a public servant by laying false or frivolous accusation or prosecution. In other words ss. 197(1), 15-A and related sections intended to immune a public servant who discharges his duties honestly and diligently from the threat of prosecution. Honest discharges of public duty would impinge adversely of the interests, acts or Omissions of private persons who would be prone to harass in criminal proceedings and prosecution to demoralise a public servant.
>
> The nexus between the discharge of the public duty and the offending act or omission must be inseparable. The obvious reason is to balance the public good and efficiency of the performance of the public duty by a public servant and the legitimate and bona fide grievance of an aggrieved person. Sometimes while discharging or purported to discharge the public duty, the officer may honestly exceed his limit or pass an order or take a decision which may later be found to be illegal, etc. Therefore, the prior sanction by the

appropriate Government is an assurance to a public servant to discharge his official functions diligently, efficiently and honestly without fear or favour, without having haunt of later harassment and victimization, so that he would serve his best in the interest of the public. The offending act must be integrally connected with the discharge of duty and should not be fanciful or pretended. If the act complained of is directly, and inextricably connected with the official duty, though it was done negligently, or in dereliction of duty or in excess thereof, Section 197 and similar provisions operate as a canopy against malicious, vexatious or frivolous accusation or prosecution at the hands of the aggrieved persons. It is well settled law that public servant can only be said to act or purported to act in the discharge of his official duty if his act or omission is such as to lie within the of his official duty, It is not every offence committed by a public servant that requires sanction for Prosecution, nor even every act done by him while he actually engaged or purported to have engaged under colour of his official duty that receives protection from prosecution. If questioned he must claim that he had done by virtue of office and it is inextricably connected with the duty.

Sanction then would be necessary, irrespective of whether it was in fact a proper discharge of his duty or not is a matter of defence on merits, which would be considered at the trial and could not arise at the time of grant of sanction which must precede taking cognizance of the prosecution. Therefore, there must be reasonable connection between the acts complained and discharge or purported discharge of the official duty, the act or omission must bear such a relation to the duty that the accused could lay reasonable, nexus between the offending act or omission and the duty but not a pretended or fanciful claim that he did it in the course of the performance of his duty. It is no part

of the duty of a public servant to enter into conspiracy; to fabricate the records; falsification of the accounts; fraud or misappropriation or demand and acceptance of illegal gratification though the exercise of power given him an occasion to commit the offences. In K.Satwant Singh v. State of Punjab, [1960] 2 SCR 89 this court held that the act of cheating or abatement thereof has no reasonable connection with the discharge of the official duty or that he did so in the course of performance of his duty. The same was reiterated in Harihar Prasad v. State of Bihar, [1972] 3 SCC 89. "

It is further respectfully submitted that, in the case of **Jeewan Kumar Raut & Anr. Vs. CBI** (Criminal Appeal Nos. 1133-1134 of 2009), the Apex Court held that,

"...TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences. TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code..."

3(e). In view of the above, the learned counsel for the Directorate of Enforcement sought for dismissal of the quash petition.

4. The writ petitioner is A.10-Adityanath Das in SC.No.2 of 2017 on the file of learned Principal Special Judge for trial of CBI Cases-cum-Special Court under PML Act, 2002 at Nampally, Hyderabad, in his seeking to quash said SC proceedings against him as A.10, now Principal Secretary Government of Andhra Pradesh. A.10 out of 10 accused including Sri YS Jagan Mohan Reddy-A1, Sri V. Vijay Sai Reddy-A2, Sri N. Srinivasan-A3, M/s. Bharati Cement Corporation Private Limited-A4, M/s. Jagati Publication Limited-A5, M/s. Carmel Asia Holdings Private Limited-A6, M/s. The India Cements Limited-A7, M/s. Janani Infrastructure Private Limited-A8, Sri M. Samuel-A9 and A10-Sri Adityanath Das, the writ petitioner and by referring to charge sheet filed by the CBI against several accused among them supra. So far as the investigation under PML Act concerned mentioned from Para 11 onwards of the private complaint by referring to Para 10.11 that A.10-Adityanath Das (petitioner), Principal Secretary, I & CAD, Government of AP, Hyderabad, in his statement dated 21.10.2014 under Section 50 (2 & 3) PML Act inter-alia stated during his tenure as Secretary I & CAD pertaining to allocation of water from Krishna and Kagna rivers to M/s. India Cements were issued.

So far as his role concerned, referred in Para 25(j) and further stated from Paras 26 to 30 as follows:

"25(j). Shri Adityanath Das was the Secretary, Department of Irrigation and Command Area Development, Government of Andhra Pradesh. Shri Adityanath Das, in conspiracy and connivance with Shri Y.S Jagan Mohan Reddy and other accused persons abused his official position and shown undue favours to M/S The India Cements Limited. The favours extended by him is in the form of allotment of additional 10 Lakh Litres of water from River Kagna without referring the matter to Interstate Water Resources Authority to M/S The India Cements Limited by violating the existing norms, regulations and procedures and caused wrongful loss to Government of Andhra Pradesh. He also did not consider the aspect of pending water royalty along with penalty from M/S The India Cements Limited and sanctioned additional water to M/S The India Cements Limited.

Thus, Shri Adityanath Das, directly involved in the offence of money laundering under Section 3 read with Section 4 of the PMLA, 2002 by knowingly assisted M/S The India Cements Limited and others in the creation of proceeds of crime and by assisting the said companies to project/claim the said Proceeds of Crime as untainted. He is therefore guilty of the offence of money laundering under Section 3 of PMLA, 2002 punishable under Section 4 of PMLA, 2002.

26. It is submitted that, in view of the above the said Movable/immovable properties total value of Rs. 232,27,55,806/- (Movable Properties - Rs 225,96,99,555/- and Immovable Properties – Rs.6,30,56,251/-) confirm to the definition of proceeds of crime as defined under Section 2(1) (u) of PMLA, 2002 as "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".

27. It is submitted that from the statements of the Accused herein and documents collected during the course of investigation under PMLA, 2002, it is well established that **Accused Persons A-1 and A-10** have acted in concert with a view to conceal the proceeds of crime i.e. bribe amount in the guise of investment, proceeds of crime in the form of lands, etc., and tried to project the same as untainted. It is also humbly submitted that the accused persons have tried to project the Proceeds of crime i.e. bribe amount as investment in the form equity in the companies with exorbitant premium without any substantiation and by submitting antedated valuation reports, etc., and thereby they committed an offence under the provisions of Section 3 of PMLA, 2002 which is punishable under Section 4 of the PMLA, 2002.

28. It is humbly submitted that the **Accused A-1 to A-7, A-9 and A-10** have been charged by the CBI for committing offences under various sections including Sections 120-B read with Section 420 of IPC, 1860 and Sections 9, 11, 13 of the Prevention of Corruption Act, 1988, which are scheduled offences under the provisions of PMLA, 2002. The Accused persons (A-1 to A-7) have dealt with the Proceeds of Crime i.e. possession, etc., and projected the proceeds of crime as untainted money as discussed supra. As the said attached properties confirm to the definition of proceeds of crime as defined by Section 2(1) (u) of PMLA, 2002 as 'Proceeds of Crime' and the accused were involved in offence of Money Laundering in terms of Section 3 of the PMLA, 2002, punishable under Section 4 of PMLA, 2002.

29. The offence of 'money-laundering' is defined under Section 2(1)(p) and has the meaning assigned to it in Section 3 of PMLA, 2002.

Offence of money laundering is defined in Section 3 as under:-

'whosoever directly or indirectly attempts to indulge or knowingly assist or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisiti0n or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering'

"**Proceeds of crime**" is defined under Section 2(1)(u) of the PMLA, 2002 as follows:

“Proceeds of crime" means any property derived or obtained, directly or 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.”

Section 4 of PMLA, 2002

"Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for term which shall not be less than three years but which may extend to seven years and shall 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 the section shall have effect as if for words "which may extend to seven years", the words "which may extend to ten years" had been substituted

Schedule is defined under Section of the PMI-A, 2002 as follows :

'Schedule means the schedule to this Act',

Scheduled offence is defined under Section 2(1)(y) of the PMLA, 2002 as follows:

"Scheduled Offence" means --

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

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

[deleted vide amendment act, 20131

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

"Person" as defined under section 2(1) (s) of the PMLA 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;

Section 8 (5) of PMLA, 2002.

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

Section 24 of the PMLA 2002 presumes burden of roof on the accused and is as follows:

Section 24 — Burden of proof:

In any proceedings relating to proceeds of crime under this Act,

(a) In the case of a person charged with the offence of money laundering under section 3, the Authority or Court shall.

Unless the contrary is proved, presume that such proceeds of crime are involved in money laundering; and

(b) In the case if any other person the Authority or Court, may presume that such proceeds of crime are involved in money laundering

Offences by Companies - Section 70 of PMLA 2002 states as under -

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was incharge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly;

PROVIDED that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1) where a contravention of any of the provisions of this Act or of any rule, direction or order made there under has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation 1: For the purposes of this section, -

(i) "Company" means anybody corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

Explanation 2: For the removable of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.

Section 71 of PMLA, 2002

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.*

30. It is humbly submitted that from the statements of the Accused herein and documents collected during the course of investigation under PMLA, it is well established that **Accused 1 to 10** have committed the offence of Money-Laundering under the provisions of Section 3 of PMLA, 2002 which is punishable under Section 4 of the PMLA, 2002 and hence, this complaint."

