



2025:DHC:10498-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 24.09.2025

Judgment pronounced on: 27.11.2025

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W.P.(C) 2819/2016 & CM APPL. 11885/2016

SANJAY AGGARWAL

.....Petitioner

Through: Mr. Naveen Malhotra, Mr.
Ritvik Malhotra and Mr.
Nilansh Malhotra, Advocates.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Anupam S. Sharma,
Special Counsel with Mr.
Vivek Gurnani, Ms. Harpreet
Kalsi, Mr. Abhishek Batra, Mr.
Ripudaman Sharma, Mr.
Vashisht Rao, Ms. Riya
Sachdeva, Mr. Vishesh Jain and
Mr. Anant Mishra, Advocates
for ED.

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W.P.(C) 2832/2016 & CM APPL. 11901/2016

CHANDAN BHATIA

.....Petitioner

Through: Mr. Naveen Malhotra, Mr.
Ritvik Malhotra and Mr.
Nilansh Malhotra, Advocates.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Anupam S. Sharma,
Special Counsel with Mr.
Vivek Gurnani, Ms. Harpreet
Kalsi, Mr. Abhishek Batra, Mr.
Ripudaman Sharma, Mr.
Vashisht Rao, Ms. Riya
Sachdeva, Mr. Vishesh Jain and
Mr. Anant Mishra, Advocates
for ED.

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W.P.(C) 2819/2016 & connected matters

Page 1 of 24



2025:DHC:10498-DB



+ W.P.(C) 2963/2016 and CM APPL. 12404/2016

KAMAL KALRA & ANR

.....Petitioners

Through: Mr. R. K. Handoo, Mr. Yoginder Handoo, Mr. Aditya Chaudhary, Mr. Ashwin Kataria, Mr. Garvit Solanki, Mr. Fateh Singh, Mr. Gaurav Vishwakarma and Mr. Aditya Aggarwal, Advs.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Ripudaman Bhardwaj CGSC with Mr. Kushagra Kumar, Mr. Amit Kumar Rana Advs. for R-1/UOI
Mr. Vivek Gurnani- Panel Counsel for ED with Mr. Kanishk Maurya and Mr. S.K. Raqueeb, Advs.
Mr. Anupam Sharrma, Special counsel-ED with Ms. Harpreet Kalsi, Mr. Vashisht Rao, Mr. Vishesh Jain, Ms. Riya Sachdeva, Mr. Anant Prakash Mishra, Advs. for ED.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Petitions have been filed challenging the proceedings initiated by the Directorate of Enforcement [hereinafter referred to as 'the Directorate'], the Respondent herein. In particular, the Petitioners assail the validity of the issuance of the Provisional

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W.P.(C) 2819/2016 & connected matters

Page 2 of 24



2025:DHC:10498-DB



Attachment Order ('PAO') passed under Section 5(1) of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as 'PMLA'] along with the Original Complaint filed under Section 5(5) of the PMLA and Show Cause Notice ('SCN') issued under Section 8 of the PMLA thereof.

2. At the threshold, it is noted that the present batch of petitions arises out of a similar Enforcement Case Information Report [hereinafter referred to as 'ECIR'] registered by the Directorate, thereby challenging the proceedings initiated under the provisions of PMLA on substantially similar factual matrix with the Petitioners advancing largely analogous submissions. Therefore, in order to maintain clarity and continuity in the adjudication of the present batch, this Court deems it appropriate to treat W.P.(C) 2819/2016 as the lead matter and refer to the facts delineated therein for the sake of consistency.

BRIEF BACKGROUND:

3. Shorn of unnecessary detail, the present petition finds its genesis in a complaint filed by Shri Praveen Kumar, Deputy General Manager of Bank of Baroda alleging serious irregularities pertaining to foreign exchange transactions. The complaint delineates the involvement of accounts of various shell companies and overseas foreign exchange remittances, amounting to approximately Rs. 6000 Crores. A similar complaint was also found to be sent to Central Bureau of Investigation ('CBI'), culminating into the registration of a First Information Report ('FIR') bearing No.RCBD1/2015/E/0009



2025:DHC:10498-DB



dated 09.10.2015 against 59 companies and other unknown bank officials/private persons for commission of offence under Section 420 read with Section 120B of Indian Penal Code, 1860 [hereinafter referred to as 'IPC'] and under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 [hereinafter referred to as 'PCA'].

