

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 09.10.2020

Orders Pronounced on : 17.12.2020

Coram:

THE HONOURABLE MR.JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P. Nos. 25177 and 25231 of 2019
and

W.M.P.Nos.24748, 24800, 24751 and 24801 of 2019

(Heard through video-conferencing)

1. A.John Kennedy
2. M/s.Charles Promoters Pvt. Ltd.,
Represented by its Director,
54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.
3. M/s.Daison Construction India Pvt. Ltd.,
Represented by its Director,
54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.
4. M/s.Martin Dwellers Pvt. Ltd.,
Represented by its Director,
G.N.Mill Post, Coimbatore-641 029.
5. M/s.Martin Hi-Tech Constructions Pvt. Ltd.,
Represented by its Director,
54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.
6. M/s.Martin Real Estate Pvt. Ltd.,
Represented by its Director,
54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.
7. M/s.Martin Realcon Pvt. Ltd.,
Represented by its Director,
54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.

8. M/s.Martin Township Developers Pvt. Ltd.,
Represented by its Director,
54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.

.. Petitioners in W.P.No.25177 of 2019

1. M/s.Martin Property Developers Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

2. M/s.Martin Builders Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

3. M/s.Charles Modular Homes Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

4. M/s.Martin Reality Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

5. M/s.Charles Housing Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

6. M/s.Martin Homes Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

7. M/s.Martin Housing Developers Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

8. M/s.Martin Plaza Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

.. Petitioners in W.P.No.25231 of 2019

Versus

Joint Director
Directorate of Enforcement
Cochin Zonal Office
Kanoos Castle
Mullassery Canal Road West
Cochin-11.

.. Respondent in both the
Writ Petitions

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of Writs of Certiorari to call for the records from the respondent herein relating to registration of Enforcement Case Information Report (ECIR) in his proceedings ECIR.No.KCZO/4/2014, dated 19.08.2014 and the Provisional Attachment Order No.02-/2019 issued in ECIR/04/KCZO/2014/1137, dated 22.07.2019 under Section 5(1) of the Prevention of Money Laundering Act (PMLA) and quash the same.

For petitioners :Mr. E. Om Prakash, Senior Counsel
for Mr.V.Venkatasamy in W.P.No.25177 of 2019

Mr. B. Kumar, Senior Counsel
for Mr.R.Murali in W.P.No.25231 of 2019

For respondent :Mr.R. Sankara Narayanan,
Addl. Solicitor General
assisted by Mr.N.Ramesh, Spl.P.P.
in both the Writ Petitions

COMMON ORDER

R. SUBBIAH, J

Both these Writ Petitions are filed questioning the validity and/or legality of the registration of Enforcement Case Information Report (ECIR) in proceedings in ECIR.No.KCZO/4/2014, dated 19.08.2014 and consequential Provisional Attachment Order No.02-/2019 (for short, "the PAO") issued in ECIR/04/KCZO/2014/1137, dated 22.07.2019 under Section 5(1) of the Prevention of Money Laundering Act (for short, "PMLA") on the file of the respondent and quash the same.

2. Both the writ petitions are filed by the companies, which are represented by Mr.A.John Kennedy, the first petitioner in W.P. No. 25177 of 2019. Since the Writ Petitions are filed with identical prayer and the issues involved in these Writ Petitions are inter-related to each other, they are taken up for hearing together and are disposed of by this common order.

3. The case of the petitioners is as follows:

(a) The Lotteries (Regulation) Act was enacted by the Central Government to regulate the trading of Lotteries throughout India and it came into force on 07.07.1998. The Government of India did not frame any Rules under the Lotteries (Regulation) Act, till the year 2010. The Government of India, under the said Lotteries (Regulation) Act, permits the respective State Government to organise, promote or conduct Lottery business, subject to certain conditions specified in Section 4 of the Lotteries (Regulation) Act. As per Section 4 of the said Act, the State Government shall sell its Lottery tickets through Distributor or Selling Agent. Section 12 of the Lotteries (Regulation) Act empowers the State Government to frame Rules to carry out the provisions of the Act.

(b) In exercise of the powers conferred under Section 12 of the Act, the State of Sikkim framed Rules for regulating the Lottery sale and distribution. Based on the said Rules, the State of Sikkim organised and promoted its Lottery sale, inter-alia, decided to sell its Lottery tickets through the Distributors or Selling Agents. For this purpose, the State Government of Sikkim invited tenders to nominate Distributors to sell the State Lottery tickets to the public under their own arrangements. In the tender floated by the State of Sikkim, M/s.Martin Lottery Agencies Limited (in short, "the MLAL") was the highest tenderer. The MLAL is now known as Future Gaming Solutions and Hotels Pvt. Ltd. As a highest bidder, they were appointed as sole Distributor to sell the Lottery tickets in any State, which was not a Lottery free State. The said MLAL was also authorised to appoint sub-agents.

(c) The State of Kerala was also organising, promoting and conducting its own Lotteries within the State and so, it is not a Lottery free zone. MLAL, the sole distributor authorised by the State of Sikkim, sought to sell the Sikkim State Lotteries in the State of Kerala by complying with all the Rules and Regulations. For this purpose, several contracts were entered into between the State of Sikkim and MLAL and the last contract was entered into between them on 10.08.2009, which came into effect from 18.10.2009 and was valid for a period of five years, i.e. upto 17.10.2014. In the meantime, The Lotteries (Regulation) Rules, 2010 were framed and notified with effect from 01.04.2010. However, the sale of Lottery business was stopped within the State of Kerala after 31.08.2010.

(d) As the State of Kerala organised its own Lottery and is not a Lottery-free State by then, the other States, such as State of Sikkim, which organises its own Lottery, can sell their tickets within the State of Kerala and vice-versa. This right was recognised by the Supreme Court of India in the decision reported in 1999 (9) SCC 700 (B.R. Enterprises Vs. State of

U.P). In fact, the sale agent/MLAL sought to sell the Sikkim State Lotteries in the State of Kerala, after complying with all the relevant Rules and Regulations which are in force in the State of Kerala. However, the State of Kerala imposed various impediments to prevent the sale of the other State Lotteries within its territory. The State of Kerala also viewed the sole distributor of the State of Sikkim as a serious competitor to its own Lottery ticket. However, the Lottery sales of the petitioner continued unabated, pursuant to the order of the High Court concerned on the petition of the sole distributor. Thus, the State of Kerala, through its officials, harassed the sole distributor in various ways using the State Machinery, especially the Police authorities, by conducting raids and confiscating Lotteries of Sikkim State etc.

(e) At the height of such harassment, based on the complaints given by the various authorities of the Government, the State of Kerala through its Police, registered 32 First Information Reports (FIRs), vindictively, in the year 2010 against the sole distributor as well as its agents, for the offences under Sections 34, 120-B, 406, 417 and 420 IPC and also under Sections 4(b), 4(c), 4(d), 4(f) and 4(g) read with Sections 7(3) and 9 of the Lotteries (Regulation) Act and the allied provisions of the Kerala Paper Lotteries Rules, Kerala Online Lottery Rules and the Lotteries (Regulation) Rules. As per the complaint, the stockists and selling agents of Sikkim Lottery Tickets are selling fake and bogus Lottery tickets to the people of Kerala and cheated them as if they sold genuine Sikkim Lottery Tickets.

(f) Later, the State of Kerala had moved the Government of India and requested the Central Government to extend the powers and jurisdiction of Central Bureau of Investigation (CBI) in the whole State of Kerala to investigate the offences concerning 32 First Information Reports (FIRs) registered by the Kerala Police in connection with the illegal sale of the other State Lotteries in their State. This request was made by the State of Kerala by way of Notification consenting for entrusting the investigation to the CBI, which is a mandate under Section 6 of the Delhi Special Police Establishment Act, 1946. The Central Government also issued a Notification under Section 5 of the Delhi Special Police Establishment Act, empowering the CBI to investigate the 32 FIRs along with the offences of abatement and conspiracy thereto.

(g) The CBI took over the investigation of the cases concerning the above said 32 FIRs and on completion of the investigation, the CBI found that there was no sufficient material to prosecute the Distributors and its agents and filed a closure report in respect of 23 FIRs. However, the CBI filed consolidated charge sheet in respect of seven FIRs, naming seven persons as accused before the learned Chief Judicial Magistrate,

Ernakulam (Kerala State), for the offences under Sections 120-B, 420 IPC, Sections 4(d), 4(f), 9, read with Section 7(3) of the Lotteries (Regulation) Act, 1998 and Rules 3(5), 4(5) of the Lotteries (Regulation) Rules, 2010. The petitioners 2 to 8 in both the Writ Petitions are not accused in the said charge sheet.

(h) The basic allegation in the charge sheet is that MLAL (sole distributor) (now Future Gaming Solutions Pvt. Ltd.), had defalcated monies belonging to the State of Sikkim, by way of sale of Sikkim Lotteries in the State of Kerala. But, inspite of the notice, the State of Sikkim has not made any complaint with respect to the loss, if any, occasioned to them by reason of sale of Lottery tickets by MLAL. However, the final report was taken on file as C.C. No. 218 of 2015 on the file of the learned Chief Judicial Magistrate, Ernakulam (Kerala).

(i) The Director of MLAL, Mr. John Britto (Accused No.2) had filed a petition under Section 482 Cr.P.C. for quashing the CBI case on the reason that the CBI had no jurisdiction to investigate, since the State of Sikkim denied the consent sought by the CBI under Section 6 of the Delhi Special Police Establishment Act. The said quash petition had been filed in CrI.M.C.Nos.1871 and 6912 of 2019 before the High Court of Kerala.

