



2025:DHC:9981-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 11.07.2025
Judgment pronounced on: 14.11.2025

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MISC. APPEAL (PMLA) 4/2021, CRL.M.A.1412/2020 (for stay), CRL.M.A.1414/2020 (for delay in filing) and CRL.M.A. 1415/2020 (for delay in re-filing)

DIRECTORATE OF ENFORCEMENT THROUGH DEPUTY DIRECTOR

.....Appellant

Through: Mr. Zoheb Hossain, Special Counsel along with Mr. Vivek Gurnani, Panel Counsel for ED, Mr. Kanishk Maurya and Mr. Satyam, Advocates.

versus

POONAM MALIK

.....Respondent

Through: Mr. Madhav Khurana, Senior Advocate along with Mr. Vignaraj Pasayat, Advocate.

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MISC. APPEAL (PMLA) 5/2021, CRL.M.A. 1432/2020 (for stay), CRL.M.A. 1434/2020 (for delay in filing) & CRL.M.A. 1435/2020 (for delay in re-filing)

DIRECTORATE OF ENFORCEMENT THROUGH DEPUTY DIRECTOR

...Appellant

Through: Mr. Zoheb Hossain, Special Counsel with Mr. Vivek Gurnani, Panel Counsel for ED, Mr. Kanishk Maurya and Mr. Satyam, Advocates.

versus

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POONAM MALIK

.....Respondent

Through: Mr. Madhav Khurana, Senior
Advocate along with
Mr. Vignaraj Pasayat,
Advocate.

CORAM:**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****J U D G M E N T****HARISH VAIDYANATHAN SHANKAR, J.**

1. The **Directorate of Enforcement**¹ has filed the present appeals under Section 42 of the **Prevention of Money Laundering Act, 2002**², challenging the common order dated 10.06.2019 and the subsequent review order dated 20.09.2019 (collectively referred to as the '**Impugned Orders**'), passed by the learned **Appellate Tribunal (PMLA), New Delhi**³, in FPA-PMLA-2968/DLI/2018 and FPA-PMLA-2969/DLI/2018.

2. By the Impugned Orders, the learned Appellate Tribunal allowed the appeals filed by the Respondent under Section 26 of the PMLA and subsequently dismissed the review application filed by the ED.

3. MISC. APPEAL (PMLA) 4/2021 challenges the order in FPA-PMLA-2969/DLI/2018, wherein the learned Appellate Tribunal set aside the learned Adjudicating Authority's order dated 26.02.2019 passed in O.A. No. 254/2018, which had confirmed the freezing of

¹ED² PMLA³Appellate Tribunal



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Account No. 006005004192 held by the Respondent with Delhi State Co-operative Bank, Hauz Khas, under Section 17(1A) of the PMLA.

4. MISC. APPEAL (PMLA) 5/2021 challenges the order in FPA-PMLA-2968/DLI/2018, wherein the learned Appellate Tribunal set aside the learned Adjudicating Authority's order dated 08.02.2019 passed in O.A. No. 253/2018, which had confirmed the freezing of Account No. 007101549766 held by the Respondent with ICICI Bank, Green Park, under Section 17(1A) of the PMLA.

BRIEF FACTS:

5. The facts of the case reveal that the Respondent's husband, Mr. Ranjit Malik, was employed as a driver with Delhi Nagrik Sahkari Bank Limited until his service officially ended in May 2017. He drew a monthly salary of Rs. 30,352/- there. Concurrently, from 2015 to August 2017, Mr. Ranjit Malik also worked under Mr. Gagan Dhawan, an accused in ECIR/HQ/17/2017, where apparently his role involved the transport and delivery of printing materials.

6. On 30.08.2017, the **Central Bureau of Investigation**⁴ registered FIR No. RC 08(A)/2017-AC-III under Section 13(2) read with Section 13(1)(d) of the **Prevention of Corruption Act, 1988**⁵, and Section 120B of the **Indian Penal Code, 1860**⁶ against M/s **Sterling Biotech Limited**⁷, certain Income Tax Officers and other individuals. Based on this FIR, the ED registered ECIR/HQRS/15/2017 on 31.08.2017 for offences under Sections 3 and 4 of the PMLA. Neither the Respondent nor her husband was named in the said FIR or ECIR.

⁴CBI

⁵PC Act

⁶IPC

⁷SBL



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7. Subsequently, on 25.10.2017, the CBI lodged another FIR bearing No. RC BD1/2017/E/0007 under Sections 13(2) read with 13(1)(d) of the PC Act and Sections 120B, 420, 467, 468 and 471 of the IPC. This was in relation to an alleged massive bank fraud of over Rs. 5,000 crores by M/s Sterling Biotech Limited and its directors, along with a former Andhra Bank Director, Mr. Anup Garg. Following this, the ED registered ECIR/HQ/17/2017 on 27.10.2017. Again, neither the Respondent nor her husband was named in the FIR or the ECIR. The ED has claimed that certain material from ECIR/HQRS/15/2017 was utilized during the investigation of ECIR/HQ/17/2017, thereby rendering both ECIRs interlinked and complementary.

8. According to the ED, the investigation revealed that Mr. Ranjit Malik *alias* Johny assisted Mr. Gagan Dhawan in managing the cash operations of the SBL group. Despite repeated summons, Mr. Ranjit Malik failed to appear and evaded ED officials during a search at 213, Shahpur Jat Village, New Delhi. Although he appeared on 31.10.2017 and undertook to submit relevant documents, he neither complied nor responded to subsequent summons, showing a lack of cooperation.

