

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL UNDER PREVENTION OF MONEY LAUNDERING
NO.1 OF 2019**

1. Shri Digambar Kamat,
major of age, Indian National,

2. Smt. Asha Digambar Kamat,
major of age, Indian National,
Both residents of House No.401/1,
1st Floor, Sanrit Apartments, Near
Masjid, Malbhat,
Margao Goa 403 601.

... Appellants

Versus

1. Joint Director (PJZO),
Directorate of Enforcement,
Government of India, 1st and 2nd
Floors, Jeevan Vishwas,
LIC Building, EDC Complex,
Patto Plaza, Panaji Goa – 403 001.

2. Churchill Alemao,
major of age, Indian National,

3. Maria Fatima Alemao,
major of age, Indian National,
Both residents of House No.150,
Varca, Salcete Goa.

... Respondents

**WITH
APPEAL UNDER PREVENTION OF MONEY LAUNDERING
NO.2 OF 2019**

Directorate of Enforcement,
through its Deputy Director,
1st and 2nd Floors, 'Jeevan Vishwas',
LIC Building, EDC Complex,
Patto Plaza, Panaji Goa – 403 001.

... Appellant

Versus

1. Shri Digambar Kamat,
aged 65 years, Indian National,
resident of House No.401/1,
1st Floor, 'Sanrit Apartments',
Near Masjid, Malbhat,
Margao Goa 403 601.

2. Smt. Asha Digambar Kamat,
major of age, Indian National,
resident of House No.401/1,
1st Floor, 'Sanrit Apartments',
Near Masjid, Malbhat,
Margao Goa 403 601.

3. Shri Churchill Alemao,
major of age, Indian National,
resident of House No.150,
Novangully,
Varca, Salcete Goa.

4. Mrs. Maria Fatima Alemao,
major of age, Indian National,
resident of House No.150,
Novangully
Varca, Salcete Goa.

... Respondents

**WITH
APPEAL UNDER PREVENTION OF MONEY LAUNDERING
NO.3 OF 2019**

Directorate of Enforcement,
through its Deputy Director,
1st and 2nd Floors, 'Jeevan Vishwas',
LIC Building, EDC Complex,
Patto Plaza, Panaji Goa – 403 001.

... Appellant

Versus

1. Shri Churchill Alemao,
aged 70 years, Indian National,
resident of House No.150,
Novangully,
Varca, Salcete Goa.

2. Mrs. Maria Fatima Alemao,
major of age, Indian National,
resident of House No.150,
Novangully
Varca, Salcete Goa.

3. Shri Digambar Kamat,
aged 65 years, Indian National,
resident of House No.401/1,
1st Floor, 'Sanrit Apartments',
Near Masjid, Malbhat,
Margao Goa 403 601.

4. Smt. Asha Digambar Kamat,
major of age, Indian National,
resident of House No.401/1,
1st Floor, 'Sanrit Apartments',
Near Masjid, Malbhat,
Margao Goa 403 601.

... Respondents

Mr. Parag Rao with Ms. Mamta Bhandari, Advocates for the Appellant
in AUPML No.1/2019.

Mr. Nikhil Vaze with Mr. Pranav Vaze, Advocate for Respondent No.1 - Enforcement Directorate (ED) in AUPML No.1/2019.

Mr. Nikhil Vaze with Mr. Fernandes Luis Alex, Advocates for the Appellant – ED in AUPML No.2/2019.

Mr. P. Rao with Ms. Reshma Kale, Advocates for Respondent Nos.1 and 2 in AUPML No.2/2019.

Mr. Arun Bras De Sa with Mr. Sahil Sardesai, Advocates for Respondent Nos.3 and 4 in AUPML No.2/2019.

Mr. Nikhil Vaze with Mr. Pranav Vaze, Advocates for the Appellant – ED in AUPML No.3/2019.

Mr. Arun Bras De Sa with Mr. Sahil Sardesai, Advocates for Respondent Nos.1 and 2 in AUPML No.3/2019.

Mr. P. Rao with Ms. Sandya Kushawah, Advocates for Respondent Nos.3 and 4 in AUPML No.3/2019.

**Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.**

**Reserved on :- 20th October, 2020
Pronounced on :- 26th October, 2020**

JUDGMENT (Per M. S. Sonak, J)

Heard learned counsel for the parties.

2. The learned counsel for the parties agree that these appeals may be taken up and disposed of by a common judgment and order

since, the challenge in all these appeals is to the common judgment and order dated 26.07.2019 made by the Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS, PBPT Act at New Delhi (Tribunal) in the proceedings under the Prevention of Money Laundering Act, 2002 (the said Act).