(j) In the meantime, the Central Bureau of Investigation (CBI) forwarded the final report to the Enforcement Directorate, Kerala, as desired by them, vide letter dated 26.02.2014 for their information and necessary action. On the basis of the final report filed by the CBI for the offences under the Lottery (Regulation) Act and Rules framed thereunder, including the offence under Section 420 read with Section 120-B IPC, the ECIR dated 19.08.2014 was registered by the Enforcement Directorate, Kerala, naming seven persons as suspected persons in the ECIR on the basis of the above CBI charge sheet. After registration of the ECIR, the Enforcement Directorate had made Provisional Attachment Order (PAO), dated 22.07.2019 under Section 5(1) of the PMLA, thereby, series of properties of the petitioners herein, which are situated within the jurisdiction of this Court at Coimbatore, Tamil Nadu, have been attached. Challenging the PAO, the present two Writ Petitions have been filed.

4. The respondent-Enforcement Directorate has filed counter affidavit in both the Writ Petitions, stating as follows:

(a) The Writ Petitions are not maintainable, as this Court has no territorial jurisdiction to entertain them. The cause of action for filing the writ petitions did not arise within the jurisdiction of this Court and therefore, this Court lacks jurisdiction to entertain the writ petitions. The claim that the petitioners are residing in the State of Tamil Nadu and the

properties attached are within the State of Tamil Nadu will not confer jurisdiction upon this Court to entertain the writ petitions. The offences were committed within the State of Kerala, where the cases were registered and charge sheet thereof is pending trial before the Chief Judicial Magistrate, Ernakulam (Kerala). Moreover, some of the accused persons in the case, have already invoked the jurisdiction of the High Court of Kerala against previous PAO issued in the instant case by filing Writ Petitions in W.P.(C).No.22327 of 2016 (filed by Shri.Santiago Martin) and W.P.(C).No.23695 of 2016, and they are pending before the High Court of Kerala. While so, to circumvent the investigation under the PMLA and to prolong the litigation, the present Writ Petitions are filed before this Court. The Writ Petitions should have been preferred only in the High Court of Kerala, following the principle of 'forum-conveniens'. The High Court of Kerala is the appropriate Court for adjudicating the issues contained in the present Writ Petitions. In this regard, the respondent-ED (Enforcement Directorate) in their counter, relied on a decision of the Delhi High Court in the case of Rashmi Cement Limited Vs. Enforcement Directorate in W.P.(Crl). No.2170 of 2017, dated 30.08.2017, reported in MANU/DE/2569/2017.

(b) The PAO No.02/2019 was issued on 22.07.2019 under Section 5(1) of the PMLA, 2002, copy of which was immediately forwarded to the Adjudicating Authority (PMLA), New Delhi. The ED subsequently filed an original complaint in O.C.No.1180 of 2019, dated 20.08.2019 before the Adjudicating Authority (PMLA), New Delhi under Section 5(5) of the PMLA, with a prayer to confirm the said PAO under Section 8(3) of the PMLA and the Adjudicating Authority (PMLA), New Delhi had taken cognizance of the said complaint under Section 8(1) of the PMLA. The Adjudicating Authority has to statutorily satisfy itself with regard to the liability and responsibility to subjectively confirm or not to confirm the said original complaint in O.C.No.1180 of 2019 within 180 days from the date of issuance of PAO, dated 22.07.2019, by virtue of Section 8(3) of the PMLA, 2002, after complying with the provisions of Sections 8(1) and 8(2) of the PMLA. Therefore, the petitioners should have availed the statutory remedy available to them in terms of Sections 8(1) and 8(2) of the PMLA Act, 2002, before the Adjudicating Authority (PMLA), New Delhi. Even if any order is passed by the Adjudicating Authority (PMLA), New Delhi, the petitioners can prefer a further appeal before the Appellate Tribunal under Section 26(1) of the PMLA. If the petitioners are in any manner aggrieved by the order passed by the Appellate Tribunal, then, in terms of Section 42 of PMLA, the petitioners can very well approach this Court. The petitioners, without doing so, have invoked the jurisdiction conferred upon this Court under Article 226 of the Constitution of India and filed the present Writ Petitions.

(c) The Writ Petitions are filed before this Court without availing the statutorily provided remedy, therefore, they are not maintainable. In this context, respondent-ED referred to following decisions:

(i) Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and another, reported in 2010 (4) SCC 772, wherein, the Supreme Court held that when a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a Writ Petition should not be entertained ignoring the statutory dispensation.

(ii) Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond and Gem Development Corporation Ltd. and another, in Civil Appeal No.7252-7253 and 8222-8223 of 2013, dated 12.02.2013, reported in MANU/SC/0116/2013 = 2013 (5) SCC 470. In this case also, the Supreme Court held that a Writ does not lie merely because it is lawful to do so and the petitioner must be asked to exhaust statutory/alternative remedy available to him in law.

(iii) United Bank of India Vs. Satyawati Tondon and others, reported in 2010 (8) SCC 110, wherein it was held that where statutory remedies are available under a fiscal statute, then exercise of jurisdiction under Article 226 by High Court for passing orders which could have serious adverse impact on the right of banks and other financial institutions to recover their dues, is not warranted.

(iv) Kannaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others, reported in 2011 (2) SCC 782, in which, the Supreme Court held that it is well settled that, ordinarily, relief under Articles 226/227 of the Constitution of India is not available, if an efficacious alternative remedy is available to any aggrieved person.

(v) G.Srinivasan Vs. The Chairperson, Adjudicating Authority under the PMLA, 2002 and others, reported in 2012 (1) MLJ 419, wherein this Court held that when the Act itself provides for an inbuilt remedy, it is not open to the petitioner therein to rush to this Court at the stage of provisional attachment, which is yet to be confirmed by the Adjudicating Authority.

(vi) Rose Valley Hotels and Entertainment Ltd. Vs. The Union of India, reported in CDJ 2015 Bihar HC 074, wherein a Division Bench of the Patna High Court held that statutory provisions of PMLA are well-equipped to deal with cases of the present nature and the adjudicating authority is amply imbued with powers under Section 8 of the PMLA to decide the validity of the provisional attachment. When the petitioner's claims is based on considerable proportion on issues of facts, which are capable of

being decided by a competent statutory authority, there appears to be little reason for this Court to exercise its extraordinary Constitutional Writ Jurisdiction at this stage.

(d) The Government of Kerala is not a party to the Writ Petitions and therefore also the writ petitions are not maintainable. Further, the cases were registered in the State of Kerala with regard to the sale and distribution of Sikkim State Lotteries. Crime No.764 of 2010 was registered against Santiago Martin and others by Museum Police Station, Thiruvananthapuram, on the basis of the complaint from the Head of Lottery Monitoring Cell, Government of Kerala. Crime No.658 of 2010 was registered by Museum Police Station, Thiruvananthapuram, based on the report of the Deputy Commissioner of Commercial Taxes, Intelligence, Kerala, in which the Santiago Martin and others, were arrayed as accused persons during the course of investigation. Further, Crime No.75 of 2010 was registered by the Thrikakkara Police Station against Santiago Martin and others. Crime No.413 of 2020 was registered by Palluruthy Police Station, in which Santiago Martin and others were arrayed as accused during the course of investigation. Crime No.495 of 2010 was registered by Ernakulam Town North Police Station, in which, Santiago Martin and others were arrayed as accused persons during the course of investigation.

(e) As regards the merits of the case, it is stated that the Directorate of Enforcement commenced investigation under the PMLA, by virtue of the powers conferred under Sections 48 and 49 of the PMLA, read with Government of India Notification No.GSR.441(E), dated 01.07.2005 against the petitioners and other persons. The Final Report No.DV1/04, dated 03.02.2014 was filed by the CBI Cochin Unit, under Section 173(2) of the Criminal Procedure Code before the learned Chief Judicial Magistrate Court, Ernakulam in cases (i) RC.11(S)/2011-CBI/ACB/Cochin (ii) RC.13(S)/2011-CBI/ACB/Cochin (iii) RC.16(S)/2011-CBI/ACB/Cochin (iv) RC.20(S)/2011-CBI/ACB/Cochin (v) RC.21(S)/2011-CBI/ACB/Cochin (vi) RC.22(S)/2011-CBI/ACB/Cochin and (vii) RC.09(S)/2011-CBI/ACB/TVPM, and they were taken cognizance of as CC.No.218/15. The Final Report filed by CBI had levelled charges against Shri.S.Martin (A1), Managing Director of Future Gaming Solutions (India) (P) Ltd. (FGSIPL), (formerly Martin Lottery Agencies Ltd. and presently Future Gaming and Hotel Services (P) Ltd.), Shri.P.John Britto (A2), Future Gaming Solutions (India) (P) Ltd., represented by Shri.S.Martin (A3), Shri.John Kennedy (A4), Shri.N.Jayamurugan (A5), Shri.A.Sakthivel (A6) and Shri.V.Selvaraj (A7) for commission of offences punishable under Sections 120-B and 420 of the Indian Penal Code read with Section 4(d), 4(f), 7(3) and 9 of the Lotteries (Regulation) Act and Rules 3(5) and 4(5) of the Lotteries (Regulation) Rules. The final report specifically

states that A1 to A7, did not remit the sale proceeds to Sikkim Government, did not remit the unclaimed/un-disbursed prize money back to the Sikkim Government, printing of Sikkim Lottery tickets from a non-security press not empanelled by RBI/IBA, not returned the unsold tickets back to the Sikkim Government, not returned the un-disbursed prize amounts to the Sikkim Government and manipulation of data showing unsold prize winning tickets as sold and claiming the same from Sikkim Government and cheating the Government of Sikkim by entering into an agreement containing covenants contrary to the Lotteries (Regulation) Act and Rules. Therefore, according to the final report, the petitioners deceived the Sikkim Government in not remitting the full sale proceeds of the Lottery Tickets. The Charge Sheet also states that the first accused (A-1) was practically conducting the Sikkim Government Lotteries in the name of M/s.FGSIPL (M/s.Future Gaming Solutions (India) Pvt. Ltd.) and thereby committed the offences punishable under Sections 120-B and 420 of IPC read with Sections 4(d), 4(f), 7(3) and 9 of the Lotteries (Regulation) Act, 1998 and Rules 3(5) and 4(5) of the Lotteries (Regulation) Rules, 2010 and Sections 120-B and 420 IPC are scheduled offences as defined under Section 2(1)(x)(y) of the PMLA.

