IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 625 OF 2021

Shri Anil Vasantrao Deshmukh,
Son of late Shri Vasantrao Deshmukh,
Aged: 71 years,
Occ: MLA/former Home Minister,
Residing at Dnyaneshwar Bungalow,
Malabar Hills, Mumbai-400006. … Applicant.

V/s.

1. Directorate of Enforcement,
   Through its Director,
   6th Floor, Lok Nayak Bhawan,
   Khan Street, New Delhi- 110003.

2. Assistant Director,
   Directorate of Enforcement,
   Mumbai Zone-I, 4th Floor,
   Kaiser-e-Hind Building,
   Ballard Estate, Mumbai- 400038.

3. State of Maharashtra
   Through its Secretary, Home Department,
   Madam Cama Road, Mumbai- 400032. … Respondents.

Mr. Vikram Choudhary, Senior Advocate with Mr. Ashok Mundargi, Senior Advocate,Mr.Inderpal B. Singh, Mr.Aniket Ujjwal Nikam and Harpreet Singh J. Purewal for the Applicant.

Mr.Tushar Mehta, Solicitor General with Mr.Aman Lekhi, Addl. Solicitor General, Mr.Anil C. Singh, Addl. Solicitor General, Mr.Zoheb Hossian, Special Counsel , Mr.Kanu Agarwal, Mr.Vivek Gumani, Mr.Aditya Thakkar, Mr.Ujjwal Sinha, Mr.Aniket Seth, Mr.Ritwiz Rishabh, Kr.Kunwar Aditya Singh and D.P.Singh i/b. Shriram Shirsat for Respondent Nos.1 and 2.

Mr.J.P.Yagnik, APP for Respondent No.3- State.

CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.
(Through Video Conferencing)

DATE : 29 October 2021.

JUDGMENT : (Per Nitin Jamdar, J.)

The Applicant has filed this criminal application for various reliefs, primarily pertaining to the summons issued by the Respondent-Directorate of Enforcement under section 50 of the Prevention of Money Laundering Act, 2002.

2. The Applicant, at the relevant time, was the Home Minister in the State of Maharashtra. The then Commissioner of Police, Mr.Param Bir Singh, wrote a letter to the Chief Minister of Maharashtra on 20 March 2021 alleging that Applicant abused his position and powers to seek illegal monetary benefits. Writ Petition No.1541of 2021 was filed in this Court by one Dr. Jayashree Patil

seeking a direction for investigation against the Applicant. Mr. Param Bir Singh filed a Public Interest Litigation No.6of 2021 on 24 March 2021, seeking a direction for investigation by the Central Bureau of Investigation (CBI). The Division Bench of this Court, by judgment and order dated 5 April 2021, disposed of these petitions and directed a preliminary enquiry into the complaint and allegations. The enquiry was directed to be concluded within fifteen days with liberty to the CBI to decide on further action to be taken. The Applicant challenged the order passed by the Division Bench in the Supreme Court by filing Special Leave Petition (Criminal) Diary No.9414/2021. The Supreme Court dismissed the petition by order dated 8 April 2021.

3. The preliminary enquiry was conducted. Upon this preliminary enquiry, FIR No.RC2232021A0003 was filed by the CBI on 21 April 2021 under section 7 of the Prevention of Corruption Act, 1988 and under section 120-B of the Indian Penal Code against the Applicant and other unknown persons. The Applicant filed a Criminal Writ Petition No.1904/2021 for quashing the FIR registered by the CBI on 21 April 2021. The Division Bench of this Court dismissed the writ petition by order dated 22 July 2021. The Applicant filed a special leave petition challenging the order dated 22 July 2021 passed by the Division Bench of this Court. The Supreme Court rejected the petition by order dated 18 August 2021.

4. Thereafter, the Respondent no. 1 and 2 Directorate of Enforcement (Directorate)registered ECIR/MBZO-I/66/2021 against the Applicant under section 3 read with section 4 of the Prevention of Money Laundering Act, 2002 (PMLA). A search was carried out at the residence of the Applicant and his son on 25 June 2021. Respondent No.2 issued a summons to the Applicant on 25 June 2021, requiring him to remain present on the date assigned. The Applicant sent his authorized representative with a written reply on 26 June 2021. On 28 June 2021, the Directorate issued the second summons to the Applicant to appear in person on 29 June 2021. The Applicant sent a written reply through his authorized representative. The third summons was sent to the Applicant on 2 July 2021 to remain present, and the Applicant sent his authorized representative with a written reply. On 12 July 2021, the Directorate issued a summons to the Applicant's wife and sought certain documents. The wife of the Applicant sent a reply through her authorized representative on 14 July 2021. To the other summons received by the Applicant's wife on 14 July 2021, she sent a reply annexing certain documents on 16 July 2021. The Directorate sent a summons to the son of the Applicant- Salil, on 25 July 2021, requiring him to remain present on 26 July 2021. The son of the Applicant sent a reply through email and asked his authorized representative to attend. The Directorate sent the fourth summons to the Applicant on 30 July 2021, to which the Applicant gave a reply

through his authorized representative. The Directorate of Enforcement issued an order of provisional attachment on 16 July 2021.

5. Meanwhile, Writ Petition (Cri.) No.282/2021 was filed by the Applicant along with his son in the Supreme Court. On 16 August 2021, the Supreme Court directed that this writ petition be listed along with matters raising identical legal issues. As regards interim relief, Supreme Court observed that it would be open to the Petitioners (Applicant) to take recourse to appropriate remedies available under the Code of Criminal Procedure, 1973, including by way of quashing petition in the High Court, if so advised. The challenge in the petition pending in the Supreme court was confined to the validity of the provisions in question. The Supreme Court observed that the order was passed in light of the observation made in the case *Devendra Dwivedi v/s. Union of India*[1]. The Directorate sent the fifth summons on 16 August 2021 to the Applicant, asking him to remain present, to which the authorized representative of the Applicant appeared and requested for time stating that the Applicant is taking recourse to the lawful remedies as per the liberty granted by the Supreme Court.

6. In this factual backdrop, the Applicant has approached this Court with this application with various reliefs. The reliefs sought are

1 2021 SCC OnLine 221

as follows:

(a) Set aside/quash the Summons dated 25.06.2021, 28.06.2921, 30.07.2021 and 16.08.2021 issued to the Applicant by Respondent No.2 in purported exercise of powers under Section 50 of the PMLA arising out of ECIR/MBZO-I/66/2021 dated 11.05.2021;

(b) Restrain Respondent No.1 and Respondent No.2 from taking any penal/coercive action against the Applicant in purported exercise of powers under Section 19 PMLA by the Respondent No.2;

(c) Direct the Respondent No.2 to comply with the mandate of Section 50(2) & 50(3) of PMLA in its true spirit and perspective and permit the Applicant to appear through an authorized representative, permit the submission of documents and record the Applicant's statement through any electronic mode and not to compel the presence of the Applicant in person;

(d) Direct the Respondent No.2 to act in a transparent and objective manner and restrain him from misusing the power vested with him under Section 50(3) of PMLA as the words "All the persons so summons shall be bound to attend in person or through authorized agents, as such officer may direct" occurring in Section 50(3) of PMLA cannot depend upon mere whims, fancies, emotions, prejudices of the officer concerned and exercise of such choice/discretion must be based upon some objective and rational yardstick that must be borne out from the record;

(e) Direct Respondent No.2 to act strictly in accordance and compliance with the directions issued by the Hon'ble Supreme Court of India in its Order dated 07.05.2021 in Suo Motu Writ Petition (C) No.1/2020, In Re : Contagion of COVID-19 Virus In Prisons inter alia relating to the adherence to the law laid done in 'Arnesh Kumar v. State of Bihar (2014) 8 SCC 273 ;

(f) Direct the Respondent No.2 to act strictly in terms of

Section 41A of the Cr.P.C., as accorded imprimatur and interpreted by the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar (2014) 8 SCC 273, and not to arrest the Applicant as the sentence contemplated under Section 3 of PMLA in the Petitioner's case may extend to 7 years;