9. Later, Mr. Ranjit Malik was arrested. Regarding this arrest, the Respondent alleged that on 01.08.2018, the ED officials entered her residence at G-1, 706, Ganga Apartment, D6, Vasant Kunj, New Delhi at 4:00 PM without a search warrant and took her husband into custody without an arrest warrant. The ED, however, contends that the arrest was effected on 02.08.2018.

10. In the investigation, it was further discovered that the Respondent maintained two bank accounts:

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- (a). Account No. 0060005004192 with Delhi State Co-operative Bank, Hauz Khas, with cash deposits of Rs. 2,60,000/- between 21.01.2015 and 12.11.2016; and
- (b). Account No. 007101549766 with ICICI Bank, Green Park, with cash deposits of Rs. 3,85,000/- between 29.06.2013 and 05.01.2016.

11. According to the ED, in his statement, Mr. Ranjit Malik admitted that neither he nor his wife had filed Income Tax Returns. He was also unable to provide any credible explanation for the payment of Rs. 20 lakhs to Mr. Gagan Dhawan or the source of substantial cash deposits in the Respondent's bank accounts. His answers were vague, inconsistent, and failed to address the financial irregularities. During the investigation, the ED, suspecting involvement in money laundering, issued freezing orders dated 05.09.2018 under Section 17(1A) of the PMLA for the Respondent's aforementioned bank accounts. Besides, several other bank accounts were provisionally frozen, which included the Respondent's husband's accounts and their jointly held accounts.

12. After the investigation, on 29.09.2018, the ED filed a prosecution complaint against the Respondent's husband, and on 23.10.2018, it filed a separate complaint notifying the learned Special Court (PMLA) about the freezing orders dated 05.09.2018, of which cognizance was taken by the learned Special Court.

13. Pursuant to the freezing orders, the ED also filed two Original Applications, O.A. No. 253/2018 and O.A. No. 254/2018, under Section 17(4) of the PMLA before the learned Adjudicating Authority, seeking confirmation of the freezing of two bank accounts held by the



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Respondent. The learned Adjudicating Authority, *vide* orders dated 08.02.2019 and 26.02.2019, confirmed the freezing under Section 8(3) of the PMLA.

14. Aggrieved by these confirmation orders, the Respondent filed appeals under Section 26 of the PMLA before the learned Appellate Tribunal. By a common order dated 10.06.2019, the learned Appellate Tribunal allowed the appeals, set aside the learned Adjudicating Authority's orders dated 08.02.2019 and 26.02.2019 and ordered reactivation/unfreezing of the Respondent's both bank accounts.

15. The ED then filed review application challenging the learned Appellate Tribunal's common order dated 10.06.2019, which was dismissed by the learned Appellate Tribunal *vide* order dated 20.09.2019.

16. Aggrieved by the learned Appellate Tribunal's common order dated 10.06.2019 and the review dismissal order dated 20.09.2019, the ED has approached this Court by way of the present appeals.

ED/ APPELLANT'S SUBMISSIONS:

17. Learned Special Counsel for the ED would submit that the freezing order under Section 17 of the PMLA and its confirmation under Section 8 are legally valid, supported by sufficient "reasons to believe", and that the learned Appellate Tribunal's contrary finding is based on a misapplication of law.

18. While supporting the confirmation order passed under Section 8, he would then submit that the learned Adjudicating Authority had rightly relied on credible material showing that Mr. Ranjit Malik acted as a cash manager for Mr. Gagan Dhawan, evaded multiple summons, and absconded during search, before and



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after appearing on 31.10.2017, following which he was arrested under Section 19(1) of the PMLA on 02.08.2018.

19. Learned Counsel appearing for the ED would further submit that the Respondent maintained two bank accounts reflecting unexplained cash deposits, and that Mr. Ranjit Malik, in statements recorded under Sections 50(2) and (3) of the PMLA, admitted to non-filing of income tax returns by him and his wife, i.e., the Respondent herein, and further failed to explain the Rs. 20 lakh transfer to Mr. Gagan Dhawan from the joint account of Mr. Ranjit Malik and Respondent (Account No. 50100016189014) or the source of deposits, offering only evasive responses.

20. Learned Counsel appearing for the ED would contend that the Respondent's claim of absence of "reason to believe" is meritless, as the Hon'ble Supreme Court has held in *CIT v. Rajesh Jhaveri*⁸ and *Radhika Agarwal v. Union of India*⁹ that such belief requires only *prima facie* satisfaction, not conclusive proof, and its adequacy cannot be judicially reviewed at the investigative stage, especially in cases involving freezing under Section 17 of the PMLA.

21. Learned Counsel appearing for the ED would also submit that proceedings before the learned Adjudicating Authority are civil in nature, governed by the standard of preponderance of probabilities rather than proof beyond reasonable doubt, as clarified by the Hon'ble Supreme Court in *Vijay Madanlal Choudhary v. Union of India*¹⁰.

22. On another issue, learned Counsel appearing for the ED would submit that the learned Appellate Tribunal erred in setting aside the freezing order solely due to the absence of a prosecution complaint

⁸(2008) 14 SCC 208

⁹2025 SCC OnLine SC 449

¹⁰(2023) 12 SCC 1



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against the Respondent, since a complaint had already been filed against her husband within the prescribed time, and as held by the Hon'ble Supreme Court in *Union of India v. J.P. Singh*¹¹, continuation of freezing under Section 8(3) only requires a pending complaint alleging money laundering, regardless of whether the person affected is named as an accused.

RESPONDENT'S SUBMISSIONS:

23. Learned Senior Counsel for the Respondent would submit that the freezing orders issued by the ED are fundamentally flawed, as they are based merely on "suspicion" rather than the statutory requirement of "reasons to believe" under Section 17 of the PMLA, and since the provision affects the constitutional right to property under Article 300A, it must be strictly construed.