(f) This Charge Sheet is pending trial before the Chief Metropolitan Magistrate, Ernakulam. Lack of complaint on the part of the State of Sikkim is not an issue in the proceedings under the PMLA. The CBI, in its final report, had specifically mentioned the reasons for not investigating the role of public servants in Sikkim. The Government of Sikkim denied the consent under Section 6 of the Delhi Special Police Establishment Act, 1946, which was required by the CBI to conduct investigation in Sikkim. As per the Charge Sheet filed by the CBI as well as the investigations conducted till date, loss had been caused to public in the State of Sikkim.

(g) The offences under the Lotteries (Regulation) Act, not being a schedule offence under the PMLA, will not affect the registration of a money laundering case. There is no requirement that all the offences alleged in the charges pressed by a law enforcement agency, should be a schedule offence. From the Charge Sheet filed by the CBI, it is clear that flouting the provisions of the Lotteries (Regulation) Act and the Rules made thereunder, was a result of the criminal conspiracy with an intention to cheat the Government of Sikkim.

(h) The Sikkim State Lottery Rules (as amended), were issued on 03.03.2016 with retrospective effect from 02.07.2007. These Rules were issued at a time when the investigation under the PMLA, looking into the aspect of non-payment of sale proceeds to the Government of Sikkim, was at an advanced stage. These Rules seek to restrict the liability of the sole distributor of Sikkim State Lottery with regard to the payment of paper Lottery sold to the sole distributor. During the time period covered in the

CBI final report, the sole distributor was required to pay the invoices raised on them by the Government of Sikkim, subject to the set-off in respect of the prize money up to Rs.5,000/- paid to the prize winner directly by the sole distributor or the other entities below him/it in the marketing chain. The CBI Charge Sheet alleges that the sales bill raised by the Government of Sikkim for the period 01.04.2009 to 31.03.2010 and as per the MRP of the ticket sold for the period from 01.04.2010 to 31.08.2010 is Rs.4970.42 crores against the sale of 572,07,13,205 Lottery Tickets, but M/s.Future Gaming Solutions (India) (P) Ltd. (formerly Martin Lottery Agencies Ltd and presently Future Gaming and Hotel Services (P) Ltd), remitted only Rs.142,93,15,372/-.

(i) The petitioners, in furtherance of the criminal conspiracy with the official of Sikkim Lottery Directorate, demanded only Rs.4,752.34 crores at wholesale rates against the sale of 572,07,13,205 Lottery tickets and against which, M/s.Future Gaming Solutions (India) (P) Ltd., remitted only Rs.142,93,15,372/- (Rs.142.93 crores). However, no action was taken by the officials of Sikkim Lottery Directorate. The clean chit said to have been given by the Sikkim Government to its sole distributor, is apparently without being aware of the manipulation in prize winning tickets done at M.J.Associates.

(j) The offence of money laundering cannot be ascertained from the charge sheet filed by the agency investigating the schedule offence, but by the investigation under the PMLA. The FIR for the schedule offence or the final report under Section 173 Cr.P.C., is only a triggering point for investigating into the offence of money-laundering. The offence under the money-laundering is independent and distinct from the schedule offence and it is continuous and stand-alone offence. In this context, reference was made to the decision of the Orissa High Court in the case of Smt.Janata Jha and another Vs. Assistant Director, reported in MANU/OR/0469/2013, wherein, it was held in paragraph 11 that, PMLA, being a special Statute, has over-riding effect on the Income Tax Act and further considering the huge amounts of money, which are lying in the Bank in the accounts of the petitioners therein as well as the nature of proceeding under the PMLA, more specifically, Section 24 thereof, when a person is accused of having committed offence under Section 3 thereunder, the burden of proving that the proceeds of crime are untainted property shall be on the accused. Therefore, it is submitted by the respondent herein that proceedings under the PMLA, 2002, cannot amount to double jeopardy, where the procedures and the nature of proof, are totally different from criminal proceedings under the Indian Penal Code.

(k) For the same proposition, the respondent also referred to the decision of Jharkhand High Court in Hari Narayan Rai Vs. Union of India, reported in MANU/JH/0726/2010, wherein, it was observed as follows:

"5. Thus in substance, the argument is that the money alleged to have been acquired will not fall within the definition of 'proceeds of crime' because the acts leading to its generation were not among the offences listed in the Schedule, as it stood on the date when those acts were committed.

6. The argument is misconceived. The reason is that what is being targeted by Section 3 and another provisions of the Act is the 'laundering of money' acquired by committing the scheduled crimes and, therefore, it would be the date of 'laundering' which would be relevant. The 'laundering' as used in Section 3 comprises of involvement in any process or activity by which the illicit money is being projected as untainted.

7. Thus, the relevant date is not the date of acquisition of illicit money but the dates on which such money is being processed for projecting it untainted."

(1) It is also stated by the respondent-ED that there is an amendment to Section 44 of the PMLA, 2002, vide The Finance (No.2) Act, 2019 in No.23 of 2019, dated 01.08.2019 and after Section 44(1)(d), an Explanation has been inserted, as per which, the jurisdiction of the Special Court during investigation, inquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence and the trial of both sets of offences by the same Court shall not be construed as a joint trial. The Explanation appears to have been inserted to take care of the situation of trial of "stand-alone money-laundering offence", as the trial of a money-laundering offence is not dependent on the outcome of the trial.

(m) The PAO, dated 31.03.2016, was challenged by Santiago Martin and his companies before the High Court of Kerala. In the Writ Petition in W.P.No.23695 of 2016 filed by Daison Land and Development (P) Ltd., an interim order dated 12.08.2016 was passed by Kerala High Court. The proceedings initiated against the petitioner therein were permitted to be continued and for the second respondent therein, the Adjudicating Authority was directed to consider the question of jurisdiction raised by the petitioner therein against the proceedings, after affording to the petitioner therein an opportunity of hearing while passing the order under Section 8(2) of the PMLA. As per the order, if PAO is confirmed, the further proceedings under Section 8(4) of the PMLA shall not be taken till further orders are received from the Court. Similarly, in the Writ Petition in W.P.No.22327 of 2016 filed by Santiago Martin, interim order dated 04.08.2016 was passed by the Kerala High Court. The proceedings initiated

against the petitioner therein were permitted to be continued and for the second respondent therein, the Adjudicating Authority was directed to consider the question of jurisdiction raised by the petitioner therein against the proceedings, after affording the petitioner therein an opportunity of hearing while passing orders under Section 8(2) of the PMLA. As per the order, if PAO is confirmed, the further proceedings under Section 8(4) of the PMLA, shall not be taken till further orders are received from the Court. In the Writ Petition in W.P.No.1424 of 2017 filed by Charles Realtors (P) Ltd., Martin Multi Projects (P) Ltd. and Daison Luxury Villas (P) Ltd., no interim order was passed, however, the said Writ Petition had been withdrawn by the petitioner therein. The Writ Petitions in W.P.Nos.22327 and 23695 of 2016 are still pending before the High Court of Kerala.

(n) The impugned PAO can continue only up to a period of 180 days, unless the same is confirmed by the Adjudicating Authority (PMLA) within the said period of 180 days. The adjudication proceedings had been set in motion by filing complaint under Section 5(5) of the PMLA. The petitioners have ample opportunity to state their case before the Adjudicating Authority and statutory remedy of appeal lies against the order of the authority before the Appellate Tribunal under the PMLA and thereafter, before the High Court. When effective alternative remedy is available to the petitioners, they cannot seek Writ Jurisdiction of this Court and hence, the present Writ Petitions are liable to be dismissed.

(o) The question as to whether an offence under Section 3 of the PMLA is committed, can be decided only after the conclusion of trial before the designated PMLA Court. In terms of Section 5 (1) of the PMLA, the condition(s) precedent for issuance of a PAO is/are the existence of a report forwarded to a Magistrate in relation to a schedule offence, the possession of proceeds of crime or the property involved in money-laundering and the satisfaction 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 proceeds of crime or that the property involved in money-laundering if not attached immediately, is likely to frustrate any proceedings under the Act.

(p) Sections 120-B and 420 IPC being schedule offences as defined under Section 2(1)(x)(y) of the PMLA, initiation of proceedings under the PMLA is legal. With regard to the maintainability of the charges under Sections 420 and 120-B IPC, it is without a complaint of loss being caused from the Government of Sikkim, and the same is to be agitated before the Court considering the CBI Charge Sheet. Sections 420 and 120-B IPC are invoked in many cases by the agencies empowered to investigate the offences under the Prevention of Corruption Act,

along with the Charge Sheet under that Act. The case of the petitioners that a Charge under Section 420 IPC would lie only on the basis of the complaint by the concerned Government, is not sustainable. The CBI, in its final report, had specifically mentioned the reasons for not investigating the role of public servants in Sikkim. The Government of Sikkim denied the consent under Section 6 of the Delhi Special Police Establishment Act, 1946, which was required by the CBI to conduct investigation in Sikkim.