(g) Direct the Respondent No.2 to act strictly in consonance with the directives laid down in 'Joginder Kumar v. State of U.P. (1994) 4 SCC 260' which has been accorded imprimatur by a Constitution Bench of the Supreme Court in 'Lalita Kumari v. Government of U.P. and Ors. (2012) 4 SCC 1' with respect to arbitrary arrests;

(h) Issue appropriate writ(s), orders(s) or directions(s) to Respondent No.2 in furtherance of the observations; order(s) and direction(s) issued by the Hon'ble Supreme Court inter alia, vide Order dated 02.12.2020 passed in SLP (Cri.) No. 3543 of 2020 titled as 'Paramvir Singh Saini vs. Baljit Singh & Ors.' to the effect that all proceedings carried out by Respondent No.1 & 2 including those in relation to the recording of statements etc. in terms of the Notice(s)/summons(s) issued under Section 50 of PMLA in ECIR MBZO-1/66/2021 to be audio/videographed in the presence of Applicant's lawyer at a visible distance (beyond audible range) inter-alia by way of installation of appropriate CCTV cameras;

(i) In the peculiar facts and circumstances of the case, entrust the investigations into ECIR/MBZO-I/66/2021 dated 11.05.2021 to a Special Investigating Team (SIT) comprising of ED officers outside the Mumbai Zonal Office and monitor/supervise the same in terms of the ratio of law laid down by the Hon'ble Supreme Court in "Babu Bhai Jamna Das Patel v. State of Gujarat (2009) 9 SCC 610.

Respondent Nos.1 and 2 have filed a preliminary reply.

7. We have heard Mr. Vikram Choudhary, learned Senior

Advocate with Mr.Ashok Mundargi, learned Senior Advocate for the Applicant; and Mr. Tushar Mehta, learned Solicitor General with Mr.Aman Lekhi and Mr.Anil C. Singh, learned Additional Solicitors General Respondent Nos.1 and 2. The matter was heard at length on video conferencing at the request of the Respondent- Directorate, even though the Court is now hearing the matters physically.

8. Since the Applicant through Writ Petition (Cri.) No.282/2021 has already approached the Supreme Court, and the petition is pending, the question that arises is regarding the scope of proceedings before us. For that purpose, the prayers made in the prayer made in the Writ Petition (Cri.) No.282/2021 pending in the Supreme Court will have to be noted, and they are as follows:

> *(a) Issue appropriate writ(s), order(s) or direction(s) and hold that the reading of twin limitations for grant of bail into Section 45(1) of PMLA vide Section 208(e)(i) of Finance Act, 2018 (Act 13 of 2018) w.e.f. 19.4.2018 by the Respondents without any specific re-incorporation or resurrection thereof by any legislative amendment in Section 45(1) of PMLA, despite the erstwhile twin conditions contained in Clause (ii) of Section 45(1) having already been wiped out from the statute book since its inception by virtue of the judgment dated 23.11.2017 rendered by this Hon'ble Court in Nikesh Tarachand Shah v/s Union of India, (2018) 11 SCC 1, is ultra vires and unconstitutional being violative Articles 14 and 21 of the Constitution of India;*
>
> *(b) Issue appropriate Writ, Order or Direction(s) holding the investigations into the non-cognizable Offence(s) under PMLA without seeking order of the Magistrate as per Section 155 Cr.P.C. to be null and void ab initio; and in the alternative*

thereto in the event that the offences under the PMLA are construed to be 'cognizable', it may be held that investigations without recording the FIR and without following the procedure prescribed under Sections 154, 156, 157, 172 Cr.P.C. etc. are illegal non-est, null and void ab initio; without jurisdiction, unconstitutional, arbitrary, violative of Article 14 and 21 of the Constitution of India;

(c) Issue appropriate writ(s), order(s) or direction(s) to and hold that the insertion of Explanation after sub-section (2) of Section 45 of PMLA vide Section 200 of the Finance Act, 2019 (2 of 2019) (23 of 2019) w.e.f. 1.8.2019 which now contemplates that the offences under the Act are always deemed to be 'cognizable' is illegal, arbitrary and unconstitutional.

(d) Issue appropriate writ(s), order(s) or direction(s) and hold that the insertion of "Explanation (i)" to Section 3 of Prevention Money Laundering Act, 2002, vide Section 193 of Finance Act (No.2) 2019 w.e.f. 01.08.2019, which requires reading the disjunctive 'or' instead of conjunctive 'and' in Section 3 before the words "projecting or claiming it as untainted property, renders Section 3 to be manifestly arbitrary, excessive, unreasonable, overbroad, and unconstitutional, by inter-alia altering the basis, pre-requisites & the very ambit as well as the scope of the offence contemplated under Section 3, contrary to the interpretation laid to rest by this Hon'ble Court in Nikesh Tarachand Shah v/s Union of India, (2018) 11 SCC 1;

(e) Issue appropriate writ(s), order(s) or direction(s) to and hold that the insertion of "Explanation (ii)" to Section 3 of Prevention of Money Laundering Act, 2002, vide Section 193 of Finance Act (No.2) 2019 w.e.f. 01.08.2019 is absolutely vague, unconstitutional, arbitrary, manifestly illegal, capable of multiple interpretations & thus, ultra vires & violative of Articles 14, 19, 20(1) & 21 of the Constitution;

(f) Issue appropriate writ(s), order(s) or direction(s) to and hold that the insertion of the 'Explanation (i)' after Clause (d)

in sub-section (1) of Section 44 of PMLA vide Section 199 of Finance Act No.2 of 2019 (23 of 2019) w.ef. 1.8.2019 is ex-facie unconstitutional, arbitrary, illegal, violative & ultra vires of Article 14, 19 and 21 of the Constitution as it is contrary to the interpretation accorded by this Hon'ble Court to the ambit, sweep and scope of Section 44 of PMLA in Nikesh Tarachand Shah vs. Union of India (2018) 11 SCC 17;

(g) Issue appropriate Writ, Order or Direction(s) to quash the investigations under PMLA conducted by the Respondent No.2 Enforcement Directorate in ECIR/MBZO-I/66/2021 summon Annexure P-8, P-9, P13 and P14 and all consequential proceedings arising therefrom being violative of the 'procedure established by law';

(h) Issue appropriate writ(s), order(s) or direction(s) to quash the summons Annexure P-8, P-9, P13 and P14 issued to Petitioners requiring their personal appearance in the office of Respondent 2;

(i) Issue appropriate writ(s), order(s) or direction(s) to quash any penal or coercive action against the petitioners by Respondent No. 2 in ECIR/MBZO-I/66/2021 Annexure P-8, P-9, P13 and P14;

(j) Issue appropriate writ(s), order(s) or direction(s) to Respondent No.2 in furtherance of the observations; order(s) and direction(s) issued by this Hon'ble Court inter alia, vide Order dated 02.12.2020 passed in SLP (Cri.) No.3543 of 2020 titled as Paramvir Singh Saini vs. Baljit Singh & Ors as well as directions in Vijay Sajnani Versus Union of India 2012 SCC OnLine 1094 & Birendra Kumar Pandey vs. Union of India & Ors. W.P.(Cri.) 28 of 2012 Order dated 16.04.2012 to the effect that in compliance with the letter & spirit of the aforementioned directions, all proceedings carried out by Respondent No.2 including those in relation to the recording of statements etc. in terms of the Notice(s)/ summon(s) issued under Section 50 of PMLA in ECIR MBZO-1/66/2021 to be audio/videographed in the presence of Petitioners' lawyer at a visible distance inter-alia by way of installation of appropriate

CCTV cameras;

It is apparent from reading of these two sets of prayers that there is an overlap between the prayers in the present Application and Writ Petition (Cri.) No.282/2021 pending in the Supreme Court.