24. It would be submitted that by the learned Senior Counsel for the Respondent that a plain reading of the freezing orders shows that the language used reflects suspicion and not a concrete belief, and the law is settled that "reasons to believe" require the presence of credible and cogent information, whereas suspicion is conjectural and lacks evidentiary backing.

25. Learned Senior Counsel appearing for the Respondent would contend that the ED cannot now claim that the use of the word "suspicion" was a typographical error, as it never sought to amend the freezing order nor issued any subsequent clarification, and the ED has also failed to disclose any material that would indicate the existence of relevant information at the time of the order.

¹¹Criminal Appeal No. 1102/2025 (Judgement dated 05.03.2025)



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26. It would be further contended by the learned Senior Counsel that in the absence of such material, the freezing order does not meet the legal standard under Section 17 and this deficiency is fatal, in view of the judgements of the Hon'ble Supreme Court in *Opto Circuit India Limited v. Axis Bank*¹², *Barium Chemicals Ltd. & Ors. v. Company Law Board & Ors.*¹³ and *Aslam Mohammad Merchant v. Competent Authority*¹⁴.

27. Learned Senior Counsel for the Respondent would submit that the ED has not demonstrated any link between the alleged siphoning of funds from Andhra Bank and the money held in the Respondent's accounts, and none of the five prosecution complaints or supplementary complaints filed by the ED establish such a connection; and in fact, the Final Supplementary Complaint dated 23.10.2018 explicitly identifies the assets constituting the "proceeds of crime" but excludes the Respondent's bank accounts, and this omission strongly suggests the absence of any credible nexus.

28. Learned Senior Counsel for the Respondent would further submit that the mere cognizance of a scheduled offence by the learned Special Court (PMLA) cannot alone justify the continuation of freezing orders, for such a view would lead to an unreasonable outcome where bank accounts entirely unconnected to the offence remain indefinitely frozen simply because proceedings exist against someone else.

29. It would be highlighted by the learned Senior Counsel that the Respondent's bank accounts are not treated as "case property" before the learned Special Court (PMLA), and since no proceedings depend

¹²(2021) 6 SCC 707

¹³AIR 1967 SC 295

¹⁴(2008) 14 SCC 186



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on the funds therein, there is no legal justification for keeping them frozen.

30. Learned Senior Counsel appearing for the Respondent would also submit that the ED has already attached assets worth Rs. 4,734 crores and Rs. 9,777.95 crores from other accused persons, and that the principal accused, the SBL Group, has repaid approximately Rs. 3,500 crores in compliance with directions of the Hon'ble Supreme Court in *Hemant S. Hathi v. Central Bureau of Investigation & Ors*¹⁵; therefore, the total value of attached assets stands at Rs. 14,512 crores, which exceeds the total loan liability of Rs. 14,508 crores, and in such circumstances, the continued freezing of the Respondent's bank accounts is disproportionate.

ANALYSIS:

31. We have heard the learned counsel appearing for both parties at length and have carefully examined the pleadings, the Impugned Orders, as well as the written submissions filed after the hearing.

32. At the outset, it is clarified that the learned Senior Counsel for the Respondent has not raised any contention regarding whether, after the freezing of property under Section 17(1A) of the PMLA, the mandatory requirements of Section 20 of the PMLA were duly complied with prior to the passing of the order under Section 8 by the learned Adjudicating Authority.

33. In this context, reference may be made to our Judgment dated 12.09.2025 in *Enforcement Directorate v. Rajesh Kumar Agarwal*¹⁶, wherein it was held that, in cases involving seizure or freezing under

¹⁵W.P.(CrI.) No. 37/2020

¹⁶2025 SCC OnLine Del 5974



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Section 17, the statute mandates strict compliance with the provisions of Section 20 before any recourse can be taken to Section 8 of the PMLA.

34. Since, as the record reflects, the Appellant failed to adhere to the express statutory mandate and in light of this Court's ruling in ***Rajesh Kumar Agarwal*** (*supra*), we are of the considered view that the Orders dated 08.02.2019 and 26.02.2019 passed by the learned Adjudicating Authority stand vitiated to the extent they permit retention by invoking Section 8 of the PMLA. Once the foundational order is set aside, all consequential proceedings become infructuous.

35. Nonetheless, we consider it appropriate to examine certain ancillary issues that arise in the present Appeals, as they are of wider legal ramifications.

36. Before proceeding further, it would be apposite to reproduce certain paragraphs from the Impugned Judgment, which will be referred to and discussed subsequently, and which read as follows:

“24. Scheme of Section 8(3) of PMLA

- a) Section 8(3)(a) of PMLA, originally provided that confirmation of attachment by Adjudicating Authority would continue during the pendency of proceedings relating to scheduled offence before a court and becomes final after guilt of person is proved in the trial court in the said scheduled offence. Thus, finality of attachment even after confirmation by Adjudicating Authority was dependent upon the pendency of proceedings relating to scheduled offence and achieving finality of judgement in such case and not otherwise. Subsequently, there was an amendment incorporated in the said provision. The same was applicable w.e.f. 15.2.2013.
- b) With effect from 19.04.2018, an amendment was brought in Section 8(3)(a) that attachment would continue during investigations for a period not exceeding 90 days or pendency of proceedings relating to any offence under PMLA before a court.
- c) It is evident from the said provision that investigation has to be completed within a period of 90 days as otherwise there will be no attachment.