(q) The proceedings under Section 5(1) of the PMLA is an executive action and hence, the question of issuing any notice does not arise. After the issuance of the order, the same had been duly served on the parties concerned expeditiously. The maintainability of the Charges under Sections 420 and 120-B IPC, without a complaint of loss being caused from the Government of Sikkim, is to be agitated before the Court considering the CBI Charge Sheet. The non-culpability of the petitioners had to be adjudicated before the Chief Judicial Magistrate, Ernakulam, before whom the Charge Sheet is pending. Therefore, it is for the petitioners to approach the concerned Court having jurisdiction to prove their innocence and this Court has no jurisdiction to entertain these writ petitions. The respondent therefore prayed for dismissal of the Writ Petitions.

5. (a) The learned Senior Counsels appearing for the petitioners in both the Writ Petitions, in unison, submitted that the sole distributor entered into a contract with the State of Sikkim on 10.08.2009. The period of contract was from 18.10.2009 for a period of five years upto 17.10.2014. On the basis of such contract, the petitioners continued with the business of sale and distribution of Lotteries in the State of Kerala, inasmuch as it was not a Lottery free state. However, the sale of Lottery business was stopped within the State of Kerala after 31.08.2010, because the State of Kerala considered the petitioners as their competitor. Notwithstanding stoppage of sale of Lotteries in Kerala, 32 FIRs were registered against the petitioners/sole distributor in different Districts of the Kerala State complaining as if the agents of Sikkim Lottery Tickets are selling fake and bogus Lottery tickets to the public, cheating them by misrepresenting as if they have sold genuine Sikkim Lottery tickets. Since it is the allegation of the State of Kerala that the State of Sikkim is also involved, they have made a Notification consenting for entrusting the investigation of 32 FIRs to the CBI. After the case was entrusted to the CBI, out of these 32 FIRs, 23 FIRs were closed. In these FIRs, wild allegations were made against sole stockists as if the tickets which were sold, were not genuine and not ensuring the authenticity and credibility by printing the seal and logo of the State on the Lottery Tickets, was found to be false. However, the CBI filed consolidated charge sheet in

respect of seven FIRs, before the Chief Judicial Magistrate, Ernakulam (Kerala State), for the offences under Sections 120-B and 420 IPC, Sections 4(d), 4(f), 9, read with Section 7(3) of the Lotteries (Regulation) Act, 1998 and Rules 3(5), 4(5) of the Lotteries (Regulation) Rules, 2010.

(b) Upon registration of the FIRs, the Petition (s) under Section 482 Cr.P.C. had been filed before the Kerala High Court to quash the final report/consolidated charge sheet. In the said quash petition, arguments were made on behalf of the petitioners therein and the matter was posted for reply by the CBI. In the meanwhile, the CBI forwarded the final report to the Enforcement Directorate of Kerala, as desired by them, vide letter dated 26.02.2014 for their information and necessary action. On the basis of the final report filed by the CBI for the offences under the provisions of the Lotteries (Regulation) Act and the Rules framed thereunder, including the offences under Sections 420 read with 120-B IPC, the ECIR dated 19.08.2014 (impugned order) was registered by the Enforcement Directorate, Kerala.

(c) The learned Senior Counsels appearing for the petitioners further submitted that under Section 5(1) of the PMLA, the impugned order(s) require to be confirmed by the Adjudicating Authority, which is situated in New Delhi, within a period of 180 days. Proviso to Section 5 of the PMLA enables that where the matter of provisional attachment is stayed by any Court, that period of stay will stand excluded and further period of 30 days will be extended. In this context, the Enforcement Directorate had to file a complaint under Section 5 (5) of the PMLA within 30 days of the provisional attachment with the Adjudicating Authority with a prayer to confirm the Provisional Order of Attachment. In the instant case, such a complaint had been filed on 20.08.2019, which is after filing of the present Writ Petitions on 19.08.2019 and in fact, this Court had also granted interim order on 27.08.2019 in the present Writ Petitions. In such a situation, the petitioners have not challenged the complaint dated 20.08.2019. Therefore, the contentions raised by the respondent-Enforcement Directorate in their counter affidavit that the petitioners have not challenged the said complaint, dated 20.08.2019, filed by them before the Adjudicating Authority, are not legally sustainable.

(d) Since the respondent-Enforcement Directorate had raised the question of maintainability of the present Writ Petitions in their counter affidavit, at the outset, the learned Senior Counsels appearing for the petitioners submitted that the ECIR was registered by the respondent-ED in the State of Kerala. Further, the properties sought to be attached are situated in Coimbatore (in Tamil Nadu), the same is within the jurisdiction of this Court. In this regard, the learned Senior Counsels appearing for the petitioners invited the attention of this Court to the relevant portions of the ECIR, and submitted that in the column relating to the place of occurrence, it has been

stated as Kerala, Sikkim and Tamil Nadu States. Therefore, it shows that a part of cause of action had definitely arisen within the State of Tamil Nadu, and therefore, this Court has jurisdiction to consider as to whether the registration of the ECIR is in accordance with law or not. Hence, the Writ Petitions under Article 226 of the Constitution of India are very well maintainable before this Court. In support of this contention, the learned Senior Counsels appearing for the petitioners relied on a judgment of a Division Bench of this Court reported in 2008 (1) LW 774 (M/s.ORJ Electronics Oxides Ltd. Vs. Customs, Excise and Service Tax Appellate Tribunal (South Zone-Bench) and another), wherein, it had been held that to decide the question of territorial jurisdiction, it is necessary to see as to whether a cause of action has arisen. Admittedly, in the case on hand, even according to the ECIR report, a part of cause of action had arisen in the State of Tamil Nadu, and therefore, this Court has jurisdiction to entertain the Writ Petitions. In this regard, the learned Senior Counsels appearing for the petitioners invited the attention of this Court to Clause 2 of Article 226 of the Constitution of India and submitted that even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter. In support of this contention, the learned Senior Counsels appearing for the petitioners also relied on a judgment of the Supreme Court reported in 2001 (1) LW (Cr1) 265 = 2000 (7) SCC 640 = MANU/SC/0549/2000 (Navinchandra N.Majithia Vs. State of Maharashtra) and also the decision of the Delhi High Court reported in 2011 SCC Online Delhi 3162 (Sterling Agro Industries Ltd. Vs. Union of India) and submitted that even if a minuscule part of cause of action arises within the jurisdiction of this Court, Writ Petition would be maintainable before this Court, and hence, the learned Senior Counsels appearing for the petitioners submitted that this Court has jurisdiction to entertain the present Writ Petitions.

(e) The objection raised by the respondent-Enforcement Directorate in the counter affidavit that the petitioners are having alternative remedy before the adjudicating authority under Section 8 of the PMLA, and therefore, the present Writ Petitions are not maintainable before this Court is legally untenable. Under Section 8 of the PMLA, the PAO passed under Section 5 of the PMLA, requires to be confirmed by the Adjudicating Authority, which is situated in New Delhi, within a period of 180 days. But a complaint before the Adjudicating Authority had been filed in this case on 20.08.2019, which is after filing of the present Writ Petitions on 19.08.2019. Moreover, this Court had also granted interim order on 27.08.2019 in respect of the proceedings before the Adjudicating Authority. Section 5 of the PMLA contains paramount provision that, before exercising the power of provisional attachment, the

Director or any other officer not below the rank of Deputy Director, authorised by the Director for the purposes of this Section, must record the reasons to believe that any person is in possession of proceeds of crime and the person is likely to conceal, transfer or deal with the property, which may result in frustrating the proceedings relating to confiscation of the property. Further, under Section 8 of the PMLA, the Adjudicating Authority is to confirm the PAO, if the Adjudicating Authority has reason to believe that an offence under Section 3 or the properties under the provisional attachment, are involved in money- laundering. The relevant Rules under the PMLA provide that, where such confirmation order is made by the Adjudicating Authority under Section 8(2), then the authorities of Enforcement Directorate can forthwith take possession of the property(ies). Therefore, the proceedings must not only be in accordance with the provisions of the PMLA Act, but the authorities must also be fair and reasonable, otherwise, the Constitutional right guaranteed under Article 300-A of the Constitution of India will be defeated. In the instant case, no such reasons were recorded by the Enforcement Directorate in the impugned PAO passed under Section 5 of the PMLA. The reasons recorded in writing are condition precedent for exercising the power. The reasons stated in paragraph 7 of the impugned PAO, are invalid, as virtually, no reasons were recorded in the same. In this regard, the learned Senior Counsels appearing for the petitioners invited the attention of this Court to the reasons recorded in the PAO. Thus, if such condition precedent is invalid, exercise is vitiated by non-application of mind, and the petitioners cannot be deprived of the right to resort to the jurisdiction of this Court under Article 226 of the Constitution of India. Thus, existence of alternative remedy is not a bar for resorting to Writ Jurisdiction under Article 226, where the fundamental rights of the petitioners have been infringed. In this regard, the learned Senior Counsels appearing for the petitioners relied on a decision of this Court reported in 2015 (3) LW 202 (Infiniti Wholesale Limited Vs. The Asst. Commissioner (CT)).

(f) Moreover, the proceedings under the PMLA initiated by the Enforcement Directorate (ED), Kerala, are without territorial jurisdiction and as such, there is violation of Section 51 of the PMLA and Section 51 speaks about the jurisdiction of the authorities and neither the alleged proceeds of crime generated nor contravention of Section 3 of the PMLA, had taken place within the territory of the State of Kerala. Thus, when the order is passed without jurisdiction, the Writ Petitions are very well maintainable before this Court, and therefore, the impugned orders are vitiated on that ground.