9. Learned Counsel informs us that a group of a large number of matters is being heard by the Supreme court where various legal questions concerning the PMLA, including the applicability of provisions of Code of Criminal Procedure (CrPC), are being argued. The Counsel have also placed on record the questions of law circulated by the learned Solicitor General in this group of matters and questions of law circulated by the counsel for the Applicant in the Supreme Court. Various questions of law regarding the Prevention on Money Laundering Act are under consideration before the Supreme Court in the group of matters, including Criminal Writ Petition No.282/2021. The questions of law circulated before the Supreme Court by the learned Solicitor General relevant for the present case are- as to whether the offence under the PMLA is cognizable or non-cognizable, particularly in view of the Explanation inserted in 2019; whether the procedure contemplated under all provisions of Chapter XII of the Code of Criminal Procedure, 1973 is required to be followed while commencing and continuing investigation under the PMLA; whether the reliance on the statements recorded by the officers of the Enforcement Directorate

during the investigation in judicial proceedings violate Article 20(3) of the Constitution and are inadmissible in light of section 25 of the Evidence Act; Whether a writ court can grant blanket 'No Coercive Steps' order without any factual foundation being pleaded/ being examined, merely because constitutional validity of certain provisions has been challenged. The questions that the Applicant has circulated as arising for consideration of the Supreme Court in Criminal Writ Petition No.282/2021 as follows:- whether the offence under the PMLA is non-cognizable; whether the procedure contemplated under Chapter XII of Cr. P.C is mandatory to be followed while commencing and continuing investigations under the PMLA; whether grounds of arrest under section 19 of the PMLA are mandatory to be framed/ communicated in writing to the arrestee. These, in brief, are the questions for consideration of the Supreme Court in the group of matters, including the Criminal Writ Petition No.282/2021.

10. The learned Senior Advocate for the Petitioner and the learned Additional Solicitor General addressed us on the order passed by the Supreme Court on 16 August 2021. The order passed in the Writ Petition (Cri.) No. 282 of 2021filed by the Applicant reads thus:

> *" The Writ Petition be heard along with connected matters.*
>
> *As regards interim relief, it will be open to the*

> *Petitioners to take recourse to appropriate remedies available (under the Criminal Procedure Code including by way of quashing petition, if so advised. The challenge in this petition will be confined to the validity of the provisions in question.*
>
> *We are inclined to pass this order in light of the observation made in Devendra Dwivedi v. Union of India and Ors. reported in 2021 SCC Online SC 221."*

According to the Applicant, as per the liberty granted, both the prayers, for interim relief and quashing, are permitted to be made before the High Court. Applicant contended as follows. The High Court has ample powers to consider the relief prayed for by the Applicant and the order passed by the Supreme Court on 16 August 2021 in Writ Petition (Cri.) No. 282 of 2021 has kept the remedies of the Applicant under the Code of Criminal Procedure by way of quashing Petition and interim relief open, and the only aspect which will now be considered by the Supreme Court is the challenge to the validity of the provisions. Even if some of the prayers made in the petition pending in the Supreme Court overlap with the present application, in view of the specific liberty, the relief prayed for can be considered. The reference to the observations made in the decision in the case of *Devendra Dwivedi v/s. Union of India*[2] is significant and therefore, this Court can decide on the positions of law as well. In the case of *Devendra Dwivedi* , the Supreme Court had observed while relegating the parties to the High Court that it will benefit from the view of the High Court in respect of the matters that are to be

2 2021 SCC OnLine 221

considered by the Supreme Court. According to the learned Additional Solicitor General, the scope of the proceeding before us is narrow, and there is no mandate to consider the application filed by the Applicant, and the words used by the Supreme Court "if so advised" and the reference to the remedies under Cr.P.C. are meaningful.

11. We have considered the submissions and the record. The order passed by the Supreme court on 16 August 2021 in Writ Petition (Cri.) No. 282 of 2021 refers only to the provisions of Cr.P.C. The learned ASG is right in contending that the reference to remedies under Cr.P.C. is significant, and reference to Article 226 of the Constitution of India is consciously omitted as the issues of law referred to above are under consideration of the Supreme Court. In the case of *Devendra Dwivedi,* the Supreme Court had disposed of the petitions under Article 32 and left it open to the petitioner therein to pursue the remedies available in law by approaching the High Court, unlike in the present case, where the petition is pending consideration in the Supreme Court. Since the Supreme Court had disposed of the case pending before it in the case *Devendra Dwivedi,* the Supreme Court, in that context, made observations in paragraph-8 that the Supreme Court will have the benefit of the considered view of the jurisdictional High Court. In paragraph-10 of the decision, the Supreme Court made a distinction between Article 226 of the Constitution of India and section 482 of Cr.P.C. in

respect of grievance regarding the conduct of the investigation. Therefore, the Applicant's grievance will have to be considered in the light of the remedies under Cr.P.C. and cannot be considered under Article 226 of the Constitution of India. Therefore, it is not proper for us to decide and declare on the questions of law pending before the Apex Court in the Applicants petition.

12. The scope of the matter before us is, thus, restricted to the quashing of summons and protection order in the facts of the case and not for deciding the questions of law referred to earlier, which are pending before the Supreme Court.

13. The outcome of the discussion on the prayer to quash the summons issued to the Applicant by Respondent No.2 under Section 50 of the PMLA and on the prayer to restrain Respondent No.1 and Respondent No.2 from taking any penal/coercive action against the Applicant, will have a bearing on the other prayers and is taken up first.

14. The genesis of this Application is the summonses issued under section 50 of the PMLA. Before we consider the Applicant's case on facts, the legal position as to the stage at which the Applicant has approached this Court and the parameters of interference by the High Court at this stage and statutory scheme of the statute in question, the PMLA, will have to be referred to.

15. When the court is called upon the pass orders regarding proceedings under an enactment, it is essential to keep in mind the object and purpose of such legislation. The legislative history and the intent of the Prevention of Money-Laundering Act, 2002 is significant. Large scale money laundering affects the economic interest of the country. Menace of money laundering has international ramifications. The Political Declaration and Global Programme of Action, annexed to the resolutions adopted by the General Assembly of the United Nations on 23 February 1990 and the Political Declaration adopted by the Special Session of the United Nations General Assembly in June 1998 called upon the Member States to adopt national money-laundering legislation and programme. The PMLA was enacted to prevent money laundering and to provide for confiscation of property derived from money laundering. Money-laundering, as defined under Section 2(p) read with section 3, takes place when whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime, including its concealment, possession, acquisition or use and projects or claims it as untainted property. Such a person is guilty of the offence of money laundering. A person is also guilty of money-laundering if such person is found to have directly or indirectly attempting to indulge or knowingly assisting knowingly is a party or is actually involved in concealment or possession

acquisition, use, and projecting it as untainted property or claiming as untainted property. Special machinery is set up to investigate the offence of money laundering. Authorities are constituted and their powers are prescribed under chapter VII of the PMLA. The authorities are: the Director or Additional Director or Joint Director, Deputy Director; Assistant Director; and such other class of officers as may be appointed. The Act lays down elaborate methodology. Section 50, which is the relevant section, lays down the powers of authorities regarding summons, production of documents and to give evidence. The relevant portion of the section reads thus:

> *"50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—*
>
> *(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:— (a) discovery and inspection;*
>
> *(b) enforcing the attendance of any person, including any officer of a 1[reporting entity] and examining him on oath;*
>
> *(c) compelling the production of records;*
>
> *(d) receiving evidence on affidavits;*
>
> *(e) issuing commissions for examination of witnesses and documents; and*
>
> *(f) any other matter which may be prescribed.*
>
> *(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.*
>
> *(3) All the persons so summoned shall be bound to attend*

in person or through authorized agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) ….”

Thus under section 50, the authorities can enforce the attendance of any person compelling the production of records, for receiving evidence on affidavits, for examination of witnesses and documents etc. The authorities can summon any person to give evidence or to produce any records during the course of any investigation and to attend in person or through authorized agents, as such officer may direct. Section 50(3) also states that such person shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents as may be required. The impugned summons are issued under this provision.