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- d) The latest amendment in PMLA has fixed the limitation of 365 days as limitation of period for investigation. The said amendment is yet to be notified.
- e) Section 45 of PMLA provides that special courts shall not take cognizance of any offence under PMLA, except upon a complaint in writing made by-
 - (i) The Director, or
 - (ii) Any officer of the Central Government or State Government authorized in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.
- f) Therefore, criminal complaint before court for punishing offence u/s 3 & 4 of PMLA has to be by way of a complaint in writing by the Director or any other officer authorized by the Central/State Government.
- g) Section 44(1)(b) of PMLA underwent an amendment where the words "upon perusal of police report of the case(s) which constitute an offence" was deleted and thus by deletion, it is clear that cognizance of offence u/s 3 PMLA can be taken only upon a complaint in writing and not on a Police report, Le. charge sheet filed by Police u/s 173(5) Cr.PC. PMLA does not define "complaint" but "complaint is defined under Section 2(4) CrPC as allegation made orally or written to be Magistrate for taking action against the persons who have committed the offence.

25. PMLA is a Special Act. The provisions of the said Act are mandatory. They have to be applied as it. Being an independent Act, no different meaning can be given. They have to be interpreted as it is.

26. It is correct that the power to attach or seize or freeze a property can be exercised only if the officer concerned has material in his possession who has a reason to believe that property sought to be attached or seized is proceed of crime or related to the crime irrespective as to whether complaint under the schedule offence and prosecution complaint under PMLA is filed or not against the party who has in his possession of proceeds of crime. But, the situation where the investigation was being done on the basis of a mere suspicion against the party where the statute provides prescribed period of time and mandates the condition that it would continue during investigation for a period not exceeding ninety days. Having in possession of proceed of crime and period of investigation on the basis of suspicion are two different situations.

27. The law laid down earlier where the time limit was not provided may not be applicable because of change of situation by virtue of amendment which was carried on 19.4.2018, the specific period is prescribed in the Act for the purpose of investigation. Earlier, no specific timeline was set to complete the investigation and to file the prosecution complaint. The mandates now is



changed whereby it is mandated that the attachment shall continue during investigation for a period not exceeding ninety days, as provided under section 8(3)(a) of the Act or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India. The second part of the provision is not applicable in the absence of such situation.

(emphasis supplied)

37. One of the findings in the Impugned Judgement that concerns us pertains to the scheme of Section 8(3) of the PMLA and, in particular, the finding that the said Section prescribes a time limit for the investigation itself.

38. In paragraph 24(c) of the Impugned Judgment, the learned Appellate Tribunal has held that Section 8(3) lays down a time frame for completion of the investigation. We are of the considered view that this constitutes an incorrect reading of the provision by the learned Appellate Tribunal. Section 8(3) of the PMLA reads as follows:

“8....

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

(a) continue during investigation for a period not exceeding ninety days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal Jurisdiction outside India, as the case may be;
and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 or Section S8-B or sub-section (2-A) of section 60 by the Special Court.”

(emphasis supplied)

39. As is manifest, Section 8(3) pertains to the *confirmation* of an attachment, retention, or freezing order. For the learned Adjudicating



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Authority to pass such an order of confirmation, the entire statutory procedure under Section 8 must be followed. This necessarily means, *first*, compliance with Section 8(1); *thereafter*, the rendering of a finding under Section 8(2) determining whether the property mentioned in the notice under Section 8(1) is involved in money laundering; and *finally*, under Section 8(3), the issuance of an order confirming the attachment, retention, or continued freezing of the said property.

40. Upon such confirmation through a written order, the attachment, under Section 8(3)(a):

(a) by virtue of the first part, continues during investigation for a period not exceeding ninety days; OR

(b) by virtue of the second part, continues during the pendency of proceedings relating to any offence under the PMLA (in India).

41. It is thus clear that the confirmation and its continuation relate solely to the attachment, retention, or freezing of property, and cannot be interpreted as prescribing a time limit for completion of the investigation itself. The language of the provision does not stipulate any period within which the investigation must be concluded; rather, it only governs the duration of the attachment, retention, or freezing, which may continue even beyond the investigation period. The ninety-day limit mentioned in the first part of Section 8(3)(a) is therefore referable to the attachment or retention, not to the investigative process.

42. Accordingly, to the extent that the learned Appellate Tribunal has held that the investigation must be completed within ninety days, failing which the attachment would lapse, we find such an interpretation to be inconsistent with the express wording of the

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statute. Consequently, the learned Appellate Tribunal's further conclusions based on this mis-interpretation, including its understanding of the amended provisions of the PMLA, are also erroneous.

43. Paragraphs 26 and 27 of the Impugned Judgment are the resultant conclusions based on the finding of the learned Appellate Tribunal that Section 8(3) prescribes a time limit for the purpose of investigation as well. Para 26 goes a step further, insofar as it concludes that the Appellant herein could not have been investigated against on the basis of a "suspicion". We do not agree with this conclusion as this, in fact, strikes at the very basis of the investigative process itself. It is well settled that the power of Courts to interfere in the investigative process is extremely circumscribed and rarely exercised.

44. Since both paragraphs incorrectly conclude that Section 8(3)(a) prescribes a period for concluding investigation, the consequential aspect of filing a prosecution complaint also is an incorrect sequential conclusion. This, to our mind, is what links the contentions advanced in respect of the proposition as regards investigation being carried out as against a person not named as an accused.

45. Turning now to the aspect of whether, for the purpose of attachment, retention, freezing etc., it is necessary for the person to be named as an accused in the prosecution complaint filed by the ED.

46. The Hon'ble Supreme Court, in *Union of India v. J.P. Singh* (*supra*), clarified that for the application of Section 8(3)(a), it is not necessary that the person affected must be named as an accused in the prosecution complaint and the order of cognizance by the learned



Special Court (PMLA) is of the offence and not of the accused or the offender. The relevant observations of the Apex Court are as follows:

“9. Therefore, at the relevant time, in view of clause (a) of sub-Section (3) of Section 8, the order of the Adjudicating Authority continued during the pendency of the proceedings relating to an offence under the PMLA before a Court. The respondent appearing in person does not deny that this was the provision which was applicable at the relevant time. But he submits that he was not named as an accused in the complaint filed under Section 44 of the PMLA and therefore, there was no proceedings pending.