4(a). The contentions in the quash petition impugning the cognizance order are that the allegation in the charge sheet by the CBI against the petitioner as Secretary to Irrigation, I & CAD Department, Government of AP, is of criminal conspiracy with other accused of party to criminal conspiracy with other accused in facilitating to obtain additional allocation of water in favour of M/s. India Cements-A7 and by G.O.Ms.No.146, I & CAD dated 22.07.2008 and G.O.Ms.No.94, I & CAD dated 12.08.2009 issued by him allocating additional quantity of water without following due procedure. However those allegations in the

charge sheet of CBI are baseless and untrue and questioning the CBI charge sheet that was taken cognizance that was pending as CC.No.24 of 2013 before the Special Court for the offences punishable under Sections 420 & 120-B IPC. Crl.P.No.5914 of 2016 filed with the contentions that he followed the procedure in processing files in issuing the 2 G.O.s and the State as well as the Central Government refused to grant sanction under Section 197 Cr.P.C. and Section 19 of PC Act as the files were processed after following procedure as per the existing Government policy and the then Hon'ble Minister filed affidavit before the Supreme Court stating all the water allocations made under G.O.146 was in accordance with the water and industrial policy of the State, the 10% reservoir water being reserved for industrial use as per the Government orders invoked and both the G.O.Ms.Nos.146 & 94 issued after following proper procedure and according to the Rules prescribed in AP Government Business Rules and Secretariat Instructions and thereby water allocations made in accordance with the procedure prescribed and no criminality can be attributed and it is based on the case registered by the CBI supra, Enforcement Directorate, Hyderabad wing registered crime No.ECIR/9/ HZO/2011 against the petitioner and 9 others by showing him as A.10 and in the enquiry he was examined by the officials of Directorate of Enforcement and the statement was recorded on 21.10.2014 where he explained the entire

procedure for allocation of river water to industries and there was no illegality much less procedural irregularity and the allocation of water to India Cements-A7 and despite it the Assistant Director of Enforcement, Government of India filed the private complaint for the alleged offence of cheating under Section 3 & 4 PML Act alleging as Secretary of I & CAD as if conspired with other accused by abusing his post by undue favour by violating norms and regulations and in causing loss to the Government by alleging as if therefrom involved in the offence of money laundering by assisting A.7 and others for those among others to claim the proceeds of crime as untainted and the Special Judge should not have taken cognizance for the offences under Section 3 & 4 of the PML Act and the cognizance order saying perused the records and complaint taken on file as SC.No.2 of 2017 against A.1 to A.10 under Section 4 r/w 3 of the Act in ordering to issue summons is untenable, that he is innocent and unnecessarily charge sheeted by filing complaint to take cognizance supra by Special Court that is liable to be quashed. He referred Sections 2, 3, 4 & 24 of the PML Act in saying to attract the offence of money laundering knowledge of indulgence of a person is necessary and said person who also project proceeds of crime as untainted property and those are lacking even otherwise on merits as for the complaint that too against the petitioner to take cognizance there is absolutely no semblance to attract any crime from the so called water

allocation made by the orders of the Government for same was done as policy of the Government as explained by the Hon'ble Minister in the affidavit referred supra as no irregularity nor procedural lapse therein and the bald allegations made in the complaint as if involved in money laundering in assisting A.7 in creation of proceeds of crime are baseless and the learned Special Judge also erred in taking cognizance against the petitioner without assigning reasons and by non-application of mind and same is liable to be quashed for the above among no offence prima facie made out under Sections 3 and 4 of PML Act even on face value of allegations and he cannot be involved in the criminal case for the discharge of official duty while processing the file as per the procedure and for no any incriminating material available against him so to involve apart from very complaint disclose lack of intention and knowledge on the part of the petitioner to commit any offence of money laundering in the so called water allocation covered by G.O.Ms.No.146 & 94 respectively and the allegations made in the complaint are otherwise absurd and thereby the proceedings are liable to be quashed.

4(b). In addition to the above, the petitioner raised additional grounds that without there being a valid sanction under Section 197 Cr.P.C. by competent authority to prosecute the petitioner for the alleged offence under Section 3 r/w 4 of the PML Act the complaint and the cognizance order of the Special Judge are erroneous and unsustainable

and Section 46 of the Act speaks that save as otherwise provided under the Act provisions of Cr.P.C. shall apply to the proceedings before the Special Court and for purpose of said provisions special Court shall be deemed to be the Court of Session and also referred Section 65 of the PML Act and thereby for want of sanction reference to prosecute him as public servant sought for quashing of the proceedings in SC.No.2 of 2017.

4(c). The counter filed by the 2nd respondent-Assistant Director, Directorate of Enforcement, Hyderabad, while denying the petition averments of any lack of knowledge or non-privy of the petitioner, by saying those are untrue and set up for the quash petition purpose, that there is a prima facie case against him also that was rightly taken cognizance and no sanction is required, by reiterated with no need of reproduction what are the contentions raised in the other 2 quash petitions and thereby the quash petition is liable to be dismissed.

4(d). The reply affidavit of the quash petitioner in the writ petition in reply to the counter of the Assistant Director is by denying those contentions and by saying the contention of writ petition is not maintainable is not correct for same is maintainable and earlier questioning the complaint filed under PML Act, WP.No.17525 of 2014 filed before this Court by some of the accused therein that was allowed on 22.12.2014 and even the Directorate of Enforcement

preferred appeal before the Supreme Court against said writ petition went unsuccessful therein also, thereby estopped from questioning of maintainability of the writ petition and it is also stated the contention of he was not discharging official duties is not correct so also of the allegation of he is responsible for the alleged illegal benefits to the India Cements in the form of allocation of water without referring to the Inter State Water Resources Authority for same is factually incorrect as in case of water for Krishna river due consultation was done with CE, ISWR and so far as Kagna river (not a tributary of Krishna) when queried of necessity of such consultations in the absence of rule/order mandating reference to ISWR and getting no reply of existence of any rule or order of compulsory consultation with ISWR and in view of the fact of State policy to adopt single window through State Investment Promotion Board (SIPB) reserving 10% water for industrial use coupled with deemed to have approved provisions if any approved in 7 days makes clear that prior consultation with ISWRA not mandatory and after taking the views of Advisor to the department the recommendations of CM through Minister concerned made as per Business rules and there is no undue favour nor undue haste nor violation of procedure taken place and contra allegations are baseless so also any allegation of abusing his position in the allocation of water for same is far from truth and factually incorrect including the so called allegation of application of other

companies for allocation of water kept pending not correct, though it is mentioned that he never contended of sanction necessary for prosecuting public servant under PML Act it is as referred supra taken as an additional ground of sanction is mandatory and pre-requisite. He also referred about G.O.Ms.No.201 dated 01.12.1995, the Government of Andhra Pradesh constituted State Level Promotion Board and whose decisions are the cabinet decisions as per Rule 26 of AP Secretariat Business Rules and SIPB by resolution dated 18.11.2000 resolved to make available 10% of water for existing projects and later on 23.05.2001 SIPB supra decided to keep its decisions out of the scrutiny of the ACB and Vigilance Departments and in 2003 SIPB made CE Irrigation as competent to give water allocation and directed the request to special amenities like water and electricity should be decided in 7 days and otherwise would be deemed to have approved and as per G.O.Ms.No.178 dated 21.06.2005 the industrial policy of the State of AP to allocate water to a tune of 10% to the use of industrial use for existing as well as future projects. The water allocation in Krishna river as per the recommendation contained in Bachavat River Water Tribunal and the allotment of Kagna basin is governed by recommendations of Bachavat Tribunal, where under AP's share was limited to 6 TMC as river Kagna is a minor stream and it is tributary to River Bheema and not of Krishna and as per G.O.Ms.No.195 dated 22.03.1979 for rivers other than

Krishna and Godavari and its tributaries, the CE Minor Irrigation is the authority designated to deal with the streams and rivers which are not Inter State Rivers and thereby the water allocation was as per procedure prescribed and not by any violations. The Advisors of the Government over see the functions of the Advisory Committee and give their suggestions and feed back on technical matters constituted and the petitioner followed by the procedure laid down by the SIPB and the industrial policy enumerated in G.O.Ms.No.178 dated 21.06.2005 and contra allegations in the counter are baseless. The counter affidavit by the Assistant Director to the additional ground on want of sanction is nothing new to what is there in the counter affidavit averments in the other 2 quash petitions referring to proposition and provisions in saying no sanction is required for the contention of requirement of sanction as a pre-requisite is untenable and thereby the writ petition is liable to be quashed.

5. Heard both sides at length the common arguments in all the three matters in several sittings and perused the provisions, propositions and factual matrix from the entire material available on record.