16. Now, we will consider the stage at which the Applicant is before us. Section 2(na) defines ‘Investigation’ as including all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under the Act to collect evidence. The reference is to all Proceedings. It is quite clear that the search carried out under section 17 of the PLMA and impugned summons issued to the Applicant is "investigation" as defined under the PMLA. Thus, by the present application, the Applicant calls upon this court to interdict or interfere with the

investigation under the PMLA. It is therefore imperative to prefix the discussion on the facts and the reliefs with the law on the scope of exercise of powers by the High Court under section 482 of Cr.P.C. in the matters of investigation.

17. The scope of exercise of powers by the High Court under section 482 of Cr.P.C. and under Article 226 of the Constitution of India in the matters of investigation has been dealt with by the Supreme Court various decisions. In the case of *Neeharika Infrastructure Pvt.Ltd. v. State of Maharashtra*[3] where the Bench of three learned Judges of the Supreme Court took a review of the earlier law on the subject. This decision provides a guidance. The decision of the Supreme Court in the case of *P. Chidambaram v. Directorate of Enforcement*[4] and in the case of State of Orissa v. Suraj Kumar Sahu[5], also need to be noted. Our respectful summary of the general propositions laid down by the Supreme Court on the subject is as follows: While it is acknowledged that the inherent jurisdiction of the High Court can be exercised to quash the criminal proceedings in a given case to prevent abuse of process of law or to secure the ends of justice, various cautions are sounded in the exercise of this jurisdiction. There is a statutory right of the police to investigate the cognizable crime without requiring any authority from the judicial authority. There is a demarcated boundary between crime detection and crime punishment. The investigation of offence

3 2021 SCC OnLine SC 315
4 (2019) 9 SCC 24
5 (2005) 13 SCC 540

is a field reserved for the executive, and it is the executive who is charged with a duty to keep vigilance over law and order situations, and is duty-bound to investigate the offences. Ordinarily, the courts are barred from usurping the jurisdiction of the police since the two organs of the State operate in two specific spheres of activities, and one ought not to tread over the other sphere. The functions of the judiciary and the police are complementary, not overlapping. The courts would not interfere with the investigation or during the investigation except in exceptional cases where non-inference will result in a miscarriage of justice. Unless a gross abuse of power is made out against those who are in charge of the investigation, the court should not generally interfere at the early stages of the investigation. The power to quash criminal proceedings and investigation is exercised very sparingly with circumspection and in the rarest of rare cases. Criminal proceedings ought not to be scuttled at the initial stage. Even to proceed on the ground of malice or abuse of powers, the High Court must be convinced that there is a clear case of abuse of power. It is not the function of the court to monitor the investigation as long as the investigation does not violate any provision of law, and it must be left to the investigating authority to decide the course of the investigation. The court cannot interfere at every stage of investigation and interrogation as it would affect the normal course of the investigation. The investigating agency must be permitted to proceed in its own lawful methodology and the procedure. The High Court should not stifle legitimate prosecution,

especially when entire facts are incomplete and hazy and also when the evidence has not been collected and produced. Thus save in exceptional cases where non-interference would result in a miscarriage of justice, the court and the judicial process should not interfere at the investigation stage of offences. With this position of law in mind, we now proceed to ascertain whether Applicant has made out any extraordinary case.

18. The Applicant's challenge before us to the summons issued under section 50 of the PMLA is primarily founded on the grounds of abuse of power and mala fides of the Respondent-Directorate.

19. In the Application, the Applicant has referred to the phrases both the malice in law and malice in fact. The ground of mala fides on the part of the statutory authority, if it is to be sustained as a legal ground, it must pass the test of legal proof. The Supreme Court in the case of *Ratnagiri Gas & Power (P) Ltd. v. RDS Projects Ltd.*[6] has observed that the law casts a heavy burden on the person alleging mala fides to prove it based on facts that are admitted or satisfactorily established and from which logical inference follows. The allegation of mala fides but must find a basis in the pleadings on oath. In the Application, none of the officers have been joined as a party respondent to substantiate the allegation of any malice in fact

6 (2013) 1 SCC 524

against them. In paragraph-6 of the Application, after stating the Applicant's credentials, it is stated that he became the target of several vested interests in the course of Applicant's political career. It is stated that a series of events at the hands of such vested interest has led to this mala fide investigation. However, which are those vested interests who were working against the Applicant are not stated. Then in the pleading, the chronology of the summonses and responses by the Applicant has been narrated. In the grounds taken in the Application, it is stated that summonses were issued under malice, how the summonses have been issued, and the timings of the summonses. In ground (g) of the Application, it is stated that the proceedings are actuated with malice in law and also in fact, the action of Respondent No.3 is out of political vendetta. These are the only pleadings and grounds. Both in the oral arguments and the pleadings and in the written notes, the attempt of the Applicant to establish the case of malice in law and fact based on the manner of issuance of summonses and their timings.

20. One of the contentions, we deal with at the outset is not providing the ECIR to the Applicant. This contention was on two facets. First, the copy of ECIR being akin to FIR ought to have been supplied as it is a right of the Applicant to receive the ECIR. The second contention is as an incidence of malafides as the ECIR of 11 May 2021 was made available only on 9 August 2021 by appending to the proposed attachment order under section 5 of the PMLA. It

was contended that ECIR has been given even at the stage of remand in some cases; and in the Applicant's case, it is deliberately withheld. Learned Senior Advocate for the Applicant clarified during the submissions that since the issue of applicability of Chapter-XII of Cr.P.C. to the PMLA is pending before the Supreme Court, the question of ECIR be equated with FIR will be decided in the Applicant's writ petition pending in the Supreme Court, and the aspect of ECIR should be considered here as a ground of legal malice.

21. The Division Bench of this Court in the judgment and order dated 29 July 2015 in the case of *Charu Kishore Mehta v. State of Maharashtra*[7] has held that ECIR is an internal document of the Enforcement Directorate, and unlike an FIR, it is not a public document, and at the investigation stage, the copy of the same cannot be furnished as a right. Second, now the copy of ECIR is available with the Applicant. On the facts of this case, the learned ASG pointed out that a search was carried out of the Applicant's premises under section 17 of the PMLA on 25 June 2021. After the search was carried out, a summons was issued. The Applicant was fully aware that the search was carried out under Section 17. Summons issued to the Applicant made it clear to the Applicant that he was called in respect of that material. It is contended that ECIR is only a document at the inception, after that, there has been a search in the Applicant's premises, two persons have been arrested whose statements have been recorded, and the Applicant was informed at

7 WP No.2961/2015 decided on 29 July 2015

the time of issuance of the third summons. We find merit in the contention of the learned ASG that the case had travelled much further after the filing of ECIR, and the non-supply of ECIR cannot be considered as a legal malice as a stand-alone ground. Our further analysis of facts will show that it can neither be considered conjointly with other events.

22. The second contention of the Applicant, before we come to the sequence of summonses, is based on Article 20(3) of the Constitution of India. The Applicant sought to argue that the Applicant is mentioned as a "suspect", therefore, the protection of Article 20(3) of the Constitution of India applies and Section 50(3) of PMLA, which mandates any person to state the truth, offends the guarantee under Article 20(3) against self-incrimination. The learned ASG, on the other hand, contended that the Applicant is at the most a suspect at the stage, and there is no question of application of Article 20(3). Learned ASG placed reliance on the decision of the Supreme Court in *Raj Narayan Bansilal v. Maneck Phiroz Mistry*[8]. In this case, the Constitution Bench was considering the case of a managing director of a limited company. The Registrar of Companies had written to the appellant company that he had received material that the company's business was carried out in fraud, and he called upon the company to furnish information. The government authorities appointed an inspector to investigate the

8 (1961) 1 SCR 417

affairs of the company. The appellant company filed a writ petition challenging the direction as regards the proposed investigation. It was also argued that the provision of the amended Companies Act, 1956 was offending the protection given under Article 20(3). The Constitution Bench negating the contention based on Article 20(3), observed that though it is true that as a result of the investigation, it may be discovered that the affairs of the company not only disclose irregularity but commission of the offence, the prosecution will not retrospectively change the complexion or character of the proceeding.