(g) As next fold of submission, the learned Senior Counsels appearing for the petitioners stated that the PMLA requires a

triggering event in the form of a crime as described in Schedule to the PMLA. For instance, the offences under Sections 420 and 120-B IPC are listed in the Schedule to the PMLA, and the offences under the Lotteries (Regulation) Act, are not in the Schedule to the PMLA. Therefore, to invoke the provisions of the PMLA, the following three instances are required:

(i) There must be a commission of an offence, in respect of which, atleast an FIR is registered, which offence must fall within one of the offences in the Schedule to PMLA;

(ii) That criminal offence, which falls under Schedule to the PMLA, must have given rise to the proceeds of the crime within the meaning of Section 2(1)(u) of the PMLA.

(iii) That the proceeds of the crime must be subjected to the process of concealment, etc., mentioned in Section 3 of the PMLA, with a view to project the proceeds of crime as an untainted property.

(h) The learned Senior Counsels appearing for the petitioners cited two examples by way of illustration to explain the above instances. Firstly, if A robs B of Rs.100/-, in the hands of A, there are proceeds of crime of Rs.100/- with further assumption that if A has put with Rs.100/- in his shirt. Secondly, if a person commits a dacoity, as a result of which, he gets hold of Gold chain of 5 sovereigns, and if he comes back to his house and puts the Gold chain on the neck of his wife as his gift to her. In the first instance quoted above, there is a Schedule offence, which gives rise to the proceeds of crime, but still, the PMLA will not apply, because, the proceeds of crime were not projected by any means as an untainted property. In the above said second illustration, all the three conditions mentioned above, are satisfied by putting the Gold chain on the neck of his wife, as though it belonged to him and he has projected it as an untainted property, and therefore, the provisions of the PMLA will apply.

(i) The learned Senior Counsels appearing for the petitioners further submitted that, in the instant case, even assuming for a moment that the allegations of the CBI are correct and that the sole distributor had not deposited all the monies obtained by sale of Sikkim Lotteries and therefore, had committed the offence under Section 420 IPC, then that by itself, the provisions of the PMLA will not apply. In this regard, the learned Senior Counsels relied on Sections 2(1)(u) and 3 of the PMLA; Section 2(1)(u) defines "proceeds of crime" and Section 3 deals with the offence of money- laundering. Thus, the learned Senior Counsels submitted that only if the proceeds of the crime are processed or indulged in any activity connected

with it, with a view to project it as an untainted property, then alone the PMLA will have application. Mere existence of proceeds of crime out of any scheduled offence, will not by itself confer jurisdiction on the Enforcement Directorate to invoke the PMLA. In the instant case, even if the allegations of the CBI are correct, the sole distributor had not deposited all the monies obtained by sale of Sikkim Lotteries and therefore, had committed the offence under Section 420 IPC, even then, that by itself, the PMLA will not apply. There are no proceeds of crime in this case and nothing was generated in the State of Kerala. Moreover, admittedly, selling of Lottery Tickets within the State of Kerala, is not an offence.

(j) The learned Senior Counsels appearing for the petitioners further submitted that there was a contract between the State of Sikkim and the sole distributor and this contract was duly performed by the sole distributor to the satisfaction of the State of Sikkim. In fact, the State of Sikkim had filed counter affidavit before the Kerala High Court, in which they have stated that no amount is due from the sole distributor and that they have not lodged any complaint for any offence of cheating, whereas, it is the case of the writ petitioners that the sole distributor has not paid the sale proceeds to the State of Sikkim. In fact, the State of Sikkim had issued No Due Certificate also. The legal effect of the issuance of the No Due Certificate is that the contract had been discharged by performance satisfactorily. The consequences of the contract being performed, are that the contract itself stand extinguished and no rights and liabilities will flow from such contracted performance, which had been accepted by the other party to the contract. In this regard, the learned Senior Counsels appearing for the petitioners relied upon a decision of the Supreme Court reported in AIR 1959 SC 1362 (Union of India Vs. Kishorilal Gupta & Bros.), wherein the Apex Court had observed as follows:

"5. ... One of the modes by which a contract can be discharged is by the same process which created it, i.e. by mutual agreement; the parties to the original contract may enter into a new contract in substitution of the old one. The legal position was clarified by the Privy Council in Payana Reena Saminathan Vs. Pana Lana Palaniappa ((1914) AC 618, 622). Lord Moulton defined the legal incidents of a substituted contract in the following terms at p.622:

"The 'receipt' given by the appellants, and accepted by the respondent, and acted on by both parties proves conclusively that all the parties agreed to a settlement of all their existing disputes by the arrangement formulated in the 'receipt'. It is a clear example of what used to be well

known in common law pleading as 'accord and satisfaction by a substituted agreement'. No matter what were the respective rights of the parties inter se they are abandoned in consideration of the acceptance by all of a new agreement. The consequence is that when such an accord and satisfaction takes place the prior rights of the parties are extinguished. They have in fact been exchanged for the new rights; and the new agreement becomes a new departure, and the rights of all the parties are fully represented by it."

The House of Lords in *Norris Vs. Baron and Company* ((1918) AC 1, 26) in the context of a contract for sale of goods brought out clearly the distinction between a contract which varies the terms of the earlier contract and a contract which rescinds the earlier one, in the following passage at p.26:

"In the first case there are no such executory clauses in the second arrangement as would enable you to sue upon that alone if the first did not exist; in the second you could sue on the second arrangement alone, and the first contract is got rid of either by express words to that effect, or because, the second dealing with the same subject-matter as the first but in a different way, it is impossible that the two should be both performed."

Scrutton, L.J. in *British Russian Gazette and Trade Outlook Limited Vs. Associated Newspaper, Limited* ((1933) 2 KB 616, 643, 644) after referring to the authoritative textbooks on the subject, describes the concept of "accord and satisfaction" thus at p.643:

"Accord and satisfaction is the purchase of a release from an obligation whether arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative. Formerly it was necessary that the consideration should be executed....

Later it was conceded that the consideration might be executory The consideration on each side might be an executory promise, the two mutual promises making an agreement enforceable in law, a contract.... 'An accord, with mutual promises to perform, is good, though the thing be not performed at the time of action; for the party has a remedy to compel the performance,' that is to say, a cross action on the contract of accord..... If, however, it can be shown that what a creditor accepts in satisfaction is merely his debtor's promise and not the performance of that promise, the original cause of action is discharged from the date when the promise is made."

The said observations indicate that an original cause of action can be discharged by an executory agreement if the intention to that effect is clear. The modern rule is stated by Cheshire and Fifoot in their Law of Contract, 3rd Edn., at p.453:

"The modern rule, is then, that if what the creditor has accepted in satisfaction is merely his debtor's promise to give consideration, and not the performance of that promise, the original cause of action is discharged from the date when the agreement is made.

This, therefore, raises a question of construction in each case, for it has to be decided as a fact whether it was the making of the promise itself or the performance of the promise that the creditor consented to take by way of satisfaction."

So too, Chitty in his book on Contracts, 31st Edn., states at p.286:

"The plaintiff may agree to accept the performance of a substituted consideration in satisfaction, or he may agree to accept the promise of such performance. In the former there is no satisfaction until performance, and the debtor remains liable upon the original claim until the satisfaction is executed. In the latter, if the promise be not

performed, the plaintiff's remedy is by action for the breach of the substituted agreement, and he has no right of resort to the original claim."

From the aforesaid authorities it is manifest that a contract may be discharged by the parties thereto by a substituted agreement and thereafter the original cause of action arising under the earlier contract is discharged and the parties are governed only by the terms of the substituted contract. The ascertainment of the intention of the parties is essentially a question of fact to be decided on the facts and circumstances of each case."

(k) Thus, according to the learned Senior Counsels appearing for the petitioners, on issuance of the No Due Certificate, the contract is performed between the sole distributor and the State of Sikkim, which performance is accepted by the said No Due Certificate. Hence, the contract is extinguished and nothing will flow from it, much less, the proceeds of the crime.

(l) It is the further submission of the learned Senior Counsels appearing for the petitioners that, even assuming that there were proceeds of crime as alleged by the CBI in the final report, still, the PAO is liable to be set aside, as the condition precedent for exercise of the power of provisional attachment is not satisfied in this case. First of all, the reasons recorded in the impugned PAO, actually do not contain any reasons; secondly, the reasons recorded have not been considered that the State of Sikkim had issued the No Due Certificate. Thirdly, no statement is made to the effect that they have had any material to come to the conclusion that the properties sought to be attached, are likely to be transferred or alienated by the petitioners. Further, no such averments are stated in the reasons recorded in writing. Hence, the learned Senior Counsels appearing for the petitioners submitted that the reasons recorded in writing in the impugned PAO, are ex-facie illegal and invalid and the consequential condition precedent for exercising of power, is absent and thus, the proceedings connected with the PAO, are liable to be set aside. According to the learned Senior Counsels appearing for the petitioners, firstly, the reasons to be recorded in writing in paragraphs 7.1 and 7.2 of the impugned PAO do not contain any reason that they considered the legal effect of the contract having been performed, nor the effect of a three-Judge Bench decision of the Supreme Court reported in AIR 1959 SC 1362 (Union of India VS. Kishorilal Gupta and Bros.) and they prayed for allowing the

present Writ Petitions by quashing the impugned orders. Secondly, the reasons recorded to the effect that the State of Sikkim had issued No Due Certificate, have been considered by the respondent-ED before passing the PAO. Further, the No Due Certificate had come into existence after registration of the ECIR, but before the PAO in 2019. Moreover, the State of Sikkim, in their counter affidavit filed before the High Court of Kerala, categorically denied the alleged loss. Thus, according to the learned Senior Counsels appearing for the petitioners, the significant and important documents have not been considered before the reasons recorded in writing by the respondent-ED, as noted in the impugned PAO. Lastly, no statement is made by the respondent-ED in the impugned PAO to the effect that they have had any material to come to the conclusion that the properties sought to be attached, are likely to be transferred or alienated by the petitioners. No such averments are made in the reasons recorded in writing by the respondent-ED in the impugned PAO. Hence, according to the learned Senior Counsel appearing for the petitioners, the reasons recorded in writing in the impugned PAO, are ex-facie illegal, invalid, and consequential condition precedent for exercising of power, is absent and hence, the proceedings connected with the PAO are liable to be set aside. Hence, for all the above said reasons, the learned Senior Counsel appearing for the petitioners prayed for allowing the present Writ Petitions, by quashing the impugned order(s).