10. There is no dispute that the complaint is based on ECIR dated 17th March, 2017 in which the respondent was shown as one of the accused. Moreover, clause (a) will apply during the continuation of the proceedings relating to an offence under the PMLA in a Court. There is no dispute that when an order under Section 8(3) was passed, the proceedings of a complaint under Section 44 of the PMLA was pending before the Special Court and cognizance of the offence under Section 3 of the PMLA was taken on the basis of the complaint. For attracting clause (a), it is enough if a complaint alleging commission of offence under Section 3 of the PMLA is pending. It is not necessary for the applicability of clause (a) that the person affected by the order under Section 8(3) must be shown as an accused in the complaint. The complaint under Section 44 will always relate to the offence under Section 3 punishable under Section 4 of the PMLA. The order of cognizance is of the offence and not of the accused or the offender.

11. Therefore, when an order under sub-Section (3) of Section 8 of the PMLA was passed, in view of clause (a) of sub-Section (3) of Section 8 as applicable on that day, the order was to continue till the disposal of the complaint.”

(emphasis supplied)

47. In light of the above authoritative pronouncement, we are of the opinion that the said issue stands concluded.

48. The continuation of attachment under Section 8(3)(a) is not dependent upon the property holder being named as an accused. The statutory requirement is satisfied if, among other things, proceedings relating to an offence under the PMLA are pending, and the learned Adjudicating Authority has, under Section 8(2), determined that the frozen property is involved in money laundering. The law does not



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mandate that the affected individual must personally be arrayed as an accused in the complaint.

49. Here, it is undisputed facts that a prosecution complaint had already been filed against the Respondent's husband and there is a clear allegation that the Respondent's bank account was used by him for the purpose of money laundering.

50. In the present cases, the ED issued freezing orders on 05.09.2018, and the learned Adjudicating Authority, upon adjudication, passed orders under Section 8 of the PMLA on 08.02.2019 and 26.02.2019 confirming the same. Before proceeding to deal with the Freezing Orders, we deem it apposite to extract Section 17 of the PMLA which reads as under:

“17. Search and seizure. —(1)Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person-

- (i) has committed any act which constitutes money-laundering, or
 - (ii) is in possession of any proceeds of crime involved in money-laundering, or
 - (iii) is in possession of any records relating to money-laundering, or
 - (iv) is in possession of any property related to crime,
- then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to-**

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;
- (e) make a note or an inventory of such record or property;
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act

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(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence: Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.”

(emphasis supplied)

51. In order to give effect to the provisions of Section 17 of the PMLA, the Central Government, in exercise of the powers conferred under sub-section (1), read with clauses (a), (m), (n), (o), (pp) and (w) of sub-section (2) of Section 73, has framed the ***Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and***



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*the Period of Retention) Rules, 2005*¹⁷. The relevant extracts of these Rules are reproduced hereinbelow for ready reference:

“3. Procedure relating to search. - (1)The Director or any other officer authorised by him may, for the purposes of the sub-section (1) of Section 17 of the Act, further authorize any officer subordinate to him and such authorization shall be in the Form 1.

(2) The authority referred to in clause (c) of sub-rule (1) of Rule 2, shall be empowered to—

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or make or cause to be made extracts or copies therefrom;
- (e) make a note or an inventory of such record or property;
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

(3) Before making a search, the authority, shall—

- (a) where a building or place is to be searched, call upon two or more respectable persons of that locality in which the building or place to be searched is situated; and
- (b) where a vessel, vehicle or aircraft is to be searched, call upon any two or more respectable persons, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(4) Any person in charge of, or, in any building, place, vessel, vehicle or aircraft shall, on production of the authorisation, allow the authority free ingress thereto and afford all reasonable facilities for search therein.

(5) If ingress into such building or place cannot be obtained, it shall be lawful for the authority executing the authorisation, with such assistance of police officers or of such other officers as specified in Section 54 of the Act, as may be required, to enter such building or place and search therein and in order to effect an entrance into such building or place, to break open any lock of any door or window of any building or place, whether that of the person to be searched or of any other person, if after production of authorisation and demand of admittance duly made, he cannot otherwise obtain admittance:

¹⁷PMLA (Search and Seizure or Freezing) Rules, 2005



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Provided that, if any such building or place is an apartment in actual occupancy of a woman, who according to custom does not appear in public, the authority shall before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it.

(6) If ingress into any vessel, vehicle or aircraft authorized to be searched cannot be obtained because such vessel, vehicle or aircraft is moving or for any other reason, it shall be lawful for the authority executing the authorisation, with such assistance as may be required of police officers and such officers, as specified in Section 54 of the Act, to stop any such vessel or vehicle or in the case of an aircraft, compel it to stop or land, and search any part of the vessel, vehicle or aircraft, and in order to effect an entrance into such vessel, vehicle or aircraft to break open any door or window of any such vessel, vehicle or aircraft, whether that of the person to be searched or of any other person, if after production of the authorisation and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that if any such vessel, vehicle or aircraft is occupied by a woman, who according to custom does not appear in public, the authority shall, before entering such vessel, vehicle or aircraft, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then break open the door of any vessel, vehicle or aircraft and enter it.

(7) The authority may require any person who, is the owner, or has the immediate possession, or control, of any box, locker, safe, almirah or any other receptacle situated in such building, place, vessel, vehicle or aircraft, to open the same and allow access to inspect or examine its contents, and, where the keys thereof are not available or where such person fails to comply with any such requirement, may break open the lock of such box, locker, safe, almirah or other receptacle which the authority may deem necessary for carrying out all or any of the purposes specified by the Director in this behalf.