3. For these appeals, the Appellants in AUPML No.1/2019 are referred to as “Kamats”, Respondent No.1 as Enforcement Directorate or ED, and Respondent Nos. 2 and 3 as “Alemaos”.

4. On 21.07.2015, a First Information Report (FIR) No.93/2015 was registered against “Kamats” and “Alemaos” alleging the offence under Sections 7, 8, 9, and 13 of the Prevention of Corruption Act, 1988 (PCA).

5. Thereafter, on 07.08.2015, the ED registered ECIR/PJ-20/01/2015 thereby commencing the proceedings under the Prevention of Money Laundering Act, 2002 (PMLA) since, the offences alleged in the FIR were “scheduled offences” in terms of Section 2(y) of PMLA. The Joint Director -ED, vide order dated 30.03.2017 made under Section 5(1) of the PMLA provisionally attached the following properties/FDRs of Kamats and Alemaos.

KAMATS

Sr. No.	Description	Value
1	Plot no.29 surveyed under chalta no. 14/1 to 14/7 of P.T. Sheet no.80 and chalta no. 3 of P.T. Sheet no.57 of city survey, Margao having area of 4047 square feet.	22.95 lakhs.
2	Residential building at village Taleigao, surveyed under Matriz no.1258, survey no. 235/1 of Taleigao village.	55.60 lakhs
3	Fixed Deposit bearing no.253100MB00004530 maintained with Punjab National Bank, Margao	10,86,922/-
4	Fixed Deposit bearing no.253100MB00004521 maintained with Punjab National Bank, Margao	9,83,001/-
5	Fixed Deposit bearing no.253100MB00004460 maintained with Punjab National Bank, Margao	7,31,057/-
6	Fixed Deposit bearing no.253100MB00004451 maintained with Punjab National Bank, Margao	8,04,335/-
7	Fixed Deposit bearing no.253100MB00004451 maintained with Punjab National Bank, Margao	5,29,748/-
Total		1,19,90,063/-

ALEMAOS

Sr. No.	Description	Value
1	Flat no.101, Ground Floor, Building no.1 at 'Coconut Grove Residence' situated at Fatrade of Varca Village, Salcete, Goa.	11.50 lakhs.
2	Flat no.102, Ground Floor, Building no.1 at 'Coconut Grove Residence' situated at Fatrade of Varca Village, Salcete, Goa.	11.50 lakhs.
3	Flat no.308, 3 rd Floor, Building no.3 at	9 lakhs.

	'Coconut Grove Residence' situated at Fatrade of Varca Village, Salcete, Goa.	
4	Flat no.507, 3 rd Floor, Building no.5 at 'Coconut Grove Residence' situated at Fatrade of Varca Village, Salcete, Goa.	9 lakhs
5	Flat no. 508, 3 rd Floor, Building no.5 at 'Coconut Grove Residence' situated at Fatrade of Varca Village, Salcete, Goa.	9 lakhs.
6	Flat no.502, Ground Floor, Building no.5 at 'Coconut Grove Residence' situated at Fatrade of Varca Village, Salcete, Goa.	11.50 lakhs.
7	Flat no. 201, Ground Floor, Building no.2 at 'Coconut Grove Residence' situated at Fatrade of Varca Village, Salcete, Goa.	11.50 lakhs
8	Flat no. 607, 3 rd Floor, Building no.6 at 'Coconut Grove Residence' situated at Fatrade of Varca Village, Salcete, Goa.	To the extent of Rs. 2 Lakhs.
Total		75.00 Lakhs

6. The Joint Director – ED then filed a complaint under Section 5(5) of the PMLA before the adjudicating authority (AA) seeking *inter alia* confirmation of the provisional attachment made by order dated 30.03.2017.

7. The AA, by order dated 10.08.2017 confirmed the provisional attachment order dated 30.03.2017.

8. Kamats and Alemaos appealed the AA's order dated 10.08.2017 to the Tribunal. The Tribunal vide impugned order partly allowed the appeal. The attachment in respect of immovable properties was raised subject to certain conditions. The attachment in respect of FDRs was confirmed and directed to continue.

9. Aggrieved, both Kamats as well as ED have instituted these appeals. There is no appeal on behalf of Alemaos.

10. Kamats are aggrieved by conditions imposed for raising attachment of the immovable properties as well as the continued attachment of the FDRs. The ED is aggrieved by raising of attachment in respect of the immovable properties, even conditionally.