23. According to us, this aspect need not detain us. The legal questions as regards section 50(3) of the PMLA offending constitutional guarantee under Article 20(3) is being considered by the Apex Court in the Applicant's petition, and the stage of Applicant's arrest under section 19 has not yet reached. We have to keep in mind the stage at which the Applicant has approached before us. The stage at which the Applicant has approached before us is only under section 50 of the PMLA. This facet is relevant for other prayers of the Applicant as well.

24. Now, we come to the main contention of the Applicant. On law, it was contended by the Applicant that section 50(2) of the PMLA gives discretion to the officer to call the summoned person to appear through representative or in person. It was argued that this discretion must not be abused, and reliance was placed on the

decision in the case of *Barium Chemicals Ltd. v. Sh.A.J.Rana*[9]. It was contended that calling a person under section 50 of the PMLA is serious and section 50 emphasizes the words "considers it necessary". We have considered the submissions based on the decision in *Barium Chemicals*. The Constitution Bench has analyzed the phrase “considers it necessary" and held that these words postulate that the authority has thought over the matter deliberately and with care, and it has been found necessary as a result of such thinking to pass the order. However, as pointed out by the learned ASG, the Constitution Bench has further observed that if there has been consideration of the matter regarding the necessity to obtain and examine all the documents and an order is passed thereafter, the Court would stay its hand in the matter and would not substitute its own opinion for that of the authority concerned. The aspect whether authorities of the Directorate have considered the relevant factors, therefore, will have to be considered along with the argument of factual malice, the chronology of events and how the Applicant and the Respondent-Directorate have acted.

25. The Applicant has contended as follows: The manner in which summonses have been issued, the case of legal and factual malice on the part of Respondent- Directorate is explicit. Both in the oral arguments and the pleadings and in the written notes, the case for mala fide, malice in law and fact is centred around the

9 (1972) 1 SCC 240

issuance of summonses and their timings. In the facts of the case, the malice in law and the abuse of the procedure are evident once the Respondent- Directorate's conduct is seen in totality. The Applicant submitted that the manner in which the entire case has unfolded and the facts therein looked at cumulatively will demonstrate the legal and factual malice. The narration of events by the Applicant in support of the contention is as follows:-

a) The first summons, which was issued on 25 June 2021 under Section 50 of the PMLA, called upon the Applicant to appear in person or through an authorized representative. The summons called upon the Applicant for the documents relevant to the case in ECIR pertaining to the Applicant. The Applicant duly complied with the summons by appearing through his authorized representative. With a reply, the Applicant asked for a copy of the ECIR and the list of documents. On the same date, the Personal Secretary of the Applicant Mr. Palande and Personal Assistant, Mr. Kundan Shah, were arrested.

b) Immediately thereafter, on 28 June 2021, again, a summons was issued by Respondent No.2. This time the Applicant was asked to appear in person on 29 June 2021 in connection with the evidence collected and statements recorded during the investigation in respect of the concerned ECIR. This summons was issued without giving a copy of the ECIR to the Applicant. On 29 June 2021, the Applicant co-operated through the authorized representative and again asked for the documents and ECIR. The

Applicant also requested for recording his statement through Video Conference.

c) The third summons was received by the Applicant on 2 July 2021. This summons directed the Applicant to appear on 5 July 2021. There was no other reference to the documents and schedule. The letter annexed to the summons stated that ECIR being an internal document, cannot be shared with the Applicant. The Applicant replied to this summons on 5 July 2021, stating that the Applicant was committed to rendering co-operation; however, the manner in which the investigation was being conducted was giving rise to an apprehension that it was not impartial and transparent, and the Applicant proposes to approach the Supreme Court for safeguarding his rights.

d) On 5 July 2021, the Applicant filed the writ petition in the Supreme Court seeking various reliefs in respect of issuance of summons and challenges to the provisions of the PMLA and for declarations as regards the position of law. While the petition filed by the Applicant was pending before the Supreme Court and Respondent No.2 was contesting the same and was fully aware of the issues, the Respondent- Directorate showed undue haste, and the timing of summons was such to nullify the attempt of the Applicant to take recourse to legal process.

e) On 30 July 2021, when the Supreme Court adjourned the matter to 3 August 2021 for consideration of ad-interim relief of no coercive steps, the same day Respondent No.2 issued a summons

directing the Applicant's personal appearance on 2 August 2021 before the date scheduled. It is pertinent to note that till the Supreme Court directed that the matter will be heard for interim relief, nothing was done by Respondent No.2 in the meanwhile. The Applicant replied on 2 August 2021, stating that since a day prior to the hearing before the Supreme Court, such summons is being issued, strengthening the apprehension that the investigation is not fair and is an abuse of power.

f) On 9 August 2021, the provisional attachment order was also passed, and the ECIR was annexed to the complaint. Assuming the ECIR was an internal document, there was no reason why it was not shared when it was asked for on 26 June 2021. Respondent No.2 is being selective in sharing the ECIR. The incidents relied upon in the affidavit filed in this Petition will show that in some cases, ECIR is supplied even at the stage of remand. This arbitrary non-supply is a clear case of selectively attacking the Applicant;

g) After the Supreme Court passed an order on 16 August 2021 granting liberty to the Applicant and knowing that the Applicant will approach this Court, a summons was issued on 16 August 2021. The summons was issued even without waiting for the text of the order to be uploaded, and this was a clear attempt to scuttle the Applicant's attempt to approach this Court.

h) When the first summons was issued, the Applicant was asked to bring documents relating to ECIR, and the ECIR was never shared with the Applicant. Even the list of documents was not given

to the Applicant. This was calculated to embarrass the Applicant, and it cannot be considered as a bona fide approach of the Authority. The Applicant in the first summons was asked to appear in person or through his representative, and even after his authorized representative attended, this option was not given in the subsequent summons, and the Applicant was asked to remain present. The social standing of the Applicant in public, his age and health condition ought to have been considered. The Applicant was forced to appear in person without any reason, and selected news items were released to media tarnishing his image. This is a complete abuse of discretion under section 50(2) of the PMLA.

i) The summonses were issued to exactly coincide with the proceedings in the Court. For instance, when the Applicant's petition was listed before the Supreme Court on 3 August 2021 for interim relief, the Applicant was directed to appear on 2 August 2021.

j) After issuing summons on 2 July 2021, nothing was done by the Respondent- Directorate and just a day before the hearing on interim relief in the Supreme Court, the Applicant was directed to appear;

k) A series of searches and raids have been carried out on the Applicant's family and the institution run by his family. These searches are done by Enforcement Directorate, CBI and Income Tax Department. To none of the summonses issued, the Applicant has denied co-operation. Between the order passed by the Supreme Court

on 16 August 2021 giving liberty to the Applicant to approach the High Court, no complaint under section 174 of IPC was filed, and when the matter was adjourned by the High Court to 4 October 2021, a complaint was filed on 1 October 2021. There is complete arbitrariness and abuse of powers in the issuance of summonses. This is, in short, the narration of the Applicant with submissions.

26. We will now analyze the events as they have unfolded to determine if the charge of the Applicant of malice is made out.