(8) The occupant of the building, place, vessel, vehicle or aircraft searched, including the person in charge of such vessel, vehicle or aircraft, or some person on his behalf, shall be permitted to attend during the search.

4. Procedure relating to seizure or freezing. - (1) The officer or the authority, as the case may be, freeze or seize any record or property found as a result of search of any building, place, vessel or vehicle or aircraft:

Provided that where it is not practicable to seize any record or property, the authority may serve an order on the owner or the person who is in immediate possession or control of any such record of property that he shall not remove, part with or otherwise

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deal with it except with the previous permission of the authority, who may take such steps as may be necessary for ensuring such compliance.

(1-A) Where it is not practicable to seize any record or property, the officer or the authority, as the case may be, may pass an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer or the authority making such order, and a copy of such order shall be served on the person concerned.

(2) The authority shall prepare a seizure memo (inventory of items) in Form II appended to these rules which shall be delivered to the occupant of the building, place, vessel, vehicle or aircraft searched including the person in charge of such vessel, vehicle or aircraft, or some person on his behalf and the authority shall also forward a copy of the inventory so prepared to the Director and the Adjudicating Authority.

(3) The authority shall place or cause to be placed the records of properties including bullion, jewellery and other valuable articles and things seized during the search in a package which shall contain the details of the bullion, jewellery and other valuable article and things placed therein, such packages shall bear an identification mark and the seal of the authority, and the occupant of such building, place, vehicle or aircraft, including the person in charge of such vessel, vehicle or aircraft searched or any other person on his behalf shall also be permitted to place his seal on packages.

(4) A copy of the list prepared in accordance with sub-rule (3) shall be delivered to the occupant of the building, place, vehicle or aircraft, including the person in charge of such vessel, vehicle or aircraft searched or any other person on his behalf and the authority shall also forward a copy thereof to the Director and the Adjudicating Authority.”

52. Under sub-section (1) of Section 17 of the PMLA, where the ‘Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section’, on the basis of information in their possession and upon recording in writing the *reasons to believe*, forms an opinion that a person has (i) committed the offence of money laundering, or (ii) is in possession of the proceeds of crime, or (iii) is holding records relating to money laundering, or (iv) owns property connected with the crime, the said officer is empowered to authorise ‘any officer subordinate to him’ to

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undertake the measures specified under clauses (a) to (f) of the sub-section. The procedural framework for conducting such searches is laid down in Rule 3 of the *PMLA (Search and Seizure or Freezing) Rules, 2005*, which prescribes not only the detailed procedure to be followed but also the specific Form in which authorization must be issued, and further mandates the manner in which the search is to be carried out.

53. Sub-section (1A) of Section 17, which is the relevant provision for the present case, contemplates circumstances where immediate seizure of property is impracticable. In such cases, the *authorised officer* may issue an order freezing the property or records, prohibiting their transfer or dealing with the same without prior permission of the officer issuing such order. The proviso to this Sub-section provides that if at any stage before confiscation it becomes practical to seize such frozen property, the *authorised officer* may proceed with seizure. The provision also mandates that a copy of the freezing order be served upon the affected person. Rule 4 of the *PMLA (Search and Seizure or Freezing) Rules, 2005*, prescribes a comprehensive procedure for seizure and freezing, including the preparation of a seizure or freezing memo in the Form appended thereto.

54. The manner in which the ED is to proceed post the passage of the freezing order is similar to the path that is to be followed in the case of property that is seized and which has already been considered by us in ***Rajesh Kumar Agarwal*** (*supra*).

55. In the present cases, freezing orders dated 05.09.2018, passed under Section 17 of the PMLA, which are identically worded, have been placed before us. For ready reference, the relevant extract from one such freezing order is reproduced below:

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“ORDER

Whereas, on the basis of Authorization dated 05.09.2018 issued by Deputy Director of Enforcement U/s 17 of Prevention of Money Laundering Act, 2002 for search and seizure to be conducted by the undersigned in respect of account no. 006005004192 in the name of Ms. Poonam Malik maintained with Delhi State Co-Operative Bank Ltd. Hauz Khas Branch Delhi.

Whereas, it is suspected that amount involved in money laundering are lying in the above mentioned bank account.

Now, therefore, it is directed that any debit operation from the above said bank account not be allowed until further orders from this office.

This order is issued under section 17 (1A) of The Prevention of Money Laundering Act, 2002.

Dated at DELHI on this 05 day of SEPTEMBER TWO Thousand EIGHTEEN.

Sd/-
(AKHILESH KUMAR PIPIL)
Assistant Director

To,
Branch Manager
Delhi State co-operative Bank
Hauz Khas Delhi

Copy to: Smt. Poonam Malik W/o SH. Ranjit Malik @ Johnny R/o B-40, Village Masoodpur, Vasant Kunj Delhi.”

56. From the above extract, it is evident that the *authorised officer* has passed a cryptic freezing order under Section 17(1A) solely on the basis of suspicion. No material has been placed before us to demonstrate compliance with the mandatory requirements of Sub-sections (1) and (1A) of Section 17 of the PMLA and of Rules 3 and 4 of the *PMLA (Search and Seizure or Freezing) Rules, 2005*.

57. There is nothing on record to indicate that the ‘*Director, or any other officer not below the rank of Deputy Director authorised by him*’, had, on the basis of information in his possession and upon

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recording in writing the requisite '*reasons to believe*', concluded that the Respondent or her husband had, through impugned bank accounts, committed the offence of money laundering, or was in possession of the proceeds of crime, or was holding relevant records, or was the owner of property connected with crime.