11. Mr. Rao, learned counsel for Kamats contends that once the Tribunal agreed that most of the contentions raised on behalf of Kamats and Alemaos and even held that the orders of attachment are illegal and deserve to be set aside, the Tribunal, could not have in the name of “striking balance” continued with the attachment of the FDRs or imposed conditions for raising attachment in respect of immovable properties. He submits that the properties/FDRs which are the subject matter of these proceedings are not “proceeds of crime” as defined under Section 2(u) of PMLA, since, admittedly, these were acquired much before 2010, which is the year in which the alleged offence was said to have been committed. He, therefore, submits that there could not have been any reason to believe that the Kamats or Alemaos were indeed in possession of any proceeds of crime.

12. Mr. Rao submits that in any case, there was absolutely no reason to believe that such proceeds of crime were likely to be concealed, transferred, or dealt with in any manner by Kamats or Alemaos which

may result in frustrating any proceedings relating to the confiscation of such proceeds of crime under Chapter III of the said Act. He submits that the authorized officer, before making any order under Section 5(1) of the PMLA, is not only required to have reason to believe in this predicate but the further reason for such belief is required to be recorded in writing.

13. Mr. Arun Bras De Sa adopted the submissions made by Mr. Rao in these appeals.

14. Mr. Vaze, learned counsel for the ED while refuting the contentions of Mr. Rao and Mr. De Sa submitted that the entire reasoning of the Tribunal was flawed and the Tribunal, in the present case ought not to have raised the attachment of the immovable properties, even conditionally.

15. Mr. Vaze submits that the object and emphasis of Section 5(1) of the PMLA were to attach the proceeds of crime or properties equivalent to the value of proceeds of crime so that there can be confiscation, should the accused person be ultimately convicted for the offence of money laundering. He, therefore, submits that once a person is found to be in possession of proceeds of crime, a provisional attachment order can be validly made under Section 5(1) of PMLA, since, likelihood of such person dealing with such proceeds of crime in order to frustrate the proceedings for confiscation is implicit.

16. Mr. Vaze submits that if the object and emphasis of Section 5(1) of the PMLA are kept in mind then, two predicates in sub-clauses (a) and (b) of Section 5(1) are required to be read disjunctively and not conjunctively. He submits that for this purpose, expression “*and*” is required to be read as “*or*” so that, the full effect is given to the legislative intent in enacting Section 5(1) of the PMLA.

17. Mr. Vaze submits that the Tribunal has also misconstrued the definition of “*proceeds of crime*” in Section 2(u) of the PMLA. He submits that expression “*value of any such property*” in Section 2(u) makes it clear that where the property directly or indirectly constituting the proceeds of crimes is converted or not presently available, it is permissible to treat even untainted property of the same or equivalent value as proceeds of crime for PMLA.

18. Mr. Vaze submits that any other interpretation would unduly advantage an accused who may be astute enough to dispose of or convert the property derived or obtained directly or indirectly as a result of criminal activities relating to the scheduled offence, leaving nothing for confiscation even after the conviction.

19. Mr. Vaze submits that for all the aforesaid reasons, the appeals instituted by Kamats may be dismissed and the appeals instituted by the ED, be allowed.

20. The learned counsel for the parties relied upon several decisions in support of their respective contentions and we shall deal with some of such relevant decisions in the course of our judgment and order.

21. Towards the conclusion of arguments, both Mr. Rao and Mr. De Sa, based on instructions made a statement that Kamats and Alemaos, without prejudice to their respective rights and contentions and without in any manner admitting any of the allegations against them but merely to show their bonafides will not transfer or alienate or encash any of the properties/FDRs referred to in paragraph 18 of the impugned order of the Tribunal, pending disposal of PMLA case No.1/2018, pending before the Special Court at Mapusa and for one month thereafter.

22. Mr. Vaze based on the instructions from ED states that if Kamats and Alemaos offer FDR worth ₹1.20 crores and ₹75 lakhs respectively for confiscation in case they are convicted, the ED will not insist upon the attachment of any immovable properties. In the absence of any such offer, ED may be inclined not only to attach the immovable properties but also to take possession of the same in terms of Section 8 of the PMLA.

23. The rival contentions now fall for our determination.

24. The Tribunal in the present case, in its impugned order dated 26.07.2019, agreed with most of the contentions raised on behalf of Kamats and Alemaos and even concluded in para 78, that the properties attached in the matter are liable to be released '*in the light of the reasons stated in earlier paras*'. However, instead of setting aside the attachment, the Tribunal issued a host of directions in para 79, perhaps not even contemplated under the PMLA, by simply observing that there is a need to strike a balance in these matters since the trial is pending before the Special Court.