6. Leave apart for the time being the respective contentions of Adityanath Das(writ petitioner) and BP Acharya (petitioner in the two quash petitions) respectively of they are not involved in any offence of money laundering in discharge of their official duties and coming to Adityanath

Das with further contentions in particular that in issuing G.O.Ms.Nos.94 & 106 I & CAD dated 22.07.2008 and 12.08.2009, in the so called allocation of additional water to the India Cements-A7 and what all if at all allocated was within the 10% reserved water for industrial use covered by various circulars and notifications referred supra in the pleadings supra and as per the AP Government Business Rules and Secretariat Instructions and from the water and industrial policy of the State and has also stated by the then Hon'ble Minister in his affidavit in the SLP(Crl).No.609 of 2012 of the allocation was done not in accordance with the regulations and procedures prescribed and in force and nothing beyond and as per the Government policy exercised through SIPB whose decisions are at par with cabinet decisions as per the Secretariat Business Rules covered by G.O.Ms.No.201 dated 01.12.1995 and that too out of SIPB resolution dated 18.12.2000 to make available 10% of water for existing projects and SIPB decided on 23.05.2001 to keep its decisions out of scrutiny particularly ACB and Vigilance Department and SIPB made CE competent to give water allocation and deemed permission or approval if no decision taken within 7 days of application and the G.O.Ms.No.178 dated 21.06.2005 covering the industrial policy of the State of AP water allocation to a tune of 10% for industrial use for existing as well as future projects and even as per the recommendations contained in Bachavat River Water

Tribunal and out of AP's share and the decision taken on merit at the highest level by the Minister concerned with the conference of the CM and no error found in Inter State Water Resources by Chief Engineer ISWRA in the said allotment and that too when it is a renewal of the old allotment with extra quantity from Krishna and Kagna rivers to India cements and that too from the proposal came from Superintending Engineer, Irrigation Circle after arrears realized of the water royalty, for no involvement of money laundering much less with intention or knowledge much less commission of money laundering or aiding or abetting any others to have benefit and sanction for prosecution refused by Central and State Governments to the CBI of PC Act and IPC offences respectively earlier sought by CBI against the petitioner from the say of no any irregularity and no loss to the Government, that required to be considered with reference to any offence of money laundering defined in Section 3 of the Act which speaks 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 the proceeds of crime and projecting or claiming it as untainted property shall be guilty of offence of money-laundering that is punishable under Section 4 of the Act with different punishments for the advance specified in Part-A of the schedule or other than those respectively, similar is the contention of Shri BP Acharya and further that the decisions

taken not by him, much less exclusively, that too the other departments involved and the Minister concerned or the cabinet committee that have taken the decisions and there is no any offence of money laundering committed by him and the cognizance order and prosecution are unsustainable and the State Government also after careful consideration of the report of the CBI and the version given by the member of service has come to the conclusion that the member of service has not taken any unilateral decision as he has forwarded his comments/observations to the State Government for orders on issues concerning APIIC and the Government; one of the common contentions raised along with other quash petitioners is want of sanction that now required to be decided first as a common issue involved with reference to the rival contentions of the requirement or not of the sanction to prosecute any of the 3 petitioners as the case may be.

7. In this regard there is no need of reproducing the arguments advanced with reference to the respective contentions by them from the respective pleadings in the petitions vis-à-vis counter and reply as the case may be, but for to deal with as per the context said rival contentions for answering more particularly from what the learned counsel for the Directorate of Enforcement Sri PSP Suresh Kumar and Sri Manmadharao submit is the Act is a complete code covering all areas right from report/complaint and registration of case and filing of the complaint and taking of

cognizance till end of trial with acquittal or conviction and punishment as the case may be that too when cognizance not being taken under Section 190 Cr.P.C. but for under Section 44 of the Act and Section 43 deals with special courts, Section 44 deals with offences trialable by the special Court and Section 44(1)(2) commences with the non-absentee clauses respectively in this regard and Section 45 even speaks of the offences are all cognizable and non-bailable with non-absentee clause of notwithstanding any thing contained in Cr.P.C. and it is Section 45(1)(ii) only that was struck down by the Apex Court in **Nikesh Tarachand Shah Vs. Union of India**[4] and not any of the other provisions of the Act. The constitutional validity is upheld for others time and again and thereby from its reading with reference to Sections 46, 65 & 71 of the Act no prior sanction even to prosecute a public servant is required for any of the three petitioners in the three matters respectively even they are public servants in the cadre of IAS officers and even taken their acts are in discharge of their official duties in their say of Section 197 Cr.P.C. has no application even for taking cognizance by the special Court. In reply to the above, the contention of the learned counsel for the petitioners is that sanction is mandatory under Section 197 CrPC to take cognizance.

8. As the main issue now to answer therefrom is requirement or non-requirement of any sanction to take

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cognizance for the offences against the officials as accused, it is thereby taken up to decide. For that it is to be seen whether the Act is a complete code covering all areas as contended and if not to what area with reference to Sections 4 & 5 Cr.P.C. the provisions of Cr.P.C. as general law either specially made applicable by the special provisions or from its silence so to apply unless shown deemed not applicable and then how far the contentions of the respective petitioners of the requirement of sanction is a pre-requisite to take cognizance by the special court is sustainable. In this regard and for more clarity, it is necessary to have overall idea of the provisions of the PML Act:

"The Prevention of Money-Laundering Act, 2002(amended from time to time-Subject index to have an overall idea of all the sections is given in the table below

Chapters & Sections	**Particulars**
Chapter I	**Preliminary**
1	Short title, extent and commencement
2	Definitions
Chapter II	**Offence of Money-Laundering**
3	Offence of money-laundering
4	Punishment for money-laundering
Chapter III	**Attachment, Adjudication and Confiscation**
5	Attachment of property involved in money-laundering
6	Adjudicating Authorities, composition, powers, etc.
7	Staff of Adjudicating Authorities
8	Adjudication
9	Vesting of property in Central Government
10	Management of properties confiscated under this Chapter
11	Power regarding summons, production of documents and evidence, etc.
Chapter IV	**Obligations of Banking Companies, Financial Institutions and Intermediaries**

12	Banking companies, financial institutions and intermediaries to maintain records
13	Powers of Director to impose fine
14	No civil proceedings against banking companies, financial institutions, etc., in certain cases
15	Procedure and manner of furnishing information by banking company, financial institution and intermediary
Chapter V	**Summons, Searches and Seizures, Etc.**
16	Power of survey
17	Search and seizure
18	Search of persons
19	Power to arrest
20	Retention of property
21	Retention of records
22	Presumption as to records or property in certain cases
23	Presumption in inter-connected transactions
24	Burden of proof
Chapter VI	**Appellate Tribunal**
25	Establishment of Appellate Tribunal
26	Appeal to Appellate Tribunal
27	Composition, etc., of Appellate Tribunal
28	Qualifications for appointment
29	Term of office
30	Conditions of service
31	Vacancies
32	Resignation and removal
33	Member to act as Chairperson in certain circumstances
34	Staff of Appellate Tribunal
35	Procedure and powers of Appellate Tribunal
36	Distribution of business amongst Benches
37	Power of Chairperson to transfer cases
38	Decision to be by majority
39	Right of appellant to take assistance of authorized representative and of Government to appoint presenting officers
40	Members, etc., to be public servants
41	Civil court not to have jurisdiction
42	Appeal to High Court
Chapter VII	**Special Courts**
43	Special Courts
44	Offences tribal by Special Courts
45	Offences to be cognizable and non-bailable
46	Application of Code of Criminal Procedure, 1973 to proceedings before Special Court
47	Appeal and revision
Chapter VIII	**Authorities**

48	Authorities under Act
49	Appointment and powers of authorities and other officers
50	Powers of authorities regarding summons, production of documents and to give evidence, etc.
51	Jurisdiction of authorities
52	Power of Central Government to issue directions, etc.
53	Empowerment of certain officers
54	Certain officers to assist in inquiry, etc.
Chapter IX	**Reciprocal Arrangement for Assistance in Certain Matters and Procedure for Attachment and Confiscation of Property**
55	Definitions. In this Chapter, unless the context otherwise requires
56	Agreements with foreign countries
57	Letter of request to a contracting State in certain cases
58	Assistance to a contracting State in certain cases
59	Reciprocal arrangements for processes and assistance for transfer of accused persons
60	Attachment, seizure and confiscation, etc., of property in a contracting State or India
61	Procedure in respect of letter of request
Chapter X	**Miscellaneous**
62	Punishment for vexatious search
63	Punishment for false information or failure to give information, etc.
64	Cognizance of offences
65	Code of Criminal Procedure, 1973 to apply
66	Disclosure of information
67	Bar of suits in civil courts
68	Notice, etc., not to be invalid on certain grounds
69	Recovery of fines
70	Offences by companies
71	Act to have overriding effect
72	Continuation of proceedings in the event of death or insolvency
73	Power to make rules
74	Rules to be laid before Parliament
75	Power to remove difficulties
Schedule	The Schedule

The Preamble with statement of objects and reasons of the Prevention of Money-Laundering Act, 2002 (Act, No.15 of 2003) is as follows:

"**The Statement of Objects and Reasons**: It is being realized, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their

integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:

(a) The United National Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for preventing 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 held in Paris from 14 to 16 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 earned 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 23 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 8 to 10June, 1998, has

made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.

In view of an urgent need for the enactment of 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 committee on Finance, which presented its report on the 4th March, 1999 to the Lok Sabha.

The recommendations of Standing Committee accepted by the Central Government are:

(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 before the gazetted officer or Magistrate;

(g) the words 'unless otherwise provide to the satisfaction of the authority concerned' may be inserted in clause 22 relating to presumption on inter-connected transactions;

(h) vacancy in the office of the Chairperson of the Appellate Tribunal, by reason of his death, resignation or otherwise, the senior most member shall act as the Chairperson till the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill the vacancy, enters upon his office;

(i) the appellant before the Appellate Tribunal may be authorized to engage any authorized representative as defined under section 288 of the Income-tax Act, 1961;

(j) the punishment for vexatious search and for false information may be enhanced from three months imprisonment to two years imprisonment, or find of rupees ten thousand to find or 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.

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/penalty 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. **The Bill seeks to achieve the above objects.**

From the above, it is clear that the law seeks to prevent money-laundering which in plain terms means the preventing legitimizing of the money earned through illegal and criminal activities by investments in movable and immovable

properties. The need for a law on the subject has been the focus of the Government world over in recent times and that of the U.N. also, because the scourge of money-laundering has threatened to wreck the foundations of the States and undermine their sovereignty even. The terrorist outfits and smuggling gangs have been depending upon money laundering to finance their operations and it is known that money for such operations are arranged through laundering. Many such illegal outfits have set up ostensibly legal front organization. The money generated through illegal activities is ultimately inducted and integrated with legitimate money and its species like movable and immovable property. Thus certain economic offences, commercial frauds, crimes like murder, extortion have contributed to money-laundering in a significant manner. The perpetrators of such heinous crimes should not be allowed to enjoy the fruits of the money that passed under the activity and therefore the present enactment is intended to deprive the property which is related to the proceeds of specific crimes listed in the Schedule to the Act."