27. On 25 June 2021, a search was carried out in the Applicant's premises, which the Applicant did not challenge in any court of law. Summons was issued after the search under section 17 of the PMLA was carried out, and, by that time, investigation under section 2(na) had commenced. The learned ASG has drawn our attention to the panchanama dated 25 June 2021, which states that during the search, the officers identified and recovered miscellaneous documents compiled in a pink coloured file containing 53 pages, and it was stated that the same was required in the course of further investigation. This is the material referred to. The first summons was issued to the Applicant on the same day. By this summons, the Applicant was not asked to appear in person. The Respondent-Directorate gave an option to the Applicant to appear through an authorized representative, which shows their bona fides. The Applicant, however, responded on 26 June 2021 that unless ECIR is given, it would not be possible for him to give the documents. The

learned ASG is right in contending that by that time, the Applicant was aware that search was carried out, panchanama was drawn, and what was the material. The summons was in respect of the same search. The Respondent- Directorate, in the course of the investigation, then issued a second summons wherein it was made clear to the Applicant that the Applicant should remain present in connection with the evidence collected and the statements recorded. The Applicant gave a lengthy reply and again reiterated that he should be given a copy of the ECIR. The reply was also under the belief that once his statement was recorded on 25 June 2021 during the search, it need not be recorded again, which is an incorrect position. Thereafter two persons were arrested after the search, and they had given their statements. Therefore, the matter had travelled beyond the ECIR, which is only a document at the inception. The third summons issued on 2 July 2021 was accompanied by a detailed letter. This letter clarified that the Applicant's presence is required to confront the evidence collected, including the statements recorded. The Respondent- Directorate informed the Applicant that he was adopting dilatory tactics, the ECIR is only an internal document, and it is a settled position that the investigating agency will decide the mode and manner of investigation, and it cannot be dictated. Pursuant to this summons also, the Applicant did not appear and sent a reply running into 20 paragraphs. By that time, the Applicant had become a defaulter, having not produced documents and not having appeared pursuant to the summons, yet the Respondent- Directorate

showed restraint and did not immediately take action under section 174 of IPC or section 63 of the PMLA. This needs to be noted that nothing has been shown to us by the Applicant that the Respondent-Directorate is obligated under law to exercise restraint and give particular numbers of opportunities before proceeding under section 63 of the PMLA. The summons issued to the Applicant asking him to appear on 2 August 2021 prior to the matter coming up before the Supreme Court on 3 August 2021 was issued earlier on 30 July 2021. This cannot be made capital of. It must be noted that this was not the first summons issued to the Applicant. The Applicant, by that time, did not have an interim order from any competent court. The investigation under the PMLA was not stayed. Even if we see these events in totality, all we can discern is that the Applicant has been repeatedly called by the Respondent Directorate, and the Applicant has repeatedly failed to attend. The breach of law is on the part of the Applicant in not attending.

28. For submission based on the non-supply of ECIR, now the Applicant has the copy of the ECIR when it was given at the time of provisional attachment order. The only argument that was advanced based on the same is that it was shared belatedly. The argument was not based on the contents of the ECIR. The argument was that in other cases, the ECIR was supplied even at the remand stage, and without any reason, it was withheld from the Applicant. Secondly, on the allegations of malafides that certain vested interests

who themselves are guilty in heinous crime are behind the predicate offence; it was not made clear what heinous offence they have committed and how, and the details of these allegations have not been elaborated in the Petition. We have referred to the legal position regarding the pleadings in the earlier paragraphs. The pleadings are bereft of any particulars. This Court is called upon to engage in guess work to presume malafides against the Directorate.

29. The Applicant argued that on 1 October 2021, when the matter was pending in this Court, a complaint was filed before the Chief Metropolitan Magistrate for an offence under section 174 of the Indian Penal Code. The Applicant submitted that this is one more facet of malice wherein even though there is a specific section, i.e. section 63 of the PMLA, which makes non-compliance of direction to appear pursuant to summons punishable, which was not invoked. According to us, this argument does not lead the case of the Applicant any further. Section 63 of the PMLA provides for punishment for false information or failure to give information. Section 63(c) states that if a person to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time does not do so, he is liable for penalty. Section 63(4), however, states that, notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under

section 50 shall also be liable to be proceeded against under section 174 of the IPC. From section 63(4), it is quite clear that notwithstanding anything with sub-section (2)(c), a person who is intentionally disobeying any direction issued under section 50 is also liable to be proceeded against section 174 of IPC. We are not considering the legal challenge to the action under section 174 of IPC. The Applicant has failed to demonstrate any malice from this action.

30. The Applicant's argument is that Enforcement Directorate is acting under a political vendetta. On this aspect, we have already referred to the lack of pleadings and absence of parties to the Application. In this context, the decision of the Constitution Bench in the case of *Sheonandan Paswan v. State of Bihar*[10] needs to be noted. The Constitution Bench was considering the argument regarding criminal prosecution and the allegation of political vendetta, based on the allegation that the successor government had initiated prosecution against the Chief Minister of the concerned State. The Supreme Court observed that this by itself does not lead to inference that the prosecution was actuated by political vendetta because it is quite possible that there may be material justifying the initiation of prosecution. The Supreme Court observed that if the criminal prosecution is otherwise justifiable and based on adequate evidence, it does not become vitiated on account of malice or political vendetta of the first informant or complainant. This dicta squarely

10 (1987) 1 SCC 288

applies to the case at hand.

31. It must be noted that the PMLA has been brought on the statute book pursuant to the resolution by the United Nations General Assembly calling upon the member States to enact money laundering legislation. The statement of object and reasons of the PMLA underscores the importance of taking effective steps to curb the menace of money laundering, which is no longer restricted to any geopolitical boundary. The scheme of the PMLA not only confers powers on the authorities under the Act to take steps to curb money laundering but casts a duty upon them to take effective steps. Therefore, unless it is demonstrated that the authorities under the PMLA were proceeding beyond their jurisdiction or in contravention of any restraint order by the court, issuance of summons by the authorities when there was no restraint order by the court cannot be considered as mala fide.

32. Nothing is shown to us as to how the ongoing investigation was either beyond the jurisdiction or was illegal. The Applicant's argument that the investigation under the PMLA in the present case cannot go beyond the proceeds of crime identified in the schedule, and predicate offence, is without merit. This ground is taken in the Petition; however, how exactly the proceedings are beyond the predicate offence ought to have been demonstrated before us in oral arguments. As a matter of fact, nothing was argued in that regard. That an FIR is registered against the Applicant by the

Central Bureau of Investigation under the provisions of the Prevention of Corruption Act is an admitted position. Also that the offence under the Prevention of Corruption Act is a part of the schedule appended to PMLA, which sets out the predicate offences. In the absence of any factual particulars placed before us demonstrating from the FIR such finding that in fact, the investigation is proceeding beyond the scope of the predicate offence, cannot be rendered in abstract. Suffice it to note that the Applicant is one of the main accused in the FIR filed under the Prevention of Corruption Act.

33. On the ground of illegality, nothing is pointed out to us as to how the summonses are illegal or beyond the powers of the authority. The search was conducted under section 17 of the PMLA. Statements have been recorded, and the Applicant is called under section 50 in respect of certain information. Though the matter has been elaborately argued, neither any legal bar for issuing summons under section 50 nor any absence of power to issue summons has been pointed out. The entire focus has been on the abuse of power while issuing the summons, and mala fide, which we find is not sustainable.

34. Under the PMLA, the Enforcement Directorate is under a duty to carry out the investigation. There is no interim order passed by any court restraining the Enforcement Directorate from proceeding further with the investigation. If the Enforcement

Directorate, in the absence of any restraint, is proceeding further in the performance of its duties, it cannot be called a mala fide exercise of power. Even assuming that issuance of summons coincided with the dates in the court, unless the court specifically restrains the Respondent- Enforcement Directorate from proceeding further, no fault can be found in the officers of the Enforcement Directorate who were performing their duties under the Act. Section 2(na) defines investigation and covers all proceedings under the Act, including the collection of evidence. Section 48 defines the authorities under the PMLA and, therefore, the authority under the Act is carrying out investigation as defined under section 2(na) and has the power to issue summons under section 50(2).

35. We, therefore, find no merit in the case of the Applicant in support of prayer clause (a) to quash the impugned Summonses issued to the Applicant by Respondent No.2 under Section 50 of the PMLA.

36. Now, we turn to prayer clause (b), which is a direction to the Respondent- Directorate not to take coercive steps pursuant to the ECIRs in question. As stated earlier, this prayer is also based primarily on the charge of malice on the part of the Respondent-Directorate in issuing summonses.