25. The aforesaid is evident from paras 78 and 79 of the impugned order which read as follows:-

“78. Therefore, the properties attached in the matter are liable to be released in the light of reasons stated in earlier paras. However, it is also a matter of fact that there are allegations by the CBI against the appellants, who are facing trial in the. complaint of schedule offence and the complaint under PML Act, thus, till the final order is passed, the alleged proceed of crime is to be secured by striking the balance.

79. Under these circumstances, the following directions are passed by modifying the impugned order:

(a) With regard to movable properties of the appellants in appeal no.1976/2017 are concerned, the said attachment shall continue till the final order is passed.

(b) Pertaining to immovable properties, it has come on record that the said properties were not acquired from proceed of crime. They were purchased much prior to the date of alleged offence. No valid reasons were recorded. The notice issued under Section 8(1) was defective notice. It is

evident that while issuance of notice, the materials available were not properly discussed. The major part of reply has been ignored by the Adjudicating Authority. The charges have not been framed as informed by both parties. The witnesses have made contrary-statements to each other under section 50 of PML Act. Thus, the immovable properties are released forthwith as no case is made out by the respondent. However, in order to strike the balance, Digambar Kamat and Churchill Alemano shall furnish the Indemnity Bonds in favour of respondent within eight weeks for sum of Rs.78.55 lakhs and Rs.75.00 lakhs, respectively, and also give an undertaking that if after trial, at the time of passing the final order, the matter is decided against them, then they shall deposit the said amount with the respondent without any protest.”

26. According to us, once the Tribunal concluded that the attachment orders were liable to be set aside, it could not have avoided setting aside the same, by merely observing that there are allegations by the CBI against Kamats and Alemaos who are facing trial and therefore, in the name of striking balance, confirmed the attachment of the FDRs or imposed conditions for raising the attachment on the immovable properties. The directions issued by the Tribunal in para 79 of its impugned order are this, quite contrary to its reasoning in the preceding paras. The directions, therefore, are quite unsustainable in such circumstances.

27. Mr. Vaze the learned counsel for ED however contends that the reasoning of the Tribunal is quite defective and therefore, the appeals instituted by ED may be allowed so that the attachment of all properties

is restored unconditionally. He submits that there was no infirmity in the provisional attachment order dated 30.03.2017 made by the Joint Director under Section 5(1) of the PMLA. He submits that the object of Section 5(1) of the PMLA is to attach properties constituting the proceeds of crime so that such properties are available for confiscation, should the accused persons be convicted for offences under the PMLA. He submits that the provisions of Section 2(u) and 5(1) of the PMLA are therefore required to be construed in the light of this object.

28. Mr. Vaze submits that there is no reason to construe the expression “*value of the property*” in Section 2(u) of the PMLA narrowly as has been done by the Tribunal. He submits that this expression includes even untainted properties of equivalent value where it is established that the actual properties constituting the proceeds of crime have been converted, effectively concealed, or frittered away. He submits that the construction of the Tribunal will permit astute money launderers from escaping the clutches of the law and thereby, frustrating the object of PMLA. He submits that this is precisely the view taken by the Delhi High Court in *K. Rethinam v. Union of India & Ors*¹ and *Directorate of Enforcement v. Axis Bank*². He submits that the narrow view taken by the Tribunal in interpreting the provisions of Section 2(u) of the PMLA is contrary to the view of the Delhi High Court in the said two matters.

¹2018 SCC Online Del 6523
²2019 SCC Online Del 7854

29. Mr. Vaze then submits that if the object of Section 5(1) of the PMLA is kept in mind then, the moment a person is found in possession of the proceeds of crime, it must follow that such person, will be likely to conceal, transfer or deal with such proceeds to frustrate confiscation proceedings under the PMLA. He, therefore, submits that the expression “*and*” which connects the predicates in clauses (a) and (b) in Section 5(1) of the PMLA must be construed as “*or*”. He submits that it only if these two predicates are construed disjunctively and not conjunctively that full effect can be given to the provisions of Section 5(1) of the PMLA and its object effectively achieved. He relies on *Ranchhoddas Atmarain vs Union of India*³, *J. Jayalalitha vs Union of India*⁴, *Municipal Corporation of Delhi vs Tek Chand Bhatia*⁵, *Mr. Radha Mohan Lakhota vs The Deputy Director, PMLA & Ors*⁶, and *Kavitha G. Pillai vs The Joint Director, Director of Enforcement*⁷.