4. Consequently, on the basis of the aforesaid FIR registered by the CBI, the Directorate registered an ECIR bearing No.ECIR/DLZO/20/2015 dated 09.10.2015 under Section 3 of the PMLA in order to trace, identify and provisionally attach property that may constitute proceeds of crime.

5. During the course of investigation, it was revealed that the Petitioner, in active collusion with importers and exporters, had orchestrated the creation of shell companies in India under the names of various individuals who lacked genuine financial substance. Thereafter, he procured Import Export Code ('IEC') numbers using minimal documentation such as PAN cards and driving licences. These shell companies used to maintain bank accounts with the Bank of Baroda, through which substantial cash deposits were channelled. Parallely, the facilitators established and/or acquired corporate entities in Dubai and Hong Kong, staffed by their own personnel and opened corresponding foreign bank accounts. Simultaneously, the complicit exporters also established overseas entities in those very jurisdictions to receive remittances, thereby fabricating a sophisticated cross-border network to camouflage the flow of tainted funds.



2025:DHC:10498-DB



6. It further emerged that, the purported importers, acting through the facilitators, submitted falsified proforma invoices and mandatory declarations. The purported importers, acting through the facilitators, submitted falsified pro forma invoices and mandatory declarations, including Form A-1, fraudulently misrepresenting that the goods would be imported within a stipulated time, and undertaking to repatriate funds if no genuine import occurred. On the basis of these fabricated representations, and notwithstanding the lack of real trade, the bank wired substantial sums abroad to the companies controlled by the facilitator in Dubai and Hong Kong. Once the funds were received in those overseas accounts, they were further transferred either to companies under the control of the facilitators or to complicit exporters in India, who either over-invoiced exports or under-invoiced imports, thereby siphoning off monies under the guise of genuine international commerce.

7. Resultantly, based on the cumulative evidence, including RCBD1/2015/E/0009, ECIR/20/DLZP/2015, documents recovered and seized from the digital devices and emails and statements of the suspects and statements recorded under Section 50 of the PMLA, the Directorate on 10.02.2015 issued a PAO No.21/2015, provisionally attaching both moveable and immoveable properties of the concerned persons including the Petitioner, as being proceeds of crime arising out of illegal acts connected to the foreign exchange laundering scheme using shell companies. Thereafter, the Directorate filed an Original Complaint ('OC') being OC No.539/2016, before the Adjudicating Authority ('AA') under Section 5(5) of the PMLA

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Signing Date: 27.11.2025
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W.P.(C) 2819/2016 & connected matters

Page 5 of 24



seeking confirmation of the PAO. Subsequently, a SCN dated 12.01.2016 was also issued under Section 8(1) of the PMLA.

8. Aggrieved by the aforesaid actions of the Directorate, the Petitioner approached the Single Bench of this Court seeking quashing of the PAO No.21/2015, OC No.539/2016 and SCN dated 12.01.2016. However, the learned Single Judge *vide* Order dated 01.04.2016, referred the present Petitions before this Court for adjudication.

CONTENTIONS OF THE PARTIES:

9. This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book.

10. Learned counsel for the parties have filed their respective written submissions and have relied upon judgments thereof. The contentions of the parties are examined hereinafter.

11. Before turning to the submissions advanced by the learned counsel for the parties, this Court deems it appropriate to reproduce certain provisions of the PMLA, PCA and Companies Act, 2013 [hereinafter referred to as 'Act of 2013'], which has been relied upon by the parties during the course of their arguments. The relevant provisions of the Act are reproduced hereinbelow:

Prevention of Money Laundering Act, 2002

5. Attachment of property involved in money-laundering.—

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

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



(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in 1[first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.];

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

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

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



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

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

49. Appointment and powers of authorities and other officers.—*(1) The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act.*

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant Director.

(3) Subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under this Act.

Prevention of Corruption Act, 1988

4. Cases triable by special Judges.—*(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.*

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

[(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the trial of an offence shall be held, as far as practicable, on day-to-day basis and an endeavour shall be made to ensure that the said trial is concluded within a period of two years:

Provided that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so:

Provided further that the said period may be extended by such further period, for reasons to be recorded in writing but not exceeding six



months at a time; so, however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate.]