37. On the submission based on the application of sections

41 and 41A of Cr.P.C., the Applicant has relied upon the decision of the Division Bench of the Delhi High Court in the case of *Vakamulla Chandrashekar v. Enforcement Directorate*[11]. In this decision, the Delhi High Court held that provision of Cr.P.C. shall apply in so far as it is not inconsistent with the provisions of the PMLA to arrest, search, seizure and investigation and other proceedings under the Act. The Division Bench held that there is nothing in the scheme of the PMLA that sections 41 and 41A of Cr.P.C. would not apply to the exercise of the power of arrest under section 19 of the PMLA, and the PMLA does not impliedly exclude the application of sections 41 and 41A of Cr.P.C. The Directorate of Enforcement has challenged the decision in the case of *Vakamulla Chandrashekar* in Special Leave Petition (Cri.) Diary No.36918/2017 and while issuing notice on 4 January 2018, the Supreme Court has stayed the operation of the impugned order of the Delhi High Court. The learned counsel for the parties have sought to advance arguments on the implication of the order passed by the Supreme Court staying the operation of the order of the Delhi High Court. Based on the decision of the Supreme Court in the case of *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI CINOD Secretariat. Madras*[12], it was sought to be contended by the Applicant that the stay order of the Supreme Court does not mean that the impugned order has been wiped out from existence. According to us, once the order passed by the Delhi High Court in the case of *Vakamulla*

11 2017 SCC OnLine Del 12810
12 (1992) 3 SCC 1

Chandrashekar has been stayed by the Supreme Court, it will not be proper for us to rely on and follow the said decision. The learned ASG argued that all the safeguards in the decision of *Arnesh Kumar v. State of Bihar*[13] followed by the Delhi High Court in *Vakamulla Chandrashekar* are already implicit in section 19 of the PMLA. The directions issued in the decision of *Arnesh Kumar* in paragraph-10 of the decision, according to the learned ASG, does not curtail the power of arrest; however, they only state that the arrest should not be unnecessarily made and the Magistrate should not authorize detention casually and mechanically. According to us, this discussion is a deviation from the issue before us, which is a challenge to the summons issued to the Applicant, and the stage of section 19 regarding arrest has not arisen in this case at this stage.

38. On the power of the High Court as regards the prayer for protection against coercive steps, the Applicant has placed heavy reliance on the decision of the Supreme court in the case of *Arnab Manoranjan Goswami v. State of Maharashtra*[14]. Based on paragraph-67 of the said judgment, the Applicant contended that the High Court has ample powers under section 482 to prevent abuse of process of law. The Supreme court in para 67 has observed that the writ of liberty runs through the fabric of the Constitution and the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. It is the duty of courts

13 (2014) 8 SCC 273
14 (2021) 2 SCC 427

across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – they need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment.

39. The learned ASG, on the other hand, has drawn our attention to the facts under which observations were made in the case of *Arnab Goswami*, which are narrated from paragraphs-5 to 19 of the decision, to contend that the observation of the Supreme Court were in the facts of that in that case where the High Court had failed to exercise its powers. In the case of *Arnab Goswami*, the appellant was a TV journalist who had broadcast certain material raising issues which, according to him, were not palatable to political parties ruling the State. The FIR filed in the year 2018 was closed by submitting a Closure Report in the year 2019, which the learned Magistrate also accepted. After the closure report, there were transactions between the parties. Thereafter, after almost a year, multiple FIRs were filed. The Supreme Court had clubbed the multiple FIRs against the appellant, and then at the instance of the home department of the State, the matter was reopened. The appellant was then arrested. These facts, on the face of it, were striking, and the Supreme Court found that the Petitioner made out a case before it. Quite clearly, the

case at hand does not have the features as in the case of *Arnab Goswami*, which on the face of it, demonstrated the need for intervention. It is equally important to note that the Supreme Court in this decision also emphasized the need to ensure proper enforcement of criminal law, and both ends of the spectrum need to be balanced. Therefore facts of each case will have to be looked at. The decision in the case of *Arnab Goswami* thereafter has been referred and explained by the decision of the three Judges of the Supreme Court in the case of *Neeharika Infrastructure Pvt.Ltd.*

40. The Applicant relied upon various orders wherein it is directed that no coercive steps be taken against the parties approaching the Supreme Court. Copies of such orders are placed on record. In the decision of *Neeharika Infrastructure Pvt.Ltd.*, the Supreme Court observed that if no case is made out to interfere with the investigation to quash the FIR, then no order can be passed that no coercive steps be taken against the applicant. In the case of *A.P. Mahesh Co-operative Urban Bank Shareholders Welfare Association v. Ramesh Kumar Bung*[15], the bench of two learned Judges rendered a decision after the judgment in *Neeharika Infrastructure Pvt. Ltd.* The Supreme Court held that the decision in *Neeharika Infrastructure Pvt. Ltd.* had allowed space for the High Court to pass an interim order in exceptional cases and in circumspection with reasons. The question is whether such an exceptional circumstances exist in the case at hand. The answer is-No.

15 2021 SCC OnLine SC 475

41. The Supreme Court in *Neeharika Infrastructure Pvt.Ltd.* has given guidance to the High Court regarding the prayer for "No Coercive Steps" when the investigation is in progress. The relevant observations of the Supreme Court are as follows:

> *"80 (xvi). The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/ or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India."*
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> (emphasis supplied)

The above-quoted observation state that when the investigation is in progress, and the facts are not clear, the High Court should restrain itself from passing interim order of not to arrest or "no coercive steps to be adopted" and should relegate the Applicant to apply Section 438 Cr.P.C.

before the competent court.

42. The learned ASG contended that when the Applicant has invoked section 482 of Cr.P.C., a discretionary relief, the Applicant's conduct will also have to be seen. Learned ASG submitted that while the Applicant keeps on proclaiming that he is ready and willing to co-operate, his conduct is entirely otherwise. For some reason or other, the Applicant is avoiding attending pursuant to the summons. We find this submission as justified. If there are no mala fides and no illegality, then there is no question of not attending and co-operating with the investigation. The learned ASG also pointed out that the search was carried out under section 17 of the PMLA on 25 June 2021 at the Applicant's residence, and his statement was recorded. There is no challenge at this stage to the initiation of investigation as per section 2(na) of the PMLA. It was contended that the Applicant can be considered at the most as a suspect and is given a chance to explain and is not an accused at this stage. The learned ASG submitted that the Applicant could not take advantage of certain coincidences and build up a case of mala fides. The learned ASG argued that no person is above the law, and the applicant must attend the questioning.

43. We must note here that the Applicant had not addressed us at all on what are the merits of the offence except the submission of the Applicant that those who made allegations against the

Applicant are themselves guilty of heinous crimes. No material in support on merits is argued before us as to why we should pass such orders, which obviously cannot be passed in a routine manner. The entire thrust is on malice in the investigation. Learned ASG also contended that the Applicant is an influential political person in the State, and without any protection from any court, the Applicant has managed to evade even simple summons and it will be extremely difficult for the Enforcement Directorate to investigate further once the Applicant enjoys the benefit of protection from the court and this aspect has to be kept in mind by the court while granting the order akin to anticipatory bail. The learned ASG has also drawn our attention to the observation made by the Division Bench of this Court in PIL No.6/2021 wherein the Division Bench, while directing preliminary enquiry by the CBI, about the political influence of the Applicant.

44. The Supreme court, in the case of *Neeharika Infrastructure Pvt.Ltd.*, has laid down that the High Court shall not pass the order of not to arrest and/or "no coercive steps" while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. As we have concluded that no case is made out by the Applicant on facts for the exercise of jurisdiction under 482 of the Cr.P.C., this dicta of the Supreme Court will be applicable. In the order dated 16 August 2021, the Supreme Court has referred to the remedies available to the

Applicant under the Cr.P.C., which includes section 438 for anticipatory bail. We have not been shown any reason as to why the Applicant cannot take recourse to this remedy by approaching the competent court, like any other person apprehending arrest. It is obvious if the Applicant intends to avail of this remedy under Section 438 of the Cr.P.C., it will be decided on its own merits.