58. The freezing orders dated 05.09.2018 themselves do not disclose any such *reason to believe*, nor do they refer to any record from which such a conclusion could be inferred. On the contrary, the order records that "*it is suspected* that amount involved in money laundering are lying in the above mentioned bank account".

59. In our considered view, the freezing orders dated 05.09.2018, being cryptic in nature and founded solely on mere suspicion, do not meet the standard prescribed, which is the formation of a "*reason to believe*". We are of the firm opinion that "*suspicion*" cannot be equated to a "*reason to believe*". In fact, suspicion cannot also be equated with a "*prima facie*" opinion.

60. "*Suspicion*" as defined by ***Black's Law Dictionary, Tenth Edition***, reads as follows-

"The apprehension or imagination of the existence of something wrong based only on inconclusive or slight evidence, or possibly even no evidence".

61. This, in our considered opinion, does not meet the prescribed standard of the formation of a "*reason to believe*". "*Suspicion*", as is apparent from the definition, is more in the nature of a subjective state of mind that may have minimal or no basis whatsoever, whereas, a "*reason to believe*" is in the nature of a preliminary objective assessment, based on an informed decision-making process and application of mind, predicated on material in the form of documents,



records and/ or other evidence. This is also in consonance with the Judgment of the Hon'ble Supreme Court in ***Radhika Agarwal*** (*supra*).

The relevant portion of the said judgement reads as under:

“45. Secondly, the fact that Section 104(1) does not explicitly require a Customs Officer to have “material in their possession” does not imply that a Customs Officer can conclude that an offence has been committed out of thin air or mere suspicion. The threshold for arrest under Section 104(1) of the Customs Act is higher than that under Section 41 of the Code. Section 41 allows the police to arrest a person without a warrant, if a “reasonable complaint has been made”, or “credible information has been received”, or “a reasonable suspicion exists” that the person has committed a cognizable offence. In contrast, Section 104(1) sets a higher threshold, stipulating that Customs Officers may only arrest a person if they have “reasons to believe” that a person has committed an offence. A person is said to have a “reason to believe” a thing, if they have sufficient cause to believe that thing but not otherwise. [See Section 26 of the Penal Code, 1860.] This represents a more stringent standard than the “mere suspicion” threshold provided under Section 41.”

(emphasis supplied)

62. Although Section 17(1A) does not expressly use the phrase “*reason to believe*”, it cannot be read in isolation from Section 17(1). The operation of Section 17(1A) is intrinsically linked to the practicability of effecting a seizure under Section 17(1), and such seizure can only be undertaken upon the formation of a “*reason to believe*”. Since the act of freezing is merely an alternative to seizure, it cannot logically be subjected to a lower or different standard of satisfaction than that applicable to the act of seizure itself.

63. The freezing orders dated 05.09.2018 issued by the ED also fail to disclose the specific material or basis on which such action was necessitated. They merely make a general reference to the amounts in the accounts being involved in money laundering. In our considered view, such freezing orders do not satisfy the statutory requirements



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envisaged under Sub-sections (1) and (1A) of Section 17 of the PMLA.

64. We are further of the view that, in the present cases, the Appellant has attempted to improve upon its case by subsequently furnishing reasons in its application under Section 17(4), as well as through pleadings, oral submissions, and written arguments. This approach runs contrary to the principles laid down by the Hon'ble Supreme Court in *Opto Circuit India Limited (supra)*. The Apex Court, relying on the celebrated judgment in *Mohinder Singh Gill v. Chief Election Commissioner*¹⁸, categorically held that the legality of an administrative or quasi-judicial action must be tested solely on the basis of the reasoning and material contained in the impugned order or communication itself. Such an order cannot later be justified or sustained by introducing additional grounds through affidavits, pleadings, or oral submissions before the Court.

65. Applying the same principle, it follows that in the present case, any attempt by the ED to supplement or improve the contents of the impugned freezing orders through their submissions cannot cure the fundamental legal infirmities inherent in the Order.

66. It is a settled proposition that the scheme of the PMLA is designed to strike a delicate balance between the extensive powers conferred upon enforcement authorities and the fundamental rights of individuals. For this reason, the statutory provisions governing search and seizure or freezing of property are hedged with procedural safeguards. These safeguards serve as a check against arbitrary action and ensure that any intrusion into private rights is proportionate, lawful, and subject to independent judicial scrutiny. The efficacy of

¹⁸(1978) 1 SCC 405



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the statutory scheme and the legitimacy of State action under it depends upon scrupulous adherence to these procedural requirements.

67. Equally well-established is the rule of statutory interpretation that when a statute prescribes that a particular act is to be performed in a specified manner, it must be performed in that manner alone or not at all. Deviation from the prescribed procedure is impermissible in law. The record of the present cases unmistakably discloses non-compliance with the mandatory provisions of Sub-sections (1) and (1A) of Section 17 of the PMLA, as well as Rules 3 and 4 of the *PMLA (Search and Seizure or Freezing of Property) Rules, 2005*. Such non-compliance renders the freezing orders dated 05.09.2018 issued by the ED not only procedurally defective but also substantively contrary to law.

68. It must also be borne in mind that the freezing of a bank account in violation of statutory requirements has far-reaching consequences. Such action directly impinges upon the constitutional right to property guaranteed under Article 300A of the Constitution of India, which mandates that no person shall be deprived of property except in accordance with the authority of law. Any violation of this constitutional safeguard strikes at the very root of the legitimacy of the impugned action and cannot be countenanced.

69. We now turn to the strenuous arguments canvassed by the ED in respect of the contention that even assuming the first limb of Section 8(3)(a) of the PMLA were not applicable, the second limb thereof would certainly have to be taken into account and since proceedings were pending in Court, the freezing order should be sustained. We are afraid that we cannot accept this contention.