17. Persons authorised to investigate.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—

(a) *in the case of the Delhi Special Police Establishment, of an Inspector of Police;*

(b) *in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;*

(c) *elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:*

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in 1 [clause (b) of sub-section (1)] of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

The Companies Act, 2013

209. Search and seizure.—(1) *Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to the key managerial personnel or any director or auditor or company secretary in practice if the company has not appointed a company secretary, are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,—*

(a) *enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and*

(b) *seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.*

(2) *The Registrar or inspector shall return the books and papers seized under sub-section (1), as soon as may be, and in any case not later than one hundred and eightieth day after such seizure, to the company from whose custody or power such books or papers were seized:*



Provided that the books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again:

Provided further that the Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures shall apply, mutatis mutandis, to every search and seizure made under this section.

212. Investigation into affairs of Company by Serious Fraud Investigation Office.—(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government,

the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities



having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.

[435. Establishment of Special Courts.— (1) The Central Government may, for the purpose of providing speedy trial of [offences under this Act, except under section 452, by notification] establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of—

(a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and

(b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.]

436. Offences triable by Special Courts.—*(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

(a) [all offences specified under sub-section (1) of section 435] shall be triable only by the Special Court established or designated for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;

(b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;



(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) in relation to an accused person who has been forwarded to him under that section; and

(d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial.

447. Punishment for fraud.—Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, [involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower] shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

[Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to 3 [fifty lakh rupees] or with both.]

Explanation.—For the purposes of this section—

(i) “fraud”, in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.



12. Learned Counsel representing the Petitioner has made the following submissions:

12.1 It is the case of the Petitioner that the right of the CBI and the Directorate to investigate the present case stood interdicted by virtue of Section 212(2) of the Act of 2013, as the matter was handed over to the SFIO by the Central Government on 15.10.2015. Reliance in this regard has been placed on *Ashish Bhalla v. State & Anr*¹.

12.2 Further, relying on the aforesaid provision it has been contended that, the said provision creates a statutory bar, preventing any other agency from investigating offences arising under matters related to the Act of 2013. Reliance in this regard has been placed on *SFIO v. Rahul Modi*². Furthermore, reliance has been placed on Section 71 of the PMLA to argue that, despite the overriding effect of PMLA, the Act of 2013, being a subsequent act abrogates the provisions of the PMLA.

12.3 Applying the aforesaid to the facts of the present case, it has been submitted that no report under Section 173 of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'CrPC'] has been filed against the Petitioner. Accordingly, the Petitioner cannot be prosecuted under the provisions of PMLA, especially since Section 447 of the Act of 2013, only came to be added under the PMLA after three years of registration of FIR, i.e., on 29.03.2018.

¹ (2023) SCC OnLine Del 5818

² 2019 5 SCC 266



2025:DHC:10498-DB



12.4 It is the case of the Petitioner that a PAO under Section 5(1) of the PMLA, can only be issued after a report under Section 173 of the CrPC has been duly filed. Relying on the two provisos provided under Section 5(1) of the PMLA, it has been argued that the first proviso therein mandates a prior filing of Section 173 CrPC, whereas the second proviso acts merely as an emergency measure. In view of the aforesaid, the learned counsel for the Petitioner, contends that the impugned PAO issued by the Directorate is invalid, since the Petitioner has neither been charged in the report nor has he undergone any investigation. It is the case of the Petitioner that in the present case, the first proviso shall be applicable, and since the final report as prescribed under the said proviso is absent in the present case, the impugned PAO is not valid.

12.5 It has been argued that the impugned PAO issued against the Petitioner, lacks a proper 'reason to believe' and as such is invalid, since no finding to this effect has been recorded either in the PAO or the order passed by the AA, specifying on what basis the Designated/ Authorised Officer [hereinafter referred to as 'D/AO'] formed the belief that the property is involved in money laundering, and how non-attachment would frustrate the proceedings under the PMLA.

12.6 Lastly, reliance has also been placed on Order dated 31.01.2025 in *SLP(Crl.) Diary No. 59099/2024* captioned *Sanjay Aggarwal v. Directorate of Education* to submit that there is no order of cognizance on record till date in view of the Supreme Court Order.