Coming to the relevant provisions of the Act for purpose of the case from the subject index of all sections in the table format given supra:

IN CHAPTER I: PRELIMINARY: **Sec.2 Definitions**:

2(1) (a) "**Adjudicating Authority" means an Adjudicating Authority appointed under sub-section (1) of section 6;**

2(1) (b) "Appellate Tribunal" means the Appellate Tribunal established under section 25;

2(1) (c) "**Assistant Director" means an Assistant Director appointed under subsection (1) of section 49;**

2(1) (d) "**attachment**" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter-III;

2(1) (n) "**intermediary**" means,- (i) a stock-broker, sub-broker share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio

manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992); or

(ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 (74 of 1952) or any member of such association; or

(iii)intermediary registered by the Pension Fund Regulatory and Development Authority; or

(iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

2(na) "investigation" includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence;

2(1) (p) **"money-laundering" has the meaning assigned to it in Section 3;**

2(1) (t) **"prescribed" means prescribed by rules made under this Act**;

2(1) (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;**

2(1) (v) " **property**" means an property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

Explanation: For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences.

2(1) (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 thirty lakh rupees or more; or

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

2(1) (z) **"Special Court**" means a Court of Session designated as Special Court under sub-section (1) of section 43;

2(1) (za) "**transfer**" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;

2(1) (zb) "**value**" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

IN CHAPTER II: OFFENCE OF MONEY-LAUNDERING (Sections 3 & 4)

Sec.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 the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Sec.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.

IN CHAPTER III:ATTACHMENT, ADJUDICATION & CONFISCATION:(Sections 5 to 11)

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

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

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

(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, authorized to investigate the offence mentioned in the schedule, before a Magistrate or Court for taking cognizance of the scheduled offence**, as the case may be, or a similar report or complaint has been made or filed under corresponding law of any other country:

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

(2) The Director, or any other officer not below the rank of Deputy Director, shall immediately after attachment under sub-

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

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

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

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

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

Sec.8 adjudication:

(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under **sub-section (4) of section 17** or under **sub-section 91) of section 18,** if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under **sub-section (1) of section 5,** or, seized under **section 17 or section 18,** the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

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

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

(2) The Adjudicating Authority shall, after------

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

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

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

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

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall by an order in writing, confirm the attachment of the property made under **sub-section (1) of section 5** or retention of property or record seized under **section 17 or section 18** and record a finding to that effect, such attachment or retention of the seized property or record shall---

(a) continue during the pendancy of the proceedings relating to any scheduled offence before a court; and

(b) becomes final after an order of confiscation is passed under sub Section (5) or Sub Section (7) of Section 8 or Section 58B or Sub Section (2A) of Section 60 by the Adjudicating Authority.

(4) Where the provisional order of attachment made under **sub-section (1) of section 5** has been confirmed under sub-section(3), the Director or any other officer authorized by him in this behalf shall forthwith take the possession of the property attached under Section 5 or frozen under sub Section (1A) of Section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of property frozen under sub Section (1A) of Section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) Where on conclusion of a trial of an offence under this Act, the special Court finds that the offence of money laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money laundering shall stand confiscated to the central Government.

(6) Where on conclusion of a trial under this Act, the special Court finds that the offence of money laundering has not taken place or the property is not involved in money laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under Sub Section (3) of Section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money laundering after having regard to the material before it.

Sec.9 Vesting of property in Central Government:

Where an order of confiscation has been made under **sub-section (5) or sub Section (7) of section 8 or Section 58B or sub section (2A) of Section 60** in respect of any property of a person,

all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances:

PROVIDED that where the Special Court or the Adjudicating Authority, as the case may be, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized or frozen under Chapter V, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:

PROVIDED FURTHER that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

CHAPTER V: SUMMONS, SEARCHES AND SEIZURES, ETC.:- **(Sections 16 to 24)**

Section 22. Presumption as to records or property in certain cases.-

1. Where any records or property are or is found in the possession or control of any person in the course of a survey or a search, or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force, it shall be presumed that-

i. such records or property belong or belongs to such person;

ii. the contents of such records are true; and

iii. the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person' handwriting, and in the case of a record, stamped, executed or

attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.

2. Where any records have been received from any place outside India, duly authenticated by such authority or person and in such manner as may be prescribed, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the adjudicating Authority, as the case may be, shall-

a. presume, that the signature and every other part of such record which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, s in that person's handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

b. admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

Section 23. Presumption in inter-connected transactions: Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 8 or for the trial of the money laundering offence, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court be presumed that the remaining transactions form part of such inter-connected transactions.

Section 24. Burden of proof: In any proceedings relating to proceeds of crime under this Act

(a) in the case of a person charged with offence of money laundering under Section 3, the authority or court shall, unless the contrary is proved, presume that such proceeds of crime or involved in money laundering; and

(b) in the case of any other person the authority or court, may presume that such proceeds of crime are involved in money laundering.

Chapter VII Special Courts: (Sections 43 to 47)

Section 43: Special Courts:

1. The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts or such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation- In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

2. While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

Section 44. Offences tribal by Special Courts:

1. Notwithstanding anything contained in the Code of Criminal Procedure,1973(2 of 1974),

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

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

b. a **Special Court may, [***] upon a complaint made by an authority authorised in this behalf under this Act take**

cognizance of the offence under section 3, without the accused being committed to it for trial.

c. If the Court which has taken cognizance of the scheduled offence is other than the special court which has taken cognizance of the complaint of the offence of money laundering under Sub Clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the special court and the special court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

d. A special court while trying the scheduled offence or the offence of money laundering shall hold the trial **in accordance with the provisions of the Criminal Procedure Code, 1973 (2 of 1974),** as it applies to a trial before a Court of Session.

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

Section 45. Offences to be cognizable and non-bailable[5]:-

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than 3 years under part-A of the schedule shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application the court is satisfied that there are reasonable grounds believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

[5] In the 2005 amended section 45(1) clause (ii) (shown in bold italics supra) is struck down by the Apex Court in Nikesh Tarachand supra

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-

a. the Director; or

b. any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

1-A Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorized, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

2. The limitation on granting of bail specified in [***] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Section 46. Application of Code of Criminal Procedure, 1973 to proceedings before Special Court.-

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

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

2. A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than

seven years, under the Union or a State, requiring special knowledge of law.

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

IN CHAPTER X – MISCELLANEOUS: (Sections 62 to 75)

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

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.

On the afore-stated scheme and from the provisions of the Act referred supra, the prosecution under the Act and attachment and eventual confiscation proceedings are distinct proceedings and thereby separate procedures contemplated even in relation thereto for the reason either these two sets of proceedings may be initiated against the same person if he is accused of the offence of money-laundering or any one out of the two sets of proceedings. Thus, even when a person is not so accused, the property in his possession may be proceeded against for attachment and confiscation, on a satisfaction by the appropriate and competent authority that such property constitutes proceeds of crime.

From the above, against transactions constituting money-laundering, the provisions of the Act contemplate two sets of proceedings; (a) prosecution for the offence of money-laundering defined in Sec.3 with the punishment provided in Sec.4; and (b) attachment, adjudication and confiscation in the sequential steps and subject to the conditions and procedures enumerated in

Chapter III of the Act and out of the two now we are concerned with the first set of the proceedings for prosecution covered by the offence of money laundering as ascribed in Sections 3 r/w 2(p) of the Act in an expansive locus as comprehending direct or indirect attempt to indulge; assist, be a party to or actually involved knowingly in any process or activity connected with the proceeds of the crime and projecting it as untainted property and on proof of guilt for punishment of the offenders of Money-Laundering, as provided in Section 4 of the Act, that would follow after a due cognizance of the offence with pre-trial enquiry if any and trial by the Special Court; which is conferred exclusive jurisdiction qua Section 44, Chapter VII of the Act. The prosecution, trial and conviction for the offence of Money-laundering are thus the criminal sanction administered by the Legislation and effectuated by a deprivation of personal liberty as a disincentive to a malfeasant.

In this regard while upholding the constitutional validity of the provisions of the Act, in **B. RAMA RAJU V. UNION OF INDIA**, MINI...the Division Bench of the then Composite Andhra Pradesh High Court on 4th March, 2011 in Writ Petition Nos.10765, 10769 23166 of 2010[6] held as follows:

> "While the offence of money-laundering comprises various degrees of association and activity with knowledge and information connected with the proceeds of crime and projection of the same as untainted property with mensrea; for the purposes of attachment and confiscation (imposition of civil and economic and not penal sanctions) neither mensrea nor knowledge that a property has a lineage of criminality is either constitutionally necessary or statutorily enjoined. Proceeds of crime is defined to include not merely property derived or obtained as a result of criminal activity relating to a scheduled offence but the value of any such property as well. The bogey of apprehensions propounded on behalf of the petitioners is that where

[6] 2011(3)ALT 443(DB)

proceeds of crime are sequentially transferred through several transactions, in favour of a series of individuals having no knowledge or information as to the criminality antecedent to the property; the authorities may proceed against each and all of such sequential transactions, thus bringing within the vortex of Chapter-III of the Act, all the properties involved in several transactions. Section 8(1) clearly postulates affording of an opportunity to a person in possession of proceeds of crime to indicate the sources of his income, earnings or assets; out of which or by means of which he has acquired the property attached, under Section 5(1) or seized under Sections 17 or 18 the evidence on which he relies and other relevant information and particulars. It is therefore clear that where a property is provisionally attached under Section 5, the person in possession of such property may avail the opportunity under Section 8 to indicate/establish that he has acquired the property attached (prima facie the proceeds of crime) out of his lawful earnings or assets, that he has the means to do so, and that his acquisition is therefore legitimate, bona fide and at fair market value of such property; and that the value paid for acquisition of the property and not the property in his possession that constitutes proceeds of crime, if at all. On such showing, to the satisfaction of the adjudicating authority, it would perhaps be not the property in possession of a person but the fair value for which he has acquired the property and paid to the transferor that constitutes proceeds of crime and the authorities may have to proceed against the property or value in the hands of the transferor.