30. According to us, in this case, it is not necessary for us to go into the issue of construction of the expression “value of any such property” in Section 2(u) of the PMLA. Though, we must say that the view taken by the Tribunal is not in accord with the view taken by the Delhi High Court in *K. Rethinam (supra)* and *Directorate of Enforcement (supra)*. However, the view of the Tribunal is quite in accord with the decision of Punjab and Haryana High Court in *Seema*

3(1961) 3 SCR 718

4(1999) 5 SCC 138

5(1980) 1 SCC 158

6(2010) SCC Online Bom 1116

72017 SCC Online Ker 10118

Garg v. Deputy Director⁸ relied upon by Mr. Rao. We do not need to go into this issue because even if we accept Mr. Vaze's contention on the construction of Section 2(u) of the PMLA, still, the attachment order dated 30.03.2017 is vitiated for non-compliance with the predicates of Section 5(1) of the PMLA.

31. Section 5(1) of the PMLA as it stood on the date of the offence in 2010 or for that matter even after its amendment in 2013, *inter alia* provides that if the director or the authorized officer has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession -

- (a) any person is in possession of any proceeds of crime; and*
- (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under Chapter III, he may, by order in writing, provisionally attach such property for a period as prescribed and in such manner as may be prescribed.*

There are certain provisos to Section 5(1), with which, we are not concerned in these matters, particularly because no serious issue was raised about the non-compliance thereof.

32. On a plain reading of the provisions of Section 5(1) of the PMLA it is apparent that the director or the authorized officer has powers to provisionally attach properties involved in money laundering,

however, such power is hedged by the crucial circumstance that the director or the authorized officer must have reason to believe that the two predicates referred to in clauses (a) and (b) as aforesaid exist or are fulfilled. Further, it is not sufficient, that the director or the authorized officer merely entertains such reason to believe in his mind but further, the reasons for such belief are required to be recorded in writing. At least on a plain reading of the provisions of Section 5(1) of the PMLA, it is apparent that the two predicates in clauses (a) and (b) have to be construed conjunctively and not disjunctively as suggested by Mr. Vaze, learned counsel for the ED. This means that the director or the authorized officer before he proceeds to make an order under Section 5(1) of the PMLA, must have reason to believe, on the basis of material in his possession, not only any person is in possession of any proceeds of crime but further, such proceeds of crime are likely to be concealed, transferred or dealt with to frustrate confiscation proceedings under Chapter III of PMLA.

33. At least the plain reading of the provisions of Section 5(1) does not support Mr. Vaze's contention that the moment any person is found to be in possession of any proceeds of crime, it must be presumed that such person would be likely to conceal, transfer or deal with such proceeds to frustrate confiscation proceedings under Chapter III of PMLA. So also, reading the “*and*” which connects the two predicates in clauses (a) and (b) might even lead to an absurd position because it might imply that even though a person is not in possession of any

proceeds of crime, he is nevertheless likely to conceal, transfer or deal with '*such proceeds of crime*' to frustrate confiscation proceedings under Chapter III of PMLA. Further, if the expression "*and*" is construed as it stands, it is not as if some absurdity would result in the construction of Section 5(1) of the PMLA or the object of Section 5(1) of the PMLA would be frustrated or defeated. There is, according to us, nothing in the text or the context obliging the Court to read "*and*" as "*or*" simply because the Court, may, in certain circumstances, have the power to do so.

34. In *Ranchhoddas Atmarain (supra)*, the Hon'ble Apex Court in fact refused to read "*or*" as "*and*".

35. In *J. Jayalalitha (supra)*, the Hon'ble Apex Court held that the dictionary meaning of the word "*or*" is "*a particle used to connect words, phrases, or classes representing alternatives*". The word '*or*', which is a conjunction, is normally used to join alternatives and also to join rephrasing of the same thing but at times to mean '*and*' also. Alternatives need not always be mutually exclusive. Moreover, the word "*or*" does not stand in isolation and, therefore, it will not be proper to ascribe to it the meaning which is not consistent with the context of Section 3. It is a matter of common knowledge that the word '*or*' is at times used to join terms when either one or the other or both are indicated. Therefore, if the context mandates, it is no good reason to restrict the meaning of the word "*or*". The word "*or*" as used in Section

3 would mean that the Government has the power to do either or both things.

36. In *Tek Chand Bhatia (supra)*, the Hon'ble Apex Court referred to the Stroud's Judicial Dictionary, 3rd Edn., vol. 1, in which it is stated :

"And" has generally a cumulative sense, requiring the fulfillment of all the conditions that it joins together, and herein it is the antithesis of "or". Sometimes, however, even in such a connection, it is, by force of a context, read as "or"."