13. *Per contra*, the learned counsel representing the Directorate, while controverting the submissions advanced by the Petitioner, has made the following submissions:

13.1 At the outset, it is the case of the Directorate that the present petition is rendered infructuous in view of the confirmation of the PAO by the AA *vide* its Order dated 29.08.2016. The learned counsel for the Directorate has also pressed the fact that the Petitioners have already availed the remedy of filing an appeal under Section 26 of the PMLA, against the order dated 29.08.2016. In view of the aforesaid, it has been argued that, since the PAO has been confirmed by the AA, and the order passed thereby is already under challenge, the present petition is liable to be dismissed. Reliance in this regard has been placed on *Jai Singh v. Union of India*³ and *Arunima Baruah v. Union of India*⁴.

13.2 In response to the submission advanced by the Petitioner regarding the transfer of investigation to SFIO by the Central Government, it has been contended that inclusion of Section 447 of the Act of 2013 under the PMLA was intentional, in order to bifurcate and delineate the powers vested on the authorities established under the aforementioned Acts. It has further been contended that a bare perusal of the explanation to Section 447 of the Act of 2013, would reveal that the said offence is conceptually and legally distinct from the offences under the PMLA, IPC and PCA alleged against the Petitioner.

³ (1977) 1 SCC 1

⁴ (2007) 6 SCC 120



13.3 Relying on Section 212 of the Act of 2013, it has been argued by the Directorate that the said provision merely deals with investigation into the affairs of the company, whereas in the present case, the scheduled offence comprising of Section 420 and 120-B of IPC and Section 13 of PCA, do not fall within the purview of SFIO under the Act of 2013. It is further argued that Section 212(2) of the Act of 2013 bars other agencies only from investigating offences under the Act of 2013 and not under any other law. This interpretation has further been supported by placing reliance on **SFIO v. Rahul Modi**⁵.

13.4 It has further been contended that the PCA, PMLA, Act of 2013 and IPC, each establish an independent and self-contained investigative regime. Under Section 17 of the PCA, only officers of a statutorily prescribed rank may investigate into the offences of corruption; under Sections 48 and 49 of the PMLA, only the designated authorities may conduct inquiries and record statements under Section 50; and under Section 4 of the CrPC, all offences under the IPC must be investigated, inquired into, and tried according to the procedure laid down in the Code (Chapter XII). In contrast, the Act of 2013 does not provide for investigation under CrPC-type procedures for IPC or PCA offences; its extra-statutory mechanisms are limited to powers under Sections 209, 212(7), and 436(2) of that Act.

13.5 With respect to the reliance placed by the Petitioner on the judgment of **Ashish Bhalla** (*Supra*), it has been contended that the said reliance is misplaced, since the case did not address offences

⁵ (2019) 5 SCC 266



2025:DHC:10498-DB



relating to PCA or PMLA. Moreover, the judgment has been challenged before the Supreme Court *vide SLP (Crl) 327/2024* titled ***Vishvendra Singh v. State of NCTD & Anr.***, wherein the Supreme Court, while dismissing the petition, has left open the relevant question of law.

13.6 Controverting the argument raised by the Petitioner, that the SFIO lacks power to investigate offences outside the Act of 2013, the Directorate has referred to Section 435 of the Act of 2013, which limits the Special Court to try only offences under that Act; while Section 436(2) allows the said Court to try other offences, it does not confer any power on SFIO to investigate or inquire the offences not covered under the Act of 2013. Similarly, reference was also made to Section 43(2) of the PMLA and Section 4(3) of the PCA to state that the said provisions merely enable the court to try additional offences; however, they do not vest any jurisdiction in the agencies to investigate the matter.

13.7 Learned Counsel for the Directorate, while controverting the argument raised by the Petitioner with respect to the absence of Section 173 of CrPC, has relied upon the judgment of the Bombay High Court in ***Radha Mohan Lakhotia v. Deputy Director***⁶, which was affirmed by the Supreme Court in ***Vijay Madanlal Choudhary v. Union of India***⁷. The Directorate contends that a PAO can validly be issued against any person who is in possession of any proceeds of crime, even if no final report has yet been filed, since there is a

⁶ 2010 SCC OnLine Bom 1116

⁷ (2022) SCC OnLine 929



2025:DHC:10498-DB



mandatory requirement that the person against whom the attachment proceedings have been initiated shall have been formally charged with commission of a scheduled offence.