Section 24 inheres on a person accused/charged of having committed an offence under Section 3, the burden of proving that proceeds of crime are untainted property. Section 23 of the Act enjoins a presumption in inter-connected transactions that where money-

laundering involves two or more inter-connected transactions and one or more of such transactions is or are proved to be involving in money-laundering, then for the purposes of adjudication or confiscation under Chapter-III, the Act enjoins a rebuttable presumption that the remaining transactions form part of such interconnected transactions.

From the scheme of the provisions of the Act, it is apparent that, a person accused of an offence under Section 3 of the Act whose property is attached and proceeded against for confiscation must advisedly indicate the sources of his income, earnings or assets, out of which or means by which he has acquired the property attached, to discharge the burden (Section 24) that the property does not constitute proceeds of crime. Where a transaction of acquisition of property is part of inter-connected transactions, the onus of establishing that the property acquired is not connected to the activity of money-laundering, is on the person in ownership, control or possession of the property, though not accused of a Section 3 offence, provided one or more of the interconnected transactions is or are proved to be involved in money-laundering (Section 23).

It further requires to be noticed that not only from the second proviso to Section 9 of the Act but on general principles of law as well, a person deprived of the property in his ownership, control or possession on account of confiscation proceedings under the Act, has a right of action against the transferor of such property to recover the value of the property.

In the context of the fact that money-laundering is perceived as a serious threat to financial systems of countries across the globe and to their integrity and sovereignty as well; in view of the fact that targeting the proceeds of crime and providing for attachment and

confiscation of the proceeds of crime is conceived to be the appropriate legislative strategy; and given the several safeguards procedural and substantive alluded to hereinbefore, we are not persuaded to the view that attachment and confiscation of property constituting proceeds of crime in the possession of a person not accused/charged of an offence under Section 3 constitutes an arbitrary or unconstitutional legislative prescription.

The contention that the definition of "proceeds of crime" [Section 2(u)] is too broad and is therefore arbitrary and invalid since it subjects even property acquired, derived or in the possession of a person not accused, connected or associated in any manner with a crime and thus places innocent persons in jeopardy, is a contention that also does not merit acceptance. In **Attorney General for India and others Vs. Amratlal Prajivandas and others** [1994] 5.SCC 54, a Constitution Bench of the Supreme Court considering the validity of provisions of the Smugglers and Foreign Exchange Manipulators (Forfeiture of **Property) Act, 1976 (SAFEMA)** observed:

> "The relatives and associates are brought in only for the purpose of ensuring that the illegally acquired properties of the convict or detenu, acquired or kept in their names, do not escape the net of the Act. It is a well-known fact that persons indulging in illegal activities screen the properties acquired from such illegal activity in the names of their relatives and associates. Sometimes they transfer such properties to them, may be, with intent to transfer the ownership and title. In fact, it is immaterial how such relative or associate holds the properties of convict/detenu – whether as a Benami or as a mere name-lender or as a bona fide transferee for value or in any other manner. He cannot claim those properties and must surrender them to the State under the Act. Since he is a relative

or associate, as defined by the Act, he cannot put forward any defence once it is proved that that property was acquired by the detenu – whether in his own name or in the name of his relatives and associates. The Court further observed : By way of illustration, take a case where a convict/detenu purchases a property in the name of his relative or associate – it does not matter whether he intends such a person to be a mere name lender or whether he really intends that such person shall be the real owner and/or possessor thereof – or gifts away or otherwise transfers his properties in favour of any of his relatives or associates, or purports to sell them to any of his relatives or associates – in all such cases, all the said transactions will be ignored and the properties forfeited unless the convict/detenu or his relative/associate, as the case may be, establishes that such property or properties are not "illegally acquired properties" within the meaning of **Section 3(c).** In this view of the matter, there is no basis for the apprehension that the independently acquired properties of such relatives and associates will also be forfeited even if they are in no way connected with the convict/detenu. So far as the holders (not being relatives and associates) mentioned in **Section 2(2)(e)** are concerned, they are dealt with on a separate footing. If such person proves that he is a transferee in good faith for consideration, his property – even though purchased from a convict/detenu – is not liable to be forfeited. It is equally necessary to reiterate that the burden of establishing that the properties mentioned in the show-cause notice issued under Section 6, and which are held on that date by a relative or an associate of the convict/detenu, are not the illegally acquired properties of the convict/detenu, lies upon such relative/associate. He must establish

that the said property has not been acquired with the monies or assets provided by the detenu/convict or that they in fact did not or do not belong to such detenu/convict.

The Supreme Court concluded: The application of SAFEMA to the relatives and associates [in **clauses (c) and (d) of Section 2(2)]** is equally valid and effective inasmuch as the purpose and object of bringing such persons within the net of SAFEMA is to reach the properties of the detenu or convict, as the case may be, wherever they are, howsoever they are held and by whomsoever they are held. They are not conceived with a view to forfeit the independent properties of such relatives and associates as explained in this judgment. SAFEMA targets for forfeiture 'illegally acquired property' of a person (defined as a convict or detenu under specified enactments and relative or associate of such convict or detenu (the expression relative or associate also defined)). This is a 1976 enactment that provides for forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators. The Act, on the other hand, specifically targets the wider pathology of money-laundering in relation to a large number of scheduled offences enumerated from a variety of specified legislations. In the context of the objects sought to be achieved by the Act and the specificity of the definitions of the expressions "money-laundering" and "proceeds of crime"; the inherence of the burden of proof on a person accused of an offence under **Section 3 (Section 24)** and the presumptions in inter-connected transactions (Section 23), it is clear that what is targeted for confiscation is proceeds of crime in the ownership, control or possession of any person and not all property or proceeds of all crime in the ownership, control or possession of any person.

Again, in **Smt. Heena Kausar Vs. Competent Authority** 2008 (7) SCALE 331 the validity of the proviso to Section 68 – C of the Narcotic Drugs and Psychotropic substances Act, 1985, (NDPS Act, 1985), prior to its amendment by Central Act 9 of 2001 fell for the consideration of the Supreme Court. Dealing with the challenge the Supreme Court observed: "…The purported object for which such a statute has been enacted must be noticed in interpreting the provisions thereof. The nexus of huge amount of money generated by drug trafficking and the purpose for which they are spent is well known … Necessity was felt for introduction of strict measures so that money earned from the drug trafficking by the persons concerned may not continue to be invested, inter alia, by purchasing moveable or immoveable properties not only in his own name but also in the names of his near relatives." In Heena Kausar (supra) interpreting similar provisions in Chapter VA of the NDPS Act, 1985, the Apex Court pointed out that the property sought to be forfeited must be one which has a direct nexus with the income, etc, derived by way of contravention of any of the provisions of the Act or any property acquired therefrom. The Court explained that the meaning of "identification of such property" (a phrase employed in Section 68 – E of Chapter VA), is that the property was derived from or used in the illicit traffic.

The SAFEMA; The **NDPS Act, 1985; The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988; and The Benami Transactions (Prohibition) Act, 1988** are illustrations of statutes that incorporate provisions for forfeiture, confiscation or acquisition without compensation, of property derived, acquired, possessed or dealt with in contravention of specified legislative prescriptions. The Act is a later statute to the aforementioned Acts and specifically

targets the perceived evil of money-laundering. The category of offences enumerated in Parts A, B and C of the Schedule of the Act elucidate the legislative intent that the several offences and the unlawful gains/wealth derived therefrom by malfeasant(s) are targeted and confiscated, including from others when the property being the derivative of criminal activity is laundered through one or more layered transactions and finds its way to the ownership, control or possession of non-offenders as well; but in respect of scheduled offences.

The object of the Act is to prevent money – laundering and connected activities and confiscation of "proceeds of crime" and preventing legitimising of the money earned through illegal and criminal activities by investments in moveable and immoveable properties often involving layering of the money generated through illegal activities, i.e., by inducting and integrating the money with legitimate money and its species like moveable and immovable property. Therefore, it is that the Act defines the expression "proceeds of crime" expansively to sub-serve the broad objectives of the Act. We thus do not find any infirmity in the provisions of the Act.**********

As we have observed earlier in this judgment in another context, the **provisions of Sections 3, 5, 8, 23 and 24** are also inter-related provisions and must be considered as components of a statutory symphony that elucidate the true scope of the onus probandi and the burden of proof. **********

In **Raghavanna v. Chenchamma** AIR 1964 SC 136 , Subba Rao, J (as his Lordship then was) again explained the distinction between burden of proof and onus:…There is an essential distinction between burden of proof and onus of proof: burden of proof lies upon the person who has to prove a fact and it never shifts, but

> the onus of proof shifts. The burden of proof in the present case, undoubtedly lies upon the plaintiff to establish the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence. **********."

Thus, but for Section 45(1)(ii) of the Act, where from the Public Prosecutor on notice once opposes the application for bail, bail cannot be granted to accused of the offence under Section 3 of the Act unless the court is satisfied that there are reasonable grounds believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail, is struck down to the above extent by the Apex Court in **Nikesh Tarachand Shah** supra as per law as on date, all other provisions of the Act with amendments in 2005 and 2009 are held constitutionally valid.

It is also made clear from the discussion supra that for the offence under Section 3 of the Act, mensrea is an essential component from attribution of knowledge and there from burden to prove his innocence and of acted in good faith and without knowledge."