While dealing with the topic 'OR is read as AND, and vice versa', Stroud says in Vol.3, at page 2009:

"You will find it said in some cases that 'or' means 'and'; but; or; never does mean 'and'."

37. In *Tek Chand Bhatia (supra)*, the Hon'ble Apex Court referred to Maxwell on Interpretation of Statutes, 11th Edn., pp. 229-30, as well as observations of *Scrutton L.J. said in Green v. Premier Glynrhonwy Slate Co.* and observed that it has been accepted that 'to carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions "or" and "and" one for the other'. The word 'or' is normally disjunctive and 'and' is normally conjunctive, but at times they are read as vice versa. As you do sometimes read 'or' as 'and' in a statute..... But you do not do it unless you are obliged, because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. As Lord Halsbury L.C. observed in ***Marsey Docks & Harbour Board v. Henderson***, the reading of 'or' as 'and' is not to be resorted to "unless some other part of the same statute or the clear

intention of it requires that to be done". The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted whether some of the cases of turning 'or' into 'and' and vice versa have not gone to the extreme limit of interpretation.

38. Therefore, the above decisions relied upon by Mr. Vaze only establish that the Court, in certain circumstances, has the power to read “and” as “or” and vice versa. However, in the absence of such compelling circumstances, the Court cannot, as a matter of course read “and” as “or” or vice versa as, the Courts, would be ignoring the caution expressed in *Tek Chand Bhatia (supra)* about going to the extreme limits of interpretation.

39. In *Union of India v. Ind-Swift Laboratories Ltd⁹*, the Hon'ble Apex Court has held that where provision is clear and unambiguous the word “or” cannot be read as “and” by applying the principle of reading down.

40. In *A. G. v. Beauchamp¹⁰* and in *R v. Oakes¹¹*, it is held that if the literal reading of the words produces an unintelligible or absurd result, “and” maybe read for “or” and “or” for “and” even though the result of so modifying the words is less favourable to the subject, provided that the intention of the Legislature is otherwise quite clear.

9(2011) 4 SCC 635

10(1920) 1 KB 650

11(1959) 2 ALL ER 92

Conversely if the reading of “and” as “or” produces grammatical distortion and makes no sense of the portion following “and”, “or” cannot be read in place of “and”. This is also the position accepted in *Sahaney Steel & Press Works Ltd. Hyderabad v. Commissioner of Income Tax Andhra Pradesh*¹².

41. In the context of Mr. Vaze's contention based upon the object of Section 5(1) of the PMLA or the intention of the Legislature in enacting Section 5(1) of the PMLA, it is to be remembered that in all ordinary cases and primarily, the language employed is the determinative factor of legislative intention. The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. This is what is held by the Hon'ble Supreme Court in *New Piece Goods Bazar Co. Ltd. v. CIT, Bombay*¹³ and *Kannailal Sur v. Paramnidhi Sadu Khan*¹⁴.

42. In *Brophy v. AG of Manitoba*¹⁵, the Privy Council held that the question is not what may be supposed to have been intended by the Legislature but what has been said. Justice Holmes went to the extent of observing: “*I only want to know what the words mean*” (*REID MACDONALD AND FORDHAM, 'Cases and other Materials on Legislation' by, 2nd Edition, p.1005.*) Lord Broughan has more emphatically stated the importance of the text of the statute in the following words: “*if the Legislature did intend that which it has not*

¹²(1997) 7 SCC 764

¹³AIR 1950 SC 165

¹⁴AIR 1957 SC 907

¹⁵(1895) AC 202

*expressed clearly; much more if the Legislature intended something very different; if the Legislature intended pretty nearly the opposite of what is said, it is not for judges to invent something which they do not meet within the words of the text (aiding their construction of the text always, of course, by the context)” (Robert Wigram Crawford v. Richard Spooner¹⁶). These and like opinions lay stress on one aspect of intention, i.e., what the words mean; and undoubtedly to the extent, the 'referent' is clearly indicated and the words have a 'plain' meaning, the courts are not to busy themselves with 'supposed intention' (**Pakala Narayanswami v. Emperor**¹⁷).*