13.8 Lastly, in response to the argument raised by the Petitioner regarding non-supply of ‘reasons to believe’, it has been argued by the learned counsel for the Directorate that the provisions under PMLA does not mandate furnishing a copy of those reasons at the stage of proceedings initiated under Section 5 of the PMLA. Further, it has been submitted that the reasons to believe recorded by the Investigating Office and accepted by the AA, already contain a detailed exposition of the ‘reasons to believe’, and those documents have already been provided to the petitioner which is also annexed with the present petition.

FINDINGS AND ANALYSIS:

14. This Court, having considered the submissions advanced by the learned counsel for the parties, is of the view that the contention of the Petitioner, that the transfer of investigation to the SFIO would bar parallel proceedings under the PMLA, is legally untenable. This Court is afraid that the said argument holds no ground since the express language, “*in respect of any offence under this Act*”, used in Section 212(2) the Act of 2013, reveals that the said provision applies only to offences covered under that Act. Moreover, a purposive and harmonious construction of the statutory regime confirms that the Act of 2013 is merely applicable to the offences relating to companies and does not extend to offences under other laws, including the PMLA.

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W.P.(C) 2819/2016 & connected matters

Page 18 of 24



While Section 212 is a self-contained code governing SFIO investigations into company affairs, its scheme does not preclude other agencies, in their own domain, from probing offences under separate laws.

15. Moreover, it is of equal importance to note that the PMLA operates as a standalone statute with its own independent investigative and prosecutorial machinery. A similar view has also been taken by the Supreme Court in *Vijay Madan Lal Chaudhary (Supra)*. In respect thereof, reliance is also placed on the usage of phrase “under any other law” in Section 212(17)(b) of the Act of 2013. This phrase recognises the statutory implication and intention implying that parallel proceedings/investigation under different statutory regimes is permissible under the Act of 2013. A similar view has also been taken by Punjab and Haryana High Court in *Vinod Kumar v. State of Haryana & Ors*⁸. The said provision merely acts as information sharing provision or mechanism that pre-supposes that multiple agencies may simultaneously investigate different aspects of the same factual matrix under different statutory regimes.

16. Importantly, if the practical application of the entire dispute is taken into account, it would become crystal clear that the Act of 2013 only deals with violations of corporate governance, norms, fraudulent conduct by the officers of the company and irregularities in the administration of the said company. However, the PMLA, penalises the process or activity connected with the proceeds of crime derived from scheduled offences, and under which, such tainted property

⁸ 2024:PHHC:059827



would be classified as proceeds of crime. The offences defined under both the aforementioned statutes are distinct and involve separate elements of proof while serving distinct legislative purposes.

17. With respect to the argument raised on behalf of the Petitioner that the PAO can only be issued subsequent to the filing of a chargesheet under Section 173 of CrPC, this Bench places reliance on its recent decision in **LPA 588 OF 2022** titled **Directorate of enforcement v. M/s Hi-tech Mechantile India Pvt. Ltd. & Ors. & Ors.** dated 17.10.2025. This Bench in the aforesaid judgment, at Paragraph Nos.58 and 59, has comprehensively examined the scope and exercise of power of attachment conferred on the authority under Section 5 of the PMLA. In substance, it was observed that while the first proviso to Section 5(1) of the PMLA constitutes a statutory pre-requisite for initiating an attachment, it is not to be construed that the compliance of the said proviso is a sole pre-requisite for issuance of a PAO, which if not complied with would render the attachment proceedings invalid or ineffective. In view of the aforesaid observation, the argument advanced by the learned counsel for the Petitioner falls and is devoid of merit.

18. With respect to the arguments advanced by the Petitioner regarding the absence of proper reason to believe, reliance is placed on **MISC. APPEAL (PMLA) 4/2021** captioned **Directorate of Enforcement through Deputy Director v. Poonam Malik** dated 14.11.2025, wherein this Court, while relying upon the recent decision



of Supreme Court in *Radhika Agarwal v. Union of India*⁹, elaborated the contours of the expression ‘reason to believe’. In substance, this Court observed that, ‘reason to believe’ is an objective, evidence-based satisfaction founded on tangible material that provides sufficient cause for the relevant authority to reach to a conclusion, and cannot rest on, or be equated with, mere suspicion.