9. From this now coming back to the specific provisions among all those of the Act relevant to answer the issue, in this regard Section 71 of the Act clearly speaks that the provisions of the Act shall have effect notwithstanding inconsistent therewith contained in any other law for the time being in force. It has the overriding effect to the provisions of the Act over any other law for the time being in force provided it is shown that other law is inconsistent with the provisions of the Act. ***It is to be seen therefrom whether the Act not***

covered any area and if so whether the Cr.P.C. provisions then applicable provided those are not inconsistent with the provisions of this Act, leave about other any law in force for the time being to consider any inconsistency from any provisions thereunder. From this now coming to the Section 46 of the Act at the cost of repetition it specifically speaks that Cr.P.C. provisions are applicable to the proceedings before the Special Court. From what Section 46 reproduced supra, Section 46(1) from the very wording supra of save as otherwise provided in this Act the provisions of the code in entirety which includes provisions as to bails or bonds shall apply to the proceedings before the special Court and for the purpose of said provisions the special Court shall be deemed to a Court of Session. Thus Cr.P.C. is applicable to the proceedings before the special Court save as otherwise specifically provided in the Act if not inconsistent therewith in the Act or anything inconsistent therewith to prevail to the extent the Act provisions specifically provided as special law taking away of the application of the Cr.P.C. provisions. Thus, the Act provisions are applicable in addition to and not in derogation to what is specially provided in the Act.

10. In this regard, the Apex Court in **State of Punjab Vs. Balbir Singh**[7] on the scope of Sections 4 & 5 Cr.P.C. r/w Sections 41 to 43 & 51 of NDPS Act and Sections 100, 102 & 165 Cr.P.C. observed that NDPS Act is not a complete code

[7] 1994 3 SCC 299

incorporating all the provisions relating to search, seizure or arrest etc., and the words in so far as they are not inconsistent with the provisions of the Act are significant enough worded in the Section 51 of the Act say that the provisions of Cr.P.C. as per Section 4 of the code shall be applicable in so far as they are not inconsistent with the NDPS Act from the combined reading of the provisions for the reason Section 4(2) Cr.P.C. provides that all the offences under any other law shall be investigated and inquired into, tried and otherwise dealt with according to the same provisions (of Cr.P.C.) but subject to any enactment for the time being in force regulating the manner or place of investigation, inquire into, or try or otherwise dealing with such offence. It is incorporated clearly particularly in the expression at Para 5 in use of the words otherwise deal with it is not necessarily mean something which is not included in the Act but for points out to the fact that the expression deal with is of comprehensive and that the investigation inquiry and trial some of the aspects dealing with offences. Consequently the provisions of Cr.P.C. shall be applicable in so far as they are not inconsistent with NDPS Act including to warrants, searches, seizure or arrest etc., made under this Act. Further with reference to the provisions of the SC & ST (POA) Act 1989 the Apex Court in **Gangula Ashok Vs. State of AP**[8] by quoting with approval the expression of the Division

[8] 2000 (2) SCC 504

Bench of this Court in **Referring Officer represented State of AP Vs. Shekar Nair**[9] and by quoting the constitution bench expression of the Apex Court in **AR Antulay** supra and **Director of Enforcement Vs. Deepak Mahajan**[10] among other particularly at Paras 12 to 15 referring to Section 4(2) Cr.P.C. and the provisions of the SC & ST (POA) Act that Section 4(2) makes it clear that subject to provisions of other enactment, all offences under other laws shall also be investigated, inquired into, tried and otherwise dealt with under the provisions of the code to mean if any enactment contained any provisions which is contrary to the code such other provision would apply in place of particular provisions of the code and if there is no such contrary provision in other laws then the provisions of the code would apply to the matters covered thereby as held in Para 16 by **AR Antulay supra** by the Constitution Bench of the Apex court and also as held in Para 128 of **Deepak Mahajan supra** by making clear that it only relates to the extent application of the code where there is no contrary provision in the special Act or any special provision excluding the application of the code by the special Act. Thus as referred supra of Section 71 of the Act is nothing new to Section 4(2) of the code and from the reading of the provisions of the Act there is nothing stated of to prosecute a public servant including to take cognizance by the special Court no sanction under the code or any other law

[9] 1999 (3) ALT 533
[10] 1994 (3) SCC 440

is required. It is nothing specifically stated excluding the application of the code in the PML Act from the provisions referred supra. It is only then to see any of the provisions of the Act are inconsistent to the code to apply with reference to Section 4(2) of the code, Section 197 Cr.P.C. as otherwise applicable from the expressions supra that what even the Constitution Bench expression in **AR Antulay supra** laid down as referred supra and quoted with approval in the expressions supra.

11. Before undertaking further discussion, coming back to the other provisions of the Act, Section 44(1)(b) speaks that notwithstanding anything contained in Cr.P.C. the special Court may upon complaint made by an authority authorized in this behalf by the Act take cognizance of the offence under Section 3 without accused is committed to it for trial. The special Court's power of taking cognizance without committal is provided thereby irrespective of what is contained in Cr.P.C. and nothing beyond, much less to construe other provisions of the code for taking cognizance no way applicable. In fact from the silence in the provisions for nothing in the Act provisions inconsistent to the code from the reading of Section 4(2) of the code with the provisions supra, Section 197 Cr.P.C. sanction for taking cognizance is a pre-requisite to proceed against a public servant. Thus it does not mean if at all sanction to prosecute otherwise is required to take cognizance, no way required because not

specifically provided by Section 44(1)(b) of the Act. Even from the very wording of Section 45 no need to reproduce herein supra only the non-absentee clause is in relation to cognizance making the offence cognizable and non-bailable to say Section 4(2) r/w schedule II of Cr.P.C. cannot be looked into because of the contrary specific provision herein. Even from Section 45(1)(a) of the amended Act the non-absentee clause is against police officers power to investigate under Cr.P.C. without authorization by special or general order of the Central Government.

12. Now from this coming to the contention of the learned counsel of the Directorate of Enforcement in this regard to answer concerned what they stated of cognizance is under Section 44 of the Act and not under Section 190 Cr.P.C. thereby bar under Section 197 Cr.P.C. to take cognizance would not apply is for the reason supra not at all tenable to appreciate.

13. Now from this coming to the other important provision contained in the Act which provides to apply Cr.P.C. specifically in some areas viz., Section 65 which reads that the provisions of the code shall apply to mean must be applied as applicable automatically to the extent indicated that is in so far as they are not inconsistent with the provisions of the code, to arrest, search and seizure, attachment, confiscation***, investigation, prosecution and all other proceedings under this Act***. So far as taking of

cognizance by the special Court referred supra requirement or non-requirement of sanction is not inconsistent with the provisions of this Act for there is no provision saying no sanction is required. **In view of that even Section 65 of the Act made applicable for prosecution the provisions of the Code and prosecution includes particularly taking of cognizance thereby what Cr.P.C. provides of mandatory requirement of sanction to prosecute a public servant for the acts done in discharge of or in the purported discharge of official duties as the case may be. What Section 71 of the Act at the cost of repetition once again referred supra says is the Act provisions prevail over any other law in force to the extent of inconsistent and not other acts including the provisions of the code not at all applicable even there is no any inconsistency and from the above the Act is silent in that area and from this and reading of Sections 65, 71 of the Act in particular and with reference to Sections 43 to 46 of the Act in general with Section 4(2) of the Code and the expressions referred supra, the provisions of the Code is applicable to the investigation, prosecution and other proceedings under the Act save to the extent not specifically provided inconsistent therewith that what the expressions referred supra laid down right from the constitution bench expression in AR Antulay supra on the scope of law. The expression besides prosecution all other proceedings**

under this Act in applying the Code where the Act is silent and not inconsistent with from its provisions is very clear that the Act is not a complete code and provisions of Cr.P.C. apply where the act is silent in the area from Section 46 and even otherwise so far as the prosecution and all other proceedings not specifically provided in the Act the provisions of the code specifically made applicable by virtue of this Section 65 of the Act. Thus once there is no procedure specifically provided for prosecution but for simply saying on the complaint to take cognizance under Section 44(1)(b) of the Act it cannot be contended no sanction to take cognizance is required if otherwise sanction is required from the provisions of the Code as taking of cognizance is part of prosecution for which by virtue of Section 65 also to read with otherwise even in the absence of Section 65 from the wording of Section 46 of the Act, Section 197 Cr.P.C. is applicable.

14. There is no quarrel on the proposition placed reliance by the learned counsel for the Directorate of Enforcement from the expression of the Apex Court in **Rohtas supra** with reference to Sections 4 & 5 of the code and Harayana Children Act 1974 as a special law that was in force even by the time the Code 1973 came into force and that special law provided procedure and that is saved by clearly as exception carved out by Section 5 of the Code.