43. Therefore, based upon the supposed intention of the Legislature, the expression “*and*” which connects the predicates in clauses (a) and (b) of Section 5(1) of the PMLA cannot be read as “*or*”. There is nothing in the context to indicate that the Legislature intended to provisionally attach the proceeds of crime irrespective of whether or not there was any likelihood of such proceeds of crime being concealed, transferred, or dealt with to frustrate any confiscation proceedings under Chapter III of the PMLA. Rather, it appears that the Legislature intended to empower the director or the authorized officer to provisionally attach the proceeds of crime where such proceeds of crime were likely to be concealed, transferred, or dealt with to frustrate the confiscation proceedings. The Legislature was conscious that it was vesting the director or the authorized officer with such extraordinary powers in the teeth of the presumption of innocence and therefore, such

¹⁶4 MIA 179, p. 187 (PC)

¹⁷AIR 1939 PC 47, p.51

extraordinary power was hedged with certain contentions which had to be cumulatively existent.

44. *Radhamohan Lakhotiya (supra)*, is not at all an authority for the proposition that the two predicates in clauses (a) and (b) of Section 5(1) of the PMLA can be construed disjunctively by reading “*and*” as “*or*”. In fact, in para 16 of *Radhamohan Lakhotiya (supra)*, the Division Bench of this Court speaking through Justice Khanvilkar (as His Lordship then was) held that provisional attachment is an emergent measure to be taken by the authorized officer having been satisfied and having reason to believe that the proceeds of crime are likely to be concealed, transferred or dealt with in any manner, which may result in frustrating any proceedings relating to the confiscation of such proceeds of crime. Similarly, in *Kavitha Pillai (supra)*, the Division Bench Kerala High Court, speaking through Justice Dama Seshadri Naidu (as His Lordship then was) held that though the belief of the director or the authorized officer for ordering provisional attachment may be subject to, the same, should be verifiable and hence recorded. The officer’s effort to provisionally attach the proceeds of crime has strings attached to it: he should ensure that he has (a) recorded the grounds of his belief; (b) sent a report to the magistrate under Section 173 of the Code of Criminal Procedure, 1973; or (c) filed a complaint before the magistrate or court for taking cognizance of the scheduled offence.

45. *Kavitha Pillai (supra)* proceeds to hold that “*reason to believe*” stands on a firmer footing than the reason “*to suspect*.” Belief is

a matter of faith or opinion-even in the secular sense. But "*reason*" to believe needs more than a nagging suspicion or personal conviction. At the same time, it is less emphatic than "*reason to act*." It stands in an intermediary position. So we may say that the information must be credible, and the conclusions from that information probable. In other words, a surmise or a conjecture should not be the foundation for the belief. Under Section 5 of the Act, "*reason to believe*" serves two purposes: that (a) any person is in possession of any proceeds of crime; and (b) such proceeds of crime are likely to be concealed, transferred, or dealt with in any manner that may frustrate any proceedings to confiscate such proceeds of crime.

46. *Kavita Pillai (supra)* refers to analogous provisions under the Income Tax Act, NDPS Act, and Penal Code and employed expression "*reasons to believe*" and in that context, referred to the ruling of the Hon'ble Supreme Court in the case of *Income Tax Officer v. Lakhmani Mewal Das*¹⁸ in which it is held that the expression "*reason to believe*" in Section 147 of the Income Tax Act does not mean a purely subjective satisfaction by the Income-tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the Court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief, not being extraneous or irrelevant. Based upon this ruling, the Kerala High Court held that a mere mechanical recording that the

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property is likely to be concealed, transferred, or dealt with would not meet the requirements of Section 5(1) of the said Act.

47. For all the aforesaid reasons, it is not possible to accept Mr. Vaze's contention that the expression "*and*" which connects the two predicates in clauses (a) and (b) of Section 5(1) of the PMLA is required to be construed as *or* and on which basis, the order dated 30.03.2017 made by the Joint Director, sustained. None of the authorities relied upon by Mr. Vaze support the proposition advanced by him in the context of the provisions of Section 5(1) of the PMLA.

48. As noted earlier, in the present case, analysis of the Joint Director's order dated 30.03.2017 makes it clear that there are no reasons whatsoever recorded by the Joint Director in support of his alleged belief that the proceeds of crime were likely to be concealed, transferred or dealt with in any manner by the Kamats or Alemaos to frustrate proceedings relating to the confiscation of such proceeds under Chapter III of the PMLA. The mere incantation that the officer had reason to believe that such proceeds of crime will be dealt with in a manner which may result in frustrating any proceedings relating to the confiscation of such proceeds of crime, constitutes no compliance whatsoever with the predicates of clause (b) of Section 5(1) of the PMLA.