6.(a) Countering the above submissions, the learned Additional Solicitor General, assisted by the learned Special Public Prosecutor, appearing for the respondent-Enforcement Directorate, submitted that, in the year 2010, originally, Kerala Police have registered 32 FIRs. against the sole distributor for the alleged offences under Sections 420 and 120-B IPC and also under the provisions of the Lotteries (Regulation) Act in various Police Stations in the State of Kerala. Subsequently, in June 2011, the Kerala State issued Notification to hand over the investigation to the CBI. Thereafter, the CBI had taken up the investigation and filed consolidated Charge Sheets before the Chief Judicial Magistrate, Ernakulam in respect of seven cases and filed closure reports in 23 cases and in the remaining two cases, the investigation is pending. The consolidated final report dated 03.02.2014 by the CBI, Cochin, is pending on the file of the Chief Judicial Magistrate, Kerala, in C.C.No.218 of 2015 for the offences punishable under Sections 120-B and 420 IPC read with Sections 4 (d), 4(f), 7(3) and 9 of the Lotteries (Regulation) Act, 1998 and Section 3(5) and 4(5) of the Lotteries (Regulation) Rules, 2010. The learned Additional Solicitor General appearing for the respondent-Enforcement Directorate invited the attention of this Court to the following charges framed by the CBI as against the

accused persons:

(i) Non-remittance of sale proceeds to the Sikkim Government;

(ii) non-remittance of unclaimed/undisbursed prize money back to the Sikkim Government;

(iii) printing of Sikkim Lottery Tickets from a non-security press not empanelled by the RBI/IBA;

(iv) not returning the unsold tickets back to the Sikkim Government;

(v) not returning un-disbursed prize amounts to the Sikkim Government;

(vi) manipulation of data showing unsold prize winning tickets as sold and claiming the same from the Sikkim Government, and

(vii) cheating the Government of Sikkim by entering into an agreement containing covenants contrary to the Lotteries (Regulation) Act and the Rules therein, and thus deceived the Sikkim Government in not receiving the full sale proceeds of the Lottery Tickets and the first accused (A-1) practically conducted the Sikkim Government Lotteries in the name of M/s.FGSIPL.

(b) The learned Additional Solicitor General further submitted that the petitioners 2 to 8-Companies in W.P. No. 25177 of 2019 and the petitioners-Companies in W.P.No.25231 of 2019 are having Registered Office at No.54, Mettupalayam Road, G.N.Mills Road, Coimbatore. Now that, all the petitioners are facing the proceedings under the PMLA as a result of the ECIR filed under Sections 3 and 4 of the PMLA, leading to passing of the PAO under Section 5(1) of the PMLA. Further, the Superintendent of Police, CBI, ACB, Cochin, vide Letter in No.827/3/11(S)/2011/SPE/KER, dated 26.02.2014, forwarded the Charge Sheet to the Directorate of Enforcement, Cochin, Kerala, on the basis of which, as it appeared to be a prima-facie case of money laundering offence under Section 3 of the PMLA, ECIR was registered on 19.08.2014. Accordingly, investigation under the PMLA was initiated by the Directorate of Enforcement and the impugned PAO was passed on 22.07.2019 attaching the immovable properties purchased by using the "proceeds of the crime" as defined under Section 2(1)(u) of the PMLA. The property(ies) in question were acquired by the petitioners-Companies from and out of the loans and advances given by Mr.Santiago Martin and his family members with an intention to launder the proceeds of crime amounting to about Rs.910 crores. As per the PAO, the property(ies) are valued at Rs.119,59,54,679/-. The PAO is valid only for 180 days and the Directorate of Enforcement filed Original Complaint (OC).No.1189 of 2019, dated 20.08.2019 under Section 5(5) of the PMLA seeking confirmation of the PAO before the Adjudicating Authority at New Delhi.

(c) It is the further submission of the learned Additional

Solicitor General that the petitioners have been served with show cause notices under Section 8 of the PMLA by the Adjudicating Authority. On receipt of such notice, the remedy open to the petitioners lies only before the Adjudicating Authority. The petitioners, without approaching the Adjudicating Authority, have filed the present Writ Petitions challenging the PAO. At the same time, there is no challenge to the Original Complaint pending before the Adjudicating Authority. When the petitioners are having efficacious alternative remedy of appeal before the Adjudicating Authority, they ought not to have filed the present Writ Petitions contending that the impugned PAO was issued without jurisdiction and ultra-vires Section 5(1) of the PMLA. The contention of the petitioners that the jurisdiction of the Adjudicating Authority (PMLA) acting under Section 8 of the PMLA is restricted only to enquire the source of income for purchase of the property(ies) under attachment, is not legally sustainable and the said contention is invalid. The learned Additional Solicitor General submitted therefore that the present Writ Petitions are not maintainable for not availing the alternative remedy before the statutory authority. In this context, the learned Additional Solicitor General placed reliance on the following decisions:-

(i) 2010 (8) SCC 110 = CDJ 2010 SC 651 (United Bank of India Vs. Satyawati Tondon);

(ii) 2011 (2) LW (Cr1) 69 = CDJ 2011 MHC 2272 (Madras High Court); (G.Srinivasan Vs. The Chairperson, Adjudicating Authority under PMLA);

(iii) CDJ 2015 Bihar HC 074 (Bihar High Court) (Rose Valley Hotels and Entertainment Limited Vs. The Union of India);

(iv) W.P.No.19929 of 2019, dated 15.07.2019 (Division Bench of Madras High Court) (D.Vasanthamani Vs. Union of India, Deputy Director, Directorate of Enforcement) (<https://indiankanoon.org/153110704/>);

(v) Ms.Nithyavathy Venkatesan Vs. The Deputy Director, Directorate of Enforcement (Division Bench of Madras High Court) (Cr1.O.P.Nos.12504 and 12512 of 2019 and W.P.Nos.15292 and 15293 of 2019) dated 23.10.2019, and

(vi) G.Gopalakrishnan Vs. The Deputy Director, Directorate of Enforcement) (Madras High Court), (W.P.(MD).No.11454 of 2018, etc., dated 03.01.2019 (<https://indiankanoon.org/doc/154306585/>)

(d) With regard to the territorial jurisdiction to entertain the present Writ Petitions, the learned Additional Solicitor General appearing for the respondent-Enforcement Directorate submitted that the accused/petitioner-Companies herein are having registered business address at Kerala. The sale of Lotteries took place in the State of Kerala. The alleged offences were committed in Kerala, for which 32 cases in various Police Stations were registered in Kerala. Upon registration, at the request of the State of Kerala, the CBI took up the

investigation at Kerala in respect of the schedule offence(s) under the PMLA and the Charge Sheet was filed at Kerala, which is pending trial before the Chief Judicial Magistrate, Ernakulam, Kerala. Subsequently, the respondent/Directorate of Enforcement registered the ECIR at Kerala and it was investigated at Cochin in Kerala. Upon sustained investigation, the PAO was passed by the Deputy Director, Directorate of Enforcement, Government of India, Cochin, Kerala. The adjudicating authority under the PMLA is at New Delhi. The Charge Sheet/complaint for the offences under the PMLA are to be filed and tried before the Special Court at Kerala. At the conclusion of the trial, the confiscation or release order of attached property(ies) are to be passed by the Special Court at Kerala. Even some of the accused persons in the case, have already invoked the jurisdiction of the High Court of Kerala by filing W.P.(C).No.22327 of 2016 (filed by Shri.Santiago Martin) and W.P.(C).No.23695 of 2016, which are pending. Thus, according to the learned Additional Solicitor General, no part of cause of action arose within the territorial jurisdiction of this Court, and therefore, the present Writ Petitions are liable to be dismissed in-limine. It is true that there is a mention about "Tamil Nadu" in the ECIR and that the property(ies) are situated in Coimbatore, Tamil Nadu, but it will not ipso-facto entitle the petitioners to approach this Court with these writ petitions.