15. Coming to the other expression placed reliance by the learned counsel for Directorate of Enforcement of the Apex Court in **VC Chinnappa Goudar supra** with reference to Sections 4(2), 5 & 197 Cr.P.C. and the provisions of Water (Prevention and Control of Pollution) Act 1974 particularly Sections 48, 49 & 60 of the Act and importance of the non-absentee clause in saying in that Act under Section 49 cognizance of offence provided which says to file the case against the accused by placing the complaint before the Court concerned and the prescription contained in the said Section are intended only for fulfilling said requirement and therefore going by the heading of the Section it cannot be held that the Magistrate can straightaway take cognizance of an offence dehors the non-compliance with the requirements under Section 197 Cr.P.C. is the contention of the learned counsel for the accused, whereas the contention of the prosecution agency (Pollution Control Board) is with reference to Section 48 which speaks there is rebuttal presumption so far as guilt of the offence concerned and Section 60 of the Act speaks of punishment therefrom to get it attracts and in view of this to read with Section 5 of the code there is no specific provision providing for sanction to be secured for proceeding against the public servant under the Act and if one can visualize the situation where Section 197 Cr.P.C. is made applicable in respect of prosecution under the Act and in that process sanction refused by the State that would virtually negate the

deemed fiction power provided by Section 48 to apply Section 60 of the Act to find guilty the head of the Department of Government concerned and as a consequence automatic coming to play of Section 60 of the Act with overriding effect over any other enactment other than the Act there is no scope for invoking Section 197 Cr.P.C. even if the appellants were the public servant was the conclusion. In fact that expression confined to its own facts and mainly by placing reliance upon Section 60 of the Act and the same cannot be equated with Sections 23 & 24 of PML Act. As per the expression in **VC Chinnappa Goudar supra** there is a legal fiction of committing the offence by the Head of the Department of the Government to punish by Section 60 of the Act and no such fiction but for only a rebuttal presumption with reverse onus clause at best that too on showing the accused got prima facie knowledge in money laundering to constitute an offence under Section 3 of the Act that to be established by prosecution and as such the proposition has no application to say by the learned counsel for the Directorate of Enforcement of no sanction of the public servant to prosecute under the PML Act is required to take cognizance or to proceed for post cognizance enquiry and trial for the offence under Section 3 & 4 of the Act. In fact the expression in **VC Chinnappa supra** did not refer any of the earlier binding expressions on the scope of the Section 4(2) of the Code including from the Constitution Bench expression of

the Apex Court in **AR Antulay supra** leave apart Section 65 of the PML Act clearly says the provisions of the Code are applicable for prosecution and so far as the prosecution concerned, there is no other provision and even for investigation the provisions of the Code made applicable save to some extent who are the authorities to investigate provided by the provisions of the Act.

16. Coming to the expression in **B. Rama Raju Vs. Union of India, Ministry of Finance, Department of Revenue, rep. By its Secretary (Revenue), New Delhi**[11] that is already discussed supra of the Act is observed as complete code by importing the provisions of the Code also into it to the extent not inconsistent and in the areas silence and not otherwise and the Act is thereby not in its own a complete code without reading the provisions of the code into it like under NDPS Act and SC & ST (POA) Act as held by the Apex Court in **Balbir Singh supra**, **Gangula Ashok supra** quoted with approval in **AR Antulay supra**.

17. Coming to the other expression they placed reliance on **YS Jagan Mohan Reddy Vs. Central Bureau of Investigation**[12] in relation to multiple investigations involving many superiors in more than 7 matters on the grant or non-granting of bail and on the scope of Section 167 Cr.P.C. and Section 173 Cr.P.C. r/w 439 Cr.P.C. what was observed in Para 29 that placed reliance only on the submission of the

[11] 2011 (3) ALT 443 (DB)
[12] 2013 (7) SCC 439

counsel for the CBI that in the investigation relating to India Cements of amounts exchanged between the parties under illegal quid pro quo investments into group of companies of A.1 about Rs.140 crores and received benefits in the form of permission for additional quantity of water from Kagna and Krishna rivers and lease of lands and investigation is almost complete are at least more than half the way. That observation is only for the purpose of bail and not even final report finding much less other than to refer as contention no any way useful in deciding the case on hand including of Adityanath Das in the writ petition No.2253 of 2018 facing allegation regarding allocation of additional water from rivers Krishna and its tributary Kagna.

18. Coming to the single judge expression of the Sikkim High Court in **Smt. Usha Agarwal Vs. Union of India**[13] placed reliance on Paras 58 to 61 of the judgment discussed therein particularly Sections 23, 24 & 45 of the Act r/w 101 & 102 of the Evidence Act and Sections 437 & 439 Cr.P.C. in relations to the grant of bail, it is categorically observed that the presumption envisaged for burden of proof in Section 24 of the Act is a rebuttal presumption to afford opportunity to the accused to establish that the property in his favour or the value of any such property acquired is by legal means and not by any illegal methods and it will not comprise any offence under Section 3 of the Act or to explain the source of the

[13] 2018 Crl.L.J. 691

property in his possession so that the burden shifts on the prosecution to rebut the said evidence and in view of that said provision no way can be called unconstitutional including making the special penal provision a non-bailable offence by Section 45 of the Act by referring to the provisions of the NDPS Act in this regard to that conclusion.

19. Coming to the other expression placed reliance by them of the Apex Court in **Gautam Kundu Vs. Directorate of Enforcement (Prevention of Money Laundering Act), Government of India through Manoj Kumar, Assistant Director, Eastern Region**[14] it is in relation to grant of bail and questioning the fulfillment of conditions of Section 45 of the Act where Sections 44, 45, 24, 65 & 71 of the Act referred in saying the rebuttal burden put by Section 24 of the Act is with reverse onus on the accused and the riders provided under Section 45 of the Act are in addition to the riders provided in Sections 437 & 439 Cr.P.C. thereby held not entitled to the bail. Even from this the presumption is rebuttal with reverse onus clause and provisions of Cr.P.C. also applicable to consider as additional provisions to what is provided in Section 45 of the Act including to bail to an accused involved in Section 3 of the PML Act. Thus the decision is no way helpful to say the provisions of Cr.P.C. have no application to the PML Act or no sanction is required to prosecute a public servant.

[14] 2015 (16) SCC 1

20. Coming to the other decision of the three Judge Bench expression of the Apex Court in **PK Pradhan Vs. State of Sikkim represented by the Central Bureau of Investigation**[15] on the scope of Section 197 Cr.P.C. what is observed therein is question of requirement of sanction for prosecution even cognizance taken without sanction can be raised by accused at any time after cognizance of the offences taken including during trial and at conclusion of trial or even after conviction. There is no quarrel on the proposition of the unfettered and indefeasible right available to the accused once Section 197 Cr.P.C. requirement of sanction is there and if no sanction obtained and cognizance taken without such sanction, to question. For that matter the Apex Court even subsequently reiterating the same held in **State of Karnataka through CBI Vs. C.Nagarajaswamy**[16] that once sanction is required under law by a statutory provision though the question to be dealt with at the stage of taking cognizance by the Court, even cognizance taken in ignorance of the same or erroneously the right of the accused no way ceases and once the same came to the notice of the Court at any later stage including even brought by accused a finding on the requirement of sanction or not has to be given by the Court and the accused is also entitled to take such pleas at any point of time including even in hearing the appeal before the appellate Court of requirement of sanction and without

[15] 2001 (6) SCC 704
[16] 2005 (8) SCC 370

which the cognizance taken is no way to survive. Same was the conclusion arrived by the Apex Court in **State of Goa Vs. Babu Thomas** that taking of cognizance by a Court against a public servant of the alleged offence connected with his duty without sanction is incompetent and the error was so fundamental that invalidates the proceedings right from the stage of cognizance and the Apex Court in **State of Harayana Vs. Bhajan Lal**[17] at Paras 101 & 102 laid down the guidelines one of which includes quashing of the proceedings for want of sanction as bar of law.

21. Coming to the contention of learned counsel Sri Manmadharao by placing reliance on the three judge bench expression of the Apex Court in **SS Dhanoa Vs. Municipal Corporation Delhi**[18], his contention on behalf of Directorate of Enforcement is that the APIIC Managing Director-cum-Chairman is not a public servant under Section 21 IPC. In the expression in **SS Dhanoa,** what was observed is that employee of super bazaar a cooperative society is not a public servant. In fact the Super bazaar at Connaught place on facts with 12 branches was a society registered under Cooperative Societies Act, 1925 and the employees therein are not public servants under Section 21 IPC to require sanction under Section 197 Cr.P.C. to prosecute them for the misdemeanor. It is observed that the super bazaar is not owned by any Government and not under the control of the

[17] AIR 1992 SC 604=1992 Supp (1) SCC 335
[18] AIR 1981 SC 1395

Government and not connected with the affairs of the Union or the State but managing only by a private society and thereby sanction not required to prosecute employee of the super bazaar by invoking Section 197 Cr.P.C. In fact who is a public servant is enumerated in Section 21 IPC in deciding whether sanction is required or not to prosecute such public servant. Without any difficulty and without quarrel to the proposition placed reliance, it can be said that said decision has no application to the case on hand even that of BP Acharya the quash petitioner in the 2 quash petitions as Chairman and Managing Director of APIIC more particularly for the reason the APIIC is the Government owned corporation under the control of the Government from the very complaint averments in the complaint sought for quashing as discussed in the previous Paras supra as part of the pleadings.

22. Having regard to the above, the contention has no legs to stand in saying to prosecute the Chairman and Managing Director of APIIC sanction under Section 197 Cr.P.C. is not required or that he is though an IAS Officer not a public servant. In fact this Court in Crl.P.No.2345 of 2017 in **LV Subrahmanyam Vs. State of Telangana**[19] where he was arrayed as A11 and the petitioner herein was A1, it is categorically observed that they are public servants and sanction is required under Section 197 Cr.P.C. and under Section 19 of PC Act respectively for the IPC offences and PC

[19] 2018 (1) ALT (Crl.) 322

Act offences and also discussed the role of the Chairman and Managing Director of APIIC as limited.