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70. As is apparent, the order passed in pursuant to the application under Section 17(4) of the PMLA was purely on the basis that the freezing was necessitated in view of the investigation. The said order does not in any manner advert to the pendency of a proceeding before the Court. In fact, a perusal of the Application under Section 17(4) also reveals that the thrust of the entire application was predicated on the FIR and its contents, as also the investigation itself. As already observed, such an attempt runs contrary to the Judgment of the Hon'ble Supreme Court in *Opto Circuit India Limited* (*supra*). We attribute this argument to the ingenuity of the ED and its accomplished counsel, who, as always, never leaves any stone unturned in the vigorous support of his client.

71. Turning now to the foundational orders of the learned Adjudicating Authority, which are the orders dated 08.02.2019 and 26.02.2019. The said orders gain significance, as they would revive in the event that the ED were to succeed in the present Appeals. The said order almost verbatim reproduces the contentions of the parties in their pleadings, and, thereafter, relying entirely on the investigation, under the heading "Discussion", in the last paragraph of the said heading, summarises the investigation and allows the freezing of the account. Para 3 of the said Order reads as follows:

"3. In view of the discussion aforesaid it is clear that deposits in the account of the defendant remains unexplained as she does not have Independent resources to deposits of Rs. 2,60,000/-. Moreover combined with the fact that her husband has passed on Rs. 20,00,000/- to Sh. Gagan Dhawan, one of the main accused, from the Joint Account with her the source of which he could not explain satisfactorily. Her husband when was asked about the aforesaid transaction and subsequently regarding the deposits in the two bank accounts under reference he could not explain it either. The submission made by the defendant before the authority that the deposits were made out of withdrawal is not found to be satisfactory. In the aforesaid fact and circumstances of the case

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when Investigations are in progress, the application for freezing of the account is allowed.”

72. Taking the said para at face value, what is obvious is that the learned Adjudicating Authority, in any event, is not the person authorized to pass an order for freezing. To that extent, the learned Adjudicating Authority has clearly erred. Even assuming the learned Adjudicating Authority was to be given the benefit of doubt, he has, in his conclusion, held that “*Case for retention being made, original application is allowed*” and thereafter goes on to grant the concomitant continuation etc., as provided for under Section 8(3) of the PMLA.

73. We also note that the Original Application filed by the ED before the learned Adjudicating Authority was titled as being one for “*..allowing continuation of freezing of bank account which was frozen...*” but ultimately prayed that the freezing order “*...be permitted to be confirmed in terms of Section 17(4) of the PMLA*”.

74. Section 17(4) of the PMLA provides filing an application requesting for continuation of an order of freezing and not for confirming an order of freezing, which is a distinct and separate act by itself.

75. The scheme of the PMLA provides for separate events and acts of seizure, freezing, retention, continuation and confirmation and each of these actions are set out and defined, relatable to different Sections, pertaining to statutorily differentiated species relatable to property, exercisable at distinct points in time with distinct consequences and contemporaneous procedural safeguards. To our mind, none of these words are interchangeable. The Application of the Appellant under



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Section 17(4) and the order have conflated all these terms and served up what can at best be called a “*khichdi*”.

76. The conclusion, as drawn by the learned Adjudicating Authority post the discussion, in the freezing order(s), is as follows:

“Conclusions:

1. Case for retention being made, original application is allowed accordingly.
2. The retention shall:
 - (a) Continue during the pendency of the proceedings relating to any offence under this Act before a court or under corresponding law of any other country before competent court of criminal Jurisdiction outside India as the case may be;
 - (b) Become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 588 or sub-section (2A); of section 60 by the Adjudicating Authority.
 - (c) Appeal against the order lies to Hon'ble Appellate Tribunal, PMLA New Delhi under section 26 of the PMLA Act. The appeal may be filled within a period of 45 days from the date of receipt of the order.

Pronounced on this day of 26th February, 2019 in the open court of this Authority.”

77. As already held by us, the learned Adjudicating Authority cannot immediately after seizure or freezing, pass an order for retention or continuation of the freezing order without following the mandate of the PMLA. To permit the ED to do so would be a travesty of justice, denying a person the procedural safeguards guaranteed by the PMLA itself.

78. The entire manner in which the Application was drawn up and the reliefs sought and what finally came to be granted by the learned Adjudicating Authority clearly lends us to conclude that there was hardly any application of mind from the get go and the present proceedings are vitiated by that fact alone.

79. We are amazed at the manner in which the ED sought the relief of confirmation in an application titled as one for continuation and



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was finally granted retention. We are conscious of the fact that we may be blamed for indulging in semantics, but at the cost of repetition, we reiterate that each of these words, as used, is distinct and in respect of different actions and different species. '*Retention*' can only be done in respect of something that is seized and '*Continuation*' can only be done in respect of something frozen. That apart, we continue to remain bewildered by the grant of '*Retention*' when what was actually sought was an order of '*Confirmation*'.

CONCLUSION:

80. In view of the foregoing discussion and the legal position emerging therefrom, it stands conclusively established that the freezing orders dated 05.09.2018 issued by the ED regarding the Respondent's bank accounts cannot be sustained in law, as they have been passed without compliance with the mandatory requirements of the statute and in disregard of the procedural safeguards provided therein.

81. We consequently find no infirmity in the ultimate conclusion arrived at by the learned Appellate Tribunal in the Impugned Judgment. Resultantly, the present appeals, being devoid of merit, stand dismissed.

82. The present Appeals, along with pending application(s), if any, are accordingly disposed of in the above terms.

83. No order as to costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.
NOVEMBER 14, 2025/sm

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