(e) It is further submitted by the learned Additional Solicitor General appearing for the respondent-Enforcement Directorate that the object of the PMLA is to prevent the money-laundering and to provide confiscation of property derived from or involved in the money-laundering, wherever it is taken or possessed. Situation of the crime property or mention of place in the ECIR, will not confer any territorial jurisdiction upon another High Court, wherein competent jurisdictional Court has already assumed jurisdiction. Further, only the High Court within whose jurisdiction the order of the subordinate authority/Court had been passed, will have the jurisdiction to entertain an application under Article 227 of the Constitution of India. In this case, it is the Kerala High Court under whose jurisdiction the PAO was passed by the respondent-Directorate of Enforcement. Thus, the learned Additional Solicitor General submitted that even if a part of cause of action arose within the jurisdiction of the particular High Court, the other High Court may refuse to exercise its discretionary jurisdiction by invoking the Doctrine of "Forum-Conveniens". In this context, the learned Additional Solicitor General relied on the following decisions:

(i) CDJ 2018 PHC 130 (Punjab and Haryana High Court) (White Water Foods (P) Ltd. and others Vs. Directorate of Enforcement, Mumbai);

(ii) AIR 2011 Delhi 174 = CDJ 2011 DHC 857 (Delhi High

Court) (M/s.Sterling Agro Industries Ltd. and others Vs. Union of India and others);

(iii) Order dated 30.08.2017 in W.P.(Cr1).2170 of 2017 of the Delhi High Court in Rashmi Cement Ltd. Vs. Enforcement Directorate, and

(iv) 2010 (4) SCC 772 = CDJ 2010 SC 344 (Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and another).

(f) With regard to the submission made by the learned Senior Counsels appearing for the petitioners that the State of Sikkim has given No Due Certificate to the sole distributor and that the Sikkim Government has not given any consent for investigation by the CBI, it is replied by the learned Additional Solicitor General appearing for the respondent-Enforcement Directorate that in the final report of the CBI, it has been specifically stated that the accused and the unknown officials of the Government of Sikkim entered into criminal conspiracy and the people in Kerala who purchased the Lottery Tickets, have been cheated, as the whole sale and draw were manipulated. In this regard, the learned Additional Solicitor General gave an example stating that Santiago Martin and John Kennedy (writ petitioners) who were in possession of unsold tickets, handed over 3 such unsold tickets to one V.Selvaraj after the draw. All the three tickets won the prize and the money was handed over to Selvaraj, who immediately sold his property, in which he himself and his minor children had interest to Martin and Company. The sum and substance of the fact is that Martin purchased the properties from Selvaraj. The sale consideration is in the form of handing over of three unsold tickets after completing the draw and awarding prizes on these three tickets. It is unbelievable that a winner of a Lottery can immediately sell his properties to the persons who conducted the Lottery. According to the petitioners, it does not catch the eye of an investigator or an authority acting under Section 5 of the PMLA. Thus, the learned Additional Solicitor General appearing for the respondent-ED prayed for dismissal of the Writ Petitions, not only on merits, but also on the ground of maintainability of the present Writ Petitions before this Court.

7(a). Heard both sides and perused the materials available on record. In view of the submissions made by the learned counsels appearing for the parties, and since we have already dealt with the factual aspects in detail as above, the facts which are germane alone are discussed hereinafter and we are not traversing into the factual aspects again.

7(b). Though very many contentions have been raised on the merits of the PAO passed by the Deputy Director of the respondent-Enforcement Directorate, the following questions are to be decided by this Court, in view of the submissions made by

the learned counsel on either side with regard to the maintainability of the present Writ Petitions:

(i) Whether the Writ Petitions are maintainable as against the PAO passed by the Deputy Director of the Enforcement Directorate, Cochin, when there is an alternative remedy before the statutory authority at Delhi?

(ii) Whether this Court has jurisdiction to entertain these Writ Petitions on the ground that the properties of the petitioners, which are subjected to attachment under the PAO, are situated within the State of Tamil Nadu?

8. If the above questions are answered, that would suffice to dispose of the present Writ Petitions. Only if this Court comes to the conclusion that the Writ Petitions are maintainable before this Court, which has jurisdiction, the question of dealing with the merits of the case would arise. Therefore, initially, we are inclined to deal with the above questions. As both the above framed questions are inter-connected to each other, they are dealt with together hereinbelow.

9. It is the contention of the learned Senior Counsels appearing for the petitioners that Section 5 of the PMLA contains an important provision that before exercising the power of provisional attachment, the Director or any other officer not below the rank of Deputy Director, authorised by the Director for the purposes of this Section, must record the reasons to believe that, any person is in possession of "proceeds of crime" and the person is likely to conceal, transfer or deal with the property, which may result in frustration of the proceedings relating to the confiscation of such proceeds of the crime. The learned Senior Counsels appearing for the petitioners invited the attention of this Court to the reasons stated in the impugned PAO and submitted that the impugned PAO actually does not contain any reasons for that matter. The so-called reasons stated in the impugned PAO did not consider that the State of Sikkim had issued the No Due Certificate and no statement is made to the effect that they have had any material to come to the conclusion that the properties sought to be attached, are likely to be transferred or alienated by the petitioners. Therefore, recording the reasons is a condition precedent for passing the PAO, whereas in the instant case, no valid reason is recorded in the impugned PAO. The learned Senior Counsels appearing for the petitioners, further, by inviting the attention of this Court to paragraph 7 of the impugned PAO, submitted that the reasons recorded in writing and communicated in the impugned PAO, are ex-facie illegal/invalid and hence, the impugned proceedings are without jurisdiction. Moreover, recording the reasons for passing the impugned PAO, is a condition precedent and if such condition precedent is invalidly exercised by the authorities under the PMLA, the same is vitiated by non-application of mind. Hence, according to the

learned Senior Counsels appearing for the petitioners, the petitioners cannot be deprived of the right to invoke the Writ Jurisdiction of this Court under Article 226 of the Constitution of India. In view of the above submission, this Court had to see the reasons passed by the respondent-ED in the impugned PAO.

10. On a perusal of the reasons assigned in the impugned PAO, it is seen that reason was recorded to the effect that huge money was earned by the petitioners predominantly through the business of Sikkim Lotteries in the year 2009-2010 and 2010-2011, which they have claimed as legitimate income in the Income Tax Returns. It was further recorded in the impugned PAO that on a comparison of the money earned by the petitioners and the remittance made to the Sikkim Government towards sale of Lottery, it was a pittance received by the Government of Sikkim and thereby Government Revenue have been misappropriated. It is also recorded that such an earnings was by way of a conspiracy with the officials of the Sikkim Government to cheat the Government of Sikkim, which is a glaring violation of the provisions of the Lotteries (Regulation) Act. As stated in paragraph 7.1 of the PAO, which is impugned in these writ petitions, the Government Revenue was Rs.5.5 crores during 18.10.2004 to 17.10.2009 and Rs.8 crores during 18.10.2009 to 17.10.2010. It is further stated therein that Santiago Martin has invested the part of the "proceeds of crime" that he has earned from his Lottery business in purchasing immovable properties, by floating more than 40 companies, in which their family members are Directors. These companies do not have any business activities except buying immovable properties using laundered funds. The income as declared in Income Tax Returns, coupled with illegally profited black money, were parked in real estate business. In paragraph 7.2 of the PAO, it is stated that the properties mentioned in schedule are purchased from the loans and advances given by Santiago Martin and his family members with an intention to launder the proceeds of crime and are likely to transfer or deal with in a manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime. In paragraph 7.3 therein, it is stated that the trial of the offences, both under the PMLA, as also of scheduled offences, may take considerable time, and if power of Provisional Attachment is not exercised here, it could result in defeating the very purpose for which the PMLA had been enacted. Thus, it is not as though the PAO was passed without any reasons. The Deputy Director of Enforcement Directorate had assigned reasons for attachment of the immovable properties upon satisfying with the nature of the offence alleged.

11. Admittedly, as against the PAO, there is an alternative remedy of appeal provided under Sections 8(1) and 8(2) of the PMLA Act, 2002, before the Adjudicating Authority (PMLA), New Delhi, but the petitioners have not availed of such a remedy

before the Adjudicating Authority. Instead, the petitioners have approached this Court with these writ petitions. It is in this back-drop, it has to be examined as to whether exercise of the Writ Jurisdiction by this Court under Article 226 of The Constitution of India, will be proper or the petitioners must be directed to avail the alternative remedy available to them. In this context, the following decisions will be apt to be relied on, as submitted by the learned Additional Solicitor General appearing for the respondent-ED, and they are:-

(i) 2010 (8) SCC 110 = CDJ 2010 SC 651 (United Bank of India Vs. Satyawati Tondon and others, wherein, it has been held by the Apex Court that is a matter of serious concern that despite repeated pronouncement of this Court (Apex Court), the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 of the Constitution of India for passing orders which have serious adverse impact on the right of the Banks and other financial institutions to recover their dues.

(ii) G.Srinivasan Vs. The Chairperson, Adjudicating Authority under PMLA, reported in 2011 (2) LW (Cr1) 69= CDJ 2011 MHC 2272, it was held that the writ petition is not maintainable and the petitioners must submit their explanation to the Adjudicating Authority and convince that the amount sought to be attached was not obtained due to any money-laundering and that it was the legally earned income.

12. Few other decisions were also relied on the same point by the learned Additional Solicitor General to contend that the petitioners herein are having efficacious and alternative remedy before the statutory authority, but without exhausting the same, they have chosen to file the present writ petitions before this Court.

13. It is trite law that when an alternative and appellate remedy is in-built in the statute, resorting to invoke the inherent and discretionary jurisdiction conferred upon this Court under Article 226 of The Constitution of India, is not proper. As mentioned above, there is an alternative remedy provided under Section 8 of the PMLA before the Adjudicating Authority. The writ petitioners ought to have approached the Adjudicating Authority and questioned the validity and/or correctness of the PAO passed by the respondent. Further, this Writ Court, under Article 226 of the Constitution of India, is not conducting any roving enquiry on the disputed questions of facts to render a finding as to whether the reasons assigned in the impugned PAO are valid or not. Therefore, we are of the opinion that when alternative remedy is available, the present Writ Petitions are not maintainable. The hastiness with which the petitioners have filed the present writ petitions before this Court, is not proper, when there is an alternative remedy

provided under Section 8 of PMLA.