49. Although, we are not going into the issue as to whether the properties/FDRs which were ordered to be attached by order dated

30.03.2017 were indeed proceeds of crime, but assuming that the same were so, at the highest, it can be said that the Joint Director had recorded reason for his belief that Kamats and Alemaos were in possession of the proceeds of crime. This much could be said to be discernible from what is set out in paragraphs 2 to 33 of the order dated 30.03.2017. However, there is absolutely nothing in all these paragraphs on the aspect of any likelihood on the part of Kamats and Alemaos to conceal, transfer or deal with in any manner such proceeds of crime which may result in frustrating any confiscation proceedings under the PMLA. The Tribunal was certainly right in holding that there was no compliance with Section 5(1) of the PMLA insofar as the compliance with the predicates of Section 5(1)(b) of the PMLA were concerned.

50. The impugned order made by the Tribunal indicates that the ED authorities were repeatedly called upon to produce on record the reasons, if any, concerning predicates of Section 5(1)(b) of the said Act. The matter was adjourned on at least two occasions to enable the authorities to produce the reasons for such belief. However, the ED authorities failed to produce such reasons and ultimately, in their pleadings before the Tribunal admitted that apart from what is reflected in the order dated 30.03.2017 there are no separate reasons to be found in the file or any other contemporaneous record. The order dated 30.03.2017 made by the Joint Director as noted above, contain no reason whatsoever in the belief concerning predicates of Section 5(1)(b)

of the said Act. On this short ground, the order dated 30.03.2017 warrants interference.

51. For all such reasons, we are satisfied that the Tribunal, after concluding that the attachment order was required to be set aside, was not justified in issuing the directions which it has issued in paragraph 79 of its impugned order. Accordingly, the conditions imposed by the Tribunal for setting aside the attachment of the immovable properties deserve to be set aside. So also, the continuance of the attachment of the FDRs by the Tribunal deserves to be set aside.

52. According to us, most of the directions in paragraph 79 of the impugned order like calling upon the parties to furnish indemnities, etc., are not even contemplated under the scheme of the PMLA. Such directions could not have been issued merely on the basis that the CBI had made some allegations against Kamats and Alemaos and that prosecutions were pending against them. Such directions could not have been issued in the name of “striking balance” between the interests of the ED as well as the accused persons.

53. In any case, even assuming that some directions were justified in the interest of striking balance, the statements made by Mr. Rao and Mr. De Sa as referred to in paragraph 21 of this judgment and order, will sufficiently protect the interests of ED, whilst, at the same time, not require Kamats and Alemaos to suffer dispossession from their immovable properties, even before they are convicted of any offences and

whilst they enjoy the presumption of innocence. The ED, in the peculiar facts of the present case, should have accepted the statements made by Kamats and Alemaos rather than to seek to dispossess them from their immovable properties even before the conclusion of the criminal proceedings pending against them.

54. Further, at the request of the learned counsel for the parties, by taking into consideration the order made by the Hon'ble Supreme Court in the case of *Ashwini Kumar Upadhyay Vs Union of India and others*¹⁹, we direct the Special Court taking up the case No. PMLA No.1/2018 to dispose of the same as expeditiously as possible and in any case within one year from the date of which the parties produce the authenticated copy of this order before it.

55. Accordingly, we dispose of these appeals by making the following order:

- (a) AUPML No.1/2019 is hereby allowed and the impugned order is set aside. However, the statement made on behalf of the Appellants-Kamats that they will not sell, transfer, alienate, encumber or liquidate or encash the attached properties/FDRs referred to in para 5 of this judgment and order until the conclusion of PMLA Case No.1/2018 pending before the Special Court at Mapusa and for one month thereafter, is hereby accepted. The Appellants-Kamats will have to abide by this

¹⁹Writ Petition (Civil) No. 699/2016

statement. In case Kamats wish to alienate or encumber any of the immovable properties or to liquidate any of the FDRs, they will have to seek prior permission from the Special Court where the PMLA Case No.1/2018 is pending. Such application, if made, will have to be disposed of on its own merits and in accordance with law after affording an opportunity of hearing to the ED on the same;

(b) AUPML No.2 of 2019 and No.3 of 2019 are hereby dismissed;

(c) The Special Court at Mapusa is directed to dispose of PMLA Case No.1/2018 as expeditiously as possible and in any case within one year from the date on which the parties place on its file the authenticated copy of this order. In case no date is fixed for appearance before the Special Court, the parties, to now appear before the Special Court on 05.11.2020 at 10.30 a.m. and place on its file an authenticated copy of this order;

(d) In the peculiar facts of the present case, there shall be no order as to costs.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.