19. Having regard to the aforesaid legal position, this Court now adverts to the material on record to see whether the authority under the PMLA, had sufficient ‘reason to believe’, before the issuance of the impugned PAO and SCN. A perusal of the order shows, that in concluding that the emergency attachment of the properties is necessary, the authority has relied upon the following documents:

- i. Copy of RC No. registered by the CBI under Section 420 read with Section 120B of the IPC and Section 13 of the PCA;
- ii. ECIR No. ECIR/20/DLZO/2015 dated 09.10.2015 registered in Directorate of Enforcement, New Delhi;
- iii. Documents recovered and seized from various premises and digital devices and emails recovered;
- iv. Statements of the suspects and witnesses, recorder under Section 50 of the PMLA and documents tendered by the said witnesses.

20. Moreover, a perusal of Section 50 statements recorded from other accused persons, as also attached under the PAO forming part of this Petition, discloses that, the Petitioner, between January 2015 to

⁹ 2025 SCC OnLine SC 449



July 2015, made advance remittances upto Rs.450 Crore. These remittances are not isolated; they are embedded within a broader network of transactions. The Petitioner is shown to have established a web of companies in the names of different individuals, ostensibly to channel forex abroad under the pretext of advance import payments. The shell companies alleged to have been set up by the Petitioner, having no genuine business substance, operated in collusion with both importers and exporters, whereafter, funds were disbursed overseas, routed through these facades, thereby camouflaging the true nature of the remittances. This corroborative testimony, coupled with documentary records and remittance trails, supports a prima facie link between the Petitioner's entities and the laundering of illicit funds under the guise of legitimate international trade.

21. Therefore, in light of the material placed before the AA and the reasoned discussion in the PAO, this Court is satisfied that the D/AO had ample and cogent material to justify and form a 'reason to believe' under Section 5(1) of the PMLA for the purpose of attachment. In our view, the formation of belief was not perfunctory or based on mere suspicion, but was founded on a rational nexus between the material collected and the inference drawn regarding the involvement of the Petitioner in the process of money-laundering.

22. As far as the contention of the Petitioner regarding the absence of pre-attachment hearing under PMLA is concerned, this Court is of the view that under Section 5 of the PMLA, the D/AO is not required to provide a separate pre-attachment hearing or notice of belief before passing a PAO. The Act contains comprehensive safeguards, including



2025:DHC:10498-DB



mandatory recording of reasons in writing and forwarding the same to AA in a sealed envelope, and subsequently, to the affected person through the issuance of show cause notice.

23. Additionally, in regard to the aforesaid, it is of utmost importance to note that the impugned PAO in the present case has already been affirmed by the AA *vide* its Order dated 29.08.2016, and the Petitioner has availed of his statutory remedy by filing an appeal under Section 26 of the PMLA before the Appellate Tribunal. Given these circumstances, and in light of the limited scope of judicial review available to this Court at this stage, it would not be appropriate for this Court to re-examine the merits of the PAO in full.

24. The PMLA is a self-contained statutory regime, with its own adjudicatory and appellate structure, and the existence of a viable statutory remedy would militate against premature interference through writ jurisdiction. This Court, in analogous cases, has held that when a complete appeal mechanism is built into a special statute, Constitutional Courts should ordinarily restrain from exercising their powers under Article 226 of the Constitution of India, 1950, unless there is some extraordinary or exceptional circumstance. Therefore, this Court being conscious about its restricted jurisdiction, deems it appropriate to not delve deeply into the validity of the PAO and its consequential proceedings, leaving those matters to be ventilated before the Appellate Tribunal.



2025:DHC:10498-DB

**CONCLUSION:**

25. Keeping in view the above position of law, as well as the facts and circumstances of the present case, this Court finds no merit in the present Petitions.

26. Accordingly, the present Petitions, along with the pending applications, are dismissed with a direction that the Petitioner may seek redressal before the Appellate Tribunal under the PMLA.

27. The foregoing discussion was only for the purpose of adjudication of *lis* raised in the present Petitions and the same shall not be treated as a final expression on the submissions of respective parties and shall also not affect the future adjudication emanating before any other forum in accordance with law.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 27, 2025

jai/hr