23. Coming to the other decision placed reliance by the learned counsel for the Directorate of Enforcement in **Subramanian Swamy Vs. Manmohan Singh**[20] in dealing with the sanction to prosecute a public servant on private complaint it was observed even a private party can apply for according sanction to prosecute a public servant and that must be decided as laid down in **Vineet Narain** within three months with any consultation outer limit of one month if at all to consult AG or other law officer of AG with reference to CVC guidelines 2005 and the private party seeking sanction must be informed of the decision on sanction application to enable him to avail appropriate remedy if not satisfied with the decision not according sanction. The person against whom the sanction is to be accorded need not be given any opportunity of hearing for according sanction but for to take a decision on the material placed by application of mind to the material. What is observed of when sanction under Section 19 of PC Act applies not in dispute, however the scope of Section 197 Cr.P.C. is different to Section 19 of PC Act undisputedly and also as referred therein. It was discussed in Para 64 of the judgment that from prosecution by taking of cognizance is barred from want of sanction proceeded without sanction. It is however observed that under the PC Act if a

[20] 2012 (3) SCC 64

special provision is made on a certain matter that matter is excluded from the general provisions in Cr.P.C. and the provisions of Section 19 PC Act will not have an overriding effect on general provision of Section 190 Cr.P.C. ***There is no dispute on that so far as taking of cognizance, but for what is discussed supra of mere private complaint to take cognizance directly by special Court does not mean from any such provision under the PML Act, exclusion of the requirement of sanction under Section 197 Cr.P.C. that too Section 65 of the Act specifically says for prosecution the provisions of the code are applicable and as submitted supra prosecution including taking of cognizance subject to sanction and Section 197 Cr.P.C. requirement must be fulfilled***. What is the contention referring to **PK Pradhan supra** of the sanction can be required or not to be considered during trial and there is nothing to find fault the cognizance taken by the special Court under PML Act is also untenable from what is discussed supra for not a case of any ambiguity on the requirement of sanction or not to consider after some factual aspects to be elicited from the evidence to be adduced.

24. In fact in **State of Maharashtra Vs. Dr. Budhikota Subbarao**[21] it is categorically observed referring to the Code and requirement of sanction to prosecute a public servant under Section 197 Cr.P.C., to prosecute for the offence under

[21] 1993 (3) SCC 339

Sections 24, 18 & 19 of Atomic Energy Act 1962 saying sanction is mandatory to take cognizance by the Court for the alleged offence under the Act are in discharge of official duty and from the non-compliance with the requirement of Section 197 Cr.P.C. to take cognizance, the order of discharge of accused passed by the High Court was upheld by the Apex Court.

25. Here before going further it is to consider what is meant by prosecution used in Section 65 of the Act for more clarity, for what the prosecution is not defined in the code or in the IPC r/w Section 2(y) of the Code or even in any provisions of the Act or even by the Constitution of India in dealing with the scope of Article 20 of the Constitution of India. In fact the five judge constitution bench of the Apex Court in **Thomas Dana & Leo Roy Frey respectively Vs. State of Punjab**[22] considered the meaning and scope of prosecution particularly at Para 10 which reads as follows:

> "To "prosecute", in the special sense of law, means, according to **Webster's Dictionary**, "(a) to seek to obtain, enforce, or the like, by legal process; as, to prosecute a right or a claim in a court of law. (b) to pursue (a person) by legal proceedings for redress or punishment; to proceed against judicially; espy., to accuse of some crime or breach of law, or to pursue for redress or punishment of a crime or violation of law, in due legal form before a legal tribunal; as, to prosecute a man for trespass, or for a riot." According to **Wharton's Law Lexicon**, 14th edn., p.810,

[22] AIR 1959 SC 375

"prosecution" means "a proceeding either by way of indictment or information,, in the criminal courts, in order to put an offender upon his trial. In all criminal prosecutions the King is nominally the prosecutor." This very question was discussed by this Court in the case of **Maqbool Hussain v. The State of Bombay**(AIR 1953 SC 325), with reference to the context in which the word " prosecution " occurred in Art.20. In the course of the judgment, the following observations, which apply with full force to the present case, were made:-"..... and the **prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure**."

26. Thus initiation of criminal proceedings under PML Act by the competent authority is by filing private complaint before special Court to take cognizance by the special Court and for that the accused once a public servant and his acts constitutes the offence alleged when in discharge of official duties, sanction must have been obtained and submitted by them with the complaint before the special court for taking cognizance of the offence under the act against said public servant by then the accused. Otherwise the starting of criminal proceedings under PML Act is from taking of cognizance on the private complaint filed before special court, for the offence under the act by the special court, for such taking of cognizance of any offence on the private complaint by the special court, it must be part of its duty to require

sanction of competent authority to prosecute the public servant. In **Anil Kumar Vs. Ayyappa**, the Apex Court in 2013 held in the case under PC Act on the requirement of sanction to file private complaint as follows:

> "14. Further, this Court in Criminal Appeal No. 257 of 2011 in the case of General Officer, Commanding v. CBI and opined as follows: **'Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him..... If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void abinitio**."

27. Apart from the above in **State, CBI Vs. Sashi Balasubramanian**[23] referring to the offences under IPC, PC Act, Customs Act and Income Tax Act it was observed under Income Tax Act for the offence under Section 95 of the Finance Act No.2/1998 as to what is meant by prosecution has been instituted that it does not mean charge sheet filed and cognizance has been taken for the ordinary meaning of prosecution includes even institution or commencement of criminal proceeding, to say any enquiry or investigation. No

[23] 2006 (13) SCC 252

doubt Section 197 Cr.P.C. only bars taking of cognizance by the Court without previous sanction of any offence against a public servant as accused of any offence alleged to have been committed by acting or purporting to act in discharge of his official duty. Thus sanction under Section 197 Cr.P.C. is pre-requisite to take cognizance of the offence under Section 3 of the PML Act against the public servant shown as accused of said offence in the private complaint filed by the competent authority before the special Court.

28. In **Harshad S. Mehta Vs. State of Maharastra**[24] at Para 15 it is observed in interpretation of the provisions of the code and the special Court and Sections 9, 4, 6, 7 & 13 of Transactions in Securities Act, 1992 on the application or not of the procedure under Sections 306 & 307 Cr.P.C. to grant pardon to an accused of the Act offences at any stage of the proceedings. It is observed that as there is no inconsistency or repugnancy between the Act supra and code supra and there is no implead or express repeal of Sections 306 & 307 of the code and the Act provisions, the Code thereby harmoniously be construed to borrow the legs from the code to the Act to stand in saying neither Section 9 nor Section 13 of the Act in its wording not expressly excluded application of Section 306 & 307 Cr.P.C. to the proceedings before the special Court thereby those provisions are applicable and for that conclusion referred Section 4(2) of the code and the

[24] 2001 (8) SCC 257

Constitution Bench expression of the Apex Court in **AR Antulay supra**. There Sections 8(2 & 3) of the Act referred saying special provision leaving no one is in doubt that all the provisions of the code shall so far as they are not inconsistent with the Act apply to the proceedings before the special Court and the same was discussed in Para 50 of the expression by referring to Para 27 of **AR Antulay supra** and at Para 51 by also referring to **AR Antulay supra** in saying the Special Court being a Court of original criminal jurisdiction has all the powers of such Court under the code so far as any exclusion specifically by the Act.

29. Coming to the other expression in **General Officer Commanding, Rashtriya Rifles Vs. CBI**[25] on the scope of Cr.P.C. and Sections 6 & 7 of Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 Section 7 and earlier Act 1958 Section 6 provided inter alia of criminal proceedings shall not be instituted except with previous sanction of Central Government. Now to consider what is meant by institution of criminal proceedings and observed at Para 26 that institution of prosecution is a stage prior to taking cognizance and therefore the filing of complaint is an institution and they referred several expressions including the constitution bench expression of the Apex Court in **Devarapalll Lakshminarayana Reddy Vs. V.Narayana**

[25] 2012 (6) SCC 228

Reddy[26] where it was held that institution means presentation of complaint before a Magistrate for taking cognizance. Though mere presentation of complaint does not tantamounts to taking of cognizance in saying particularly at Para 44 of the expression referring to several other expressions that prosecution starts at least when cognizance of offence is taken by the Court though not from pendency of investigation.

30. In view of the above, it is crystal clear that for filing of a private complaint to take cognizance before the special court by the competent authority, obtaining and filing of the orders granting sanction by the competent authority to prosecute the public servant is mandatory and more particularly for the special court to take cognizance which is lacking in the case on hand and for want of sanction the cognizance orders respectively of the learned Special Judge are no way sustainable and are liable to be set aside.

31. On the scope of requirement of sanction under Section 197 Cr.P.C. and it's marked difference with Section 19 of PC Act, this Court in **LV Subrahmanyam supra** dealt with in detail particularly at Paras 44 & 45 and negated as untenable the contention of the learned Special Public Prosecutor for CBI of validity or otherwise of sanction and requirement or not is a matter to be considered in trial, by answering the scope of law in this regard from Paras 47 to 49

[26] 1976 (3) SCC 352

in saying once it is noticed about the sanction is required and it is brought to the notice of the Court of the prosecution no way sustains for want of sanction the continuation of the proceedings is nothing but abuse of process and to sub serve the ends of justice the inherent power or writ jurisdiction has to be invoked in saying ends of justice are more important and Court cannot shut its size when brought to the notice of the Court any abuse of process leading to injustice, but for invoking the inherent power or writ jurisdiction which have no limitations but self imposed that too mainly to sub serve the ends of justice having its roots in necessity and its breadth thereby is co-extensive with necessity.

32. Accordingly and in the result, all the three criminal petitions are allowed by setting aside the respective cognizance orders of the learned Special Judge holding that sanction to prosecute the respective petitioners in the respective cases as public servants is mandatory and pre-requisite to take cognizance and from its lacking the learned Special Judge should not have been taken cognizance and the cognizance orders thereby are unsustainable, by directing further the learned Special Judge to return said complaints to the complainant/s if at all to submit with necessary sanction orders from the competent authority respectively. The other defence raised by the accused on merits that is discussed supra no way requires herein from the above to further dwell into to give any specific findings for the time being but for left

open such defence if at all to consider at any proper stage in future upon any such necessity.

33. In consideration of the submissions of the learned Standing Counsel Sri PSP Suresh Kumar and Sri K. Manmadharao respectively, the operation of the common order herein is suspended only for four weeks from today.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 21.01.2019
L.R. Copy to be marked
(B/o)
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