14. The learned Senior Counsel appearing for the petitioners made elaborate submissions with regard to the merits of the claim and stated that the State of Sikkim had issued No Due Certificate and when such a certificate was issued, the question of investing the tainted money in the property, does not arise. Per contra, it is the submission of the learned Additional Solicitor General appearing for the respondent-ED that there is conspiracy between the petitioners/accused and unknown officials of the State of Sikkim, which had resulted in cheating the people at Kerala, who had purchased the Lottery tickets as the whole sale and draw were manipulated. Therefore, as stated earlier, when there are disputed questions of facts, this Court cannot go into the merits of the claim by conducting a roving enquiry to render a finding in a Writ Petition under Article 226 of the Constitution of India. This Court is not sitting as an Appellate Authority as against the impugned PAO passed by the authority under the Enforcement Directorate. Therefore, the submission made by the learned Senior Counsels appearing for the petitioners on the merits of the matter that there are no valid reasons mentioned in the impugned order, has to be decided only by the Adjudicating Authority and not by this Court under Article 226 of the Constitution of India.

15. As submitted by the learned Senior Counsels appearing for the petitioners, there must be a commission of an offence in respect of which atleast an FIR is registered, which offence must fall within one of the offences in the schedule to the PMLA. This question has to be decided only by the Adjudicating Authority by conducting proper trial. Therefore, we are not dealing with the same, particularly on the merits of the matter. If any finding is rendered on the merits of the matter, it will have an adverse impact on the proceeding that may be taken up by the Adjudicating Authority. Therefore, we refrain from dealing with the merits of the matter.

16. It is noticed that after recording the ECIR by the Enforcement Directorate, the Enforcement Directorate has to identify and attach the crime money. This is explained in Chapter-3 of the PMLA dealing with attachment, adjudication and confiscation. Further, Chapter-6 of the PMLA provides for judicial/statutory appeal remedies as against the order of the Adjudicating Authority as well. The attachment of property, etc., if any shall be in force till the conclusion of the trial by the Special Court as specified under Section 8(5) of the PMLA. After investigation, the Enforcement Directorate shall file a prosecution complaint under Section 200 Cr.P.C. before the Special Courts seeking confiscation of the attached properties under Section 8(5) of the PMLA and for punishment for the offences under Sections 3 and 4 of the PMLA. The decision as to whether the attached properties are to be confiscated or not,

has to be decided only by the Special Court, i.e. a Sessions Court, after full trial. In this case, after investigation, the Enforcement Directorate had already filed prosecution complaint and it is pending before the Special Court at Kerala. This being the position, as observed above by this Court, this Court cannot traverse into the merits of the matter at this stage as observed earlier.

17. It is yet another submission of the learned Senior Counsels appearing for the petitioners that the ECIR states the place of occurrence as "State of Tamil Nadu", among other places, and hence, a part of cause of action had admittedly arisen in the State of Tamil Nadu, and therefore, this Court has jurisdiction to consider as to whether the registration of the ECIR is in accordance with law or not.

18. Since the question of jurisdiction of this Court to deal with the matter has also been raised now, as submitted above by the learned Senior Counsels appearing for the petitioners, we are of the opinion that it is appropriate for this Court to answer the issue as to whether the petitioners are justified in approaching this Court. It is true that small fraction of cause of action had arisen within the jurisdiction of this Court, however, it is not sufficient to maintain these writ petitions before this Court. It is to be observed that only a minuscule cause of action arose within the jurisdiction of this Court, but a larger and substantial part of cause of action had arisen within the State of Kerala, where most of the occurrence alleged to have been committed by the petitioners, took place. While so, we are of the opinion that merely because the properties, which are subjected to attachment under the PAO, are situated within the State of Tamil Nadu, it is grossly insufficient to maintain these writ petitions before this Court. When a small fraction of cause of action arose within the jurisdiction of a Court and a larger or substantial cause of action arose within the jurisdiction of another Court, the latter will prevail over the former. Therefore, we are of the opinion that a substantial cause of action for resorting to a legal action for the petitioners arose within the State of Kerala and this Court is not inclined to usurp such jurisdiction and to entertain these writ petitions.

19. The petitioners have registered business address at Kerala and the sale of Lotteries took place at Kerala. For the alleged commission of offences by the petitioners, 32 cases (FIRs) were registered against them in various Police Stations at Kerala. The State of Kerala requested CBI to take over the investigation and accordingly, after investigation, CBI filed final report before the Chief Judicial Magistrate, Ernakulam at Kerala. Therefore, the complaint, complaining alleged commission of offences under the PMLA, has to be tried only before the Special Court at Kerala. After trial, an order of confiscation

under Section 8(5) of the PMLA has to be passed only by the Special Court at Kerala in the event of conviction.

20. Further, even if this Court has power to deal with the matter, it can always restrain itself from exercising its power and if any Court competent is seized of the facts, they are common to both the Courts. In this case, the CBI has filed its final report, which is pending before the Chief Judicial Magistrate, Ernakulam (Kerala State). Therefore, we are not inclined to entertain the present Writ Petitions, on the ground of jurisdiction also.

21. Further, the petitioners cannot file the present Writ Petitions even on the ground of "forum-conveniens". In this regard, it is useful to refer a decision in the case of Kusum Ingots and Alloys Ltd. Vs. Union of India and others, reported in AIR 2004 SC 2321, in which, the Apex Court held that a writ petition, questioning the Constitutionality of a Parliamentary Act was not be maintainable in the High Court of Delhi merely because the seat of the Union of India was in Delhi. On the point of "forum-conveniens", the Supreme Court held as follows:

"30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney (AIR 1941 Cal 670 : ILR (1941) 1 Cal 490), Madanlal Jalan Vs. Madanlal [(1945) 49 CWN 357 : AIR 1949 Cal 495], Bharat Coking Coal Ltd. Vs. Jharia Talkies & Cold Storage (P) Ltd. [(1997) CWN 122], S.S.Jain & Co. Vs. Union of India [(1994) 1 CHN 445] and New Horizons Ltd. Vs. Union of India [AIR 1994 Delhi 126]."

(emphasis supplied)

22. In the above decision (Kusum Ingots and Alloys Ltd. case) of the Supreme Court, the Apex Court held that a High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of "forum conveniens". Thus, there is no question of granting leave to file Writ Petition under Article 226(2) of the Constitution of India in case where a small fraction of cause of

action may have arisen. In appropriate cases, the High Court may however refuse to exercise its discretionary jurisdiction by invoking the Doctrine of "Forum-Conveniens".

23. Whether the principle of "Forum-Conveniens" or analogous principles, will apply or not, for consideration of an Application for leave to sue under Clause 12 of the Letters Patent, fell for consideration before a Full Bench of this Court in Duro Flex Pvt. Limited Vs. Duroflex Seatings System, reported in 2014 (6) CTC 577 (FB) : (2014) 5 LW 673 (FB) : AIR 2015 Mad 30 (FB) = (2015) 1 MLJ 774 (FB), wherein it was held as follows:

"55. We may add that a Division Bench of this Court comprising two of us (S.K.K., C.J. and M.S.N., J.) had an occasion to examine the applicability of the Principles of Forum Conveniens in a case of Writ proceedings in Bharat Bhogilal Patel Vs. Union of India, 2014 (6) CTC 285 (DB) : 2014 (7) MLJ 641. In the context of that judgment, we referred to the decision of a Five-Judges Bench of the Delhi High Court in Sterling Agro Industries Ltd. Vs. Union of India, AIR 2011 Del. 74, which had gone into the Doctrine of Forum Conveniens vis-a-vis the Concept of Cause of Action. In the context of that judgement, it was observed in Sterling Agro Industries Ltd. case (supra) as under:

"The Concept of forum conveniens fundamentally means that it is obligatory on the part of the Court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. The Principle of Forum Conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute Court to entertain the matter. While exercising jurisdiction under Articles 226 & 227 of the Constitution of India, the Court cannot be totally oblivious of the Concept of Forum Conveniens.

The conclusion thus arrived at was that the Principles of Forum Conveniens, though applicable to the International law as a principle of Comity of Nations, would apply

to the discretionary remedy under Article 226 of the Constitution of India."

24. Recently, this Court has also held in O.S.A.Nos.38, 40 and 42 of 2020 (Sulphur Mills Limited Vs. M/s.Dayal Fertilizers Pvt. Limited and three others), by judgment dated 11.11.2020 that, even though a part of cause of action arises in one Court and the major part of cause of action had arisen within the jurisdiction of the other Court, the petition is not maintainable before the Court where the small part of cause of action had arisen.

25. On the whole, we are of the considered view that, first of all, the Writ Petitions are not maintainable before this Court, when there is an efficacious alternative remedy available for the petitioners to approach the concerned authority under the PMLA; secondly, only a small fraction of cause of action had arisen before this Court and the larger and substantial part of cause of action had arisen only in the State of Kerala, where the FIRs have been registered and the trial is pending before the Special Court at Kerala. Therefore, this Court is not the appropriate Court to entertain the present Writ Petitions. Hence, on these two grounds, the present Writ Petitions are liable to be dismissed.

26. In view of the foregoing reasonings, the Writ Petitions are dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

cs/rsh

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To

The Joint Director,
Directorate of Enforcement,
Cochin Zonal Office,
Kanoos Castle, Mullassery Canal Road West,
Cochin-11.

+2 ccs to Mr.V.Venkatasamy advocate sr41758
+1 cc to Mr.V.Venkatasamy Advocate sr41753
+1 cc to M/s.R.Murali Advocate sr41754

W.P.Nos.25177 & 25231 of 2019

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