45. We conclude that no case is made out by the Applicant for the exercise of our jurisdiction under Section 482 Cr. P.C to restrain Respondent No.1 and Respondent No.2 from taking any penal/coercive action against the Applicant. If the applicant has apprehension of arrest, he has the statutory remedy under section 438 of Cr. P.C by approaching the competent court.

46. Grant of prayer clause (c) to direct recording of Applicant's statement through electronic mode and not to compel his presence will amount to interfering with the discretion of the investigating authority as to the manner in which they intend to carry out the investigation. The Supreme Court in the case of *P. Chidambaram v. Directorate of Enforcement*[16] in paragraph-64, it is observed thus:

> *"64. As held by the Supreme Court in a catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of*

16 (2019) 9 SCC 24

> *law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused."*

The activity of money laundering is often very complex, masked under various layers and the methods of investigation resultantly also are complex. Furthermore, since we have not found that issuance of summonses to the Applicant is vitiated by malafides or that the Officers of the Directorate are proceeding beyond their duty and when the discretion of the Investigating Officer as to the personal presence of the person called for questioning is not being abused, there is no reason why we should dictate a different course of investigation in this case. Thus, the prayer clause (c) to direct Respondent No.2 to permit the Applicant to appear through an authorized representative or through any electronic mode and not to compel the presence of the Applicant in person, is rejected and it is left to the discretion of the Directorate of Enforcement as regards the mode.

47. As regards prayer (d) as to the direction to the Directorate to act in a transparent manner and not to misuse the power, it is not a specific prayer. Even if it could be considered, it must be first demonstrated that there is an arbitrary exercise of power, which the

Applicant has not established. As regards prayer clauses (f) and (g) are concerned, they relate to arrest of the Applicant and prayers as regards not to take coercive steps, which aspect we have already dealt with. Also, for prayer Clauses (d), (e) and (f), this would arise under Section 19 of the PMLA, which stage, as pointed out by the learned ASG, has not arisen.

48. As regards the part of prayer clause (h) that the statement of the Applicant be recorded in the presence of his advocate and the advocate be permitted to be present at the time of questioning at a distance, the Applicant relied upon the decision of the Supreme Court in the case of *Birendra Kumar Pandey v. Union of India*[17]. In this decision, the Supreme Court observed thus:

> *"The prayer has been opposed by the learned Additional Solicitor General, Mr.P.P. Malhotra, who has brought to our notice the decision of a Three Judges Bench in the case of Poolpandi and Others v. Superintendent, Central Excise and Others (1992) 3 SCC 259. Mr. Malhotra pointed out that the very first paragraph of the said judgment mentions that the common question arising in the said case before their Lordships was the stand taken by the petitioners that they were entitled to-the presence of their lawyers when they were being questioned during the interrogation under the provisions of the Customs Act, 1962, or the Foreign Exchange Regulation Act, 1973. Their Lordships had noticed the difference of opinion of different High Courts in this connection and had rejected the submission made on behalf of the petitioners therein, that they were entitled to have their lawyers present at the time of interrogation. Such prayer, therefore, was disallowed.*

17 WP (Crl.) No.28/2012 decided on 16 April 2012

Mr. Malhotra has also drawn our attention to the decision in Senior Intelligence Officer, Directorate of Revenue Intelligence v. Jugal Kishore Samra (2011) 12 SCC 362, wherein the decision in Poolpandi's case (supra) was also referred to and, ultimately, having regard to the facts of the of the case, a two-Judge Bench of this Court directed as follows:

"Taking a cue, therefore, from the direction made in D.K. Basu and having regard to the special facts and circumstances of the case, we deem it appropriate to direct that the interrogation of the respondent may be held within the sight of his advocate or any other person duly authorized by him. The advocate or the person authorized by the respondent may watch the proceedings from a distance or from beyond a glass partition but he will not be within the hearing distance and it will not be open to the respondent to have consultations with him in the course of the interrogation."

In fact, the said direction is the very direction that the petitioners are seeking in this criminal miscellaneous petition.

Apart from the above, this Bench and other Benches of this Court have also had occasion to deal with similar matters and we had passed similar orders to the extent that the petitioners' counsel would be allowed to be present at the time of interrogation within visible distance, though beyond hearing distance.

In our view, the decision which was rendered in Poolpandi's case (supra) by a Bench of Three Judges, was in the context of the direct involvement of the learned counsel during the actual interrogation where the lawyer assumed an active role during the interrogation. On the other hand, the order that has been sought, as passed in various matters, does not contemplate such an eventuality. In fact, in terms of the orders which we have earlier passed, a lawyer has no role to play whatsoever during the interrogation, except to be at a distance beyond hearing range to ensure that no coercive methods were used during the interrogation.

> *Accordingly, we allow the criminal miscellaneous petition and direct that the petitioner's advocate should be allowed to be present during the interrogation of the petitioners but that he should be made to sit at a distance beyond hearing range, but within visible range and the Lawyer must be prepared to be present whenever the petitioners are called upon to attend such interrogation.*
>
> *The criminal miscellaneous petition is disposed of accordingly."*

The learned ASG sought to contend that the order passed in the case of *Birendra Kumar Pandey* is per incuriam in the light of the decision of *Poolpandi v. Superintendent, Central Excise*[18] which is a decision of three learned Judges in which the request for presence of the lawyer was rejected. The learned ASG submitted that the decision in the case of *Poolpandi* was followed in the case of *Senior Intelligence Officer, Directorate of Revenue Intelligence v. Jugal Kishore Samra*[19]. The learned ASG submitted that the decision in the case of *Birendra Kumar Pandey* incorrectly records that *Poolpandi* was a case of direct involvement during actual interrogation and, thus, the decision in the case of *Poolpandi* being of three learned Judges, this Court should follow the same. It is, however, needs to be noted that the decision in the case of *Birendra Kumar Pandey* has referred to the decision of three learned Judges in *Poolpandi* and the judgment in the case of *Jugal Kishore Samra*. After considering both the decisions, the Supreme Court, in the case of *Birendra Kumar Pandey*, has directed that the advocate for the petitioner therein should be

18 (1992) 3 SCC 259
19 (2011) 12 SCC 362: (2012) 1 SCC (Cri) 573

allowed to remain present during the questioning, but he will be made to sit at a distance beyond the hearing range but within a visible range.

49. Further, we note that in various cases of the Enforcement Directorate under the PMLA, the counsel for PMLA Directorate had accepted that advocate can remain at a visible distance. Two such orders passed in special leave petitions are placed on record. In SLP (Cri) Diary No.36376/2017, the Court permitted the counsel for the respondent to remain present at the visible distance as permissible in law. In Writ Petition (Cri) No.300/2019 before the Supreme Court, the only relief sought was the permission for the petitioners' advocate to remain present during interrogation at a visible distance but not audible distance and the learned Additional Solicitor General had no objection, and it was granted. The Division Bench of this Court, in the order dated 5 May 2017 passed in WP No.1806/2017 (*Rakesh Natwarlal Patel v. Directorate of Enforcement*), observed that the relief claimed of advocate's presence is squarely covered by order of three Judges bench judgment of the Apex Court in Crl. MP No. 10117 of 2012 on 25 April 2012 and in similar circumstances, the Apex Court directed that the lawyer of the Petitioner should be allowed to be present during the interrogation of the Petitioner. It was further directed that he should be made to sit at a distance beyond hearing range, but within visible distance and the lawyer must be prepared to be present whenever the petitioners are called upon to

attend such investigation. Similar is the order passed by the Division Bench of this Court in Cr.WP No.1664/2017 on 5 May 2017. There are, therefore series of such directions.

50. Though it is sought to be contended by the learned ASG that we should ignore the above referred orders and also hold the decision in *Birendra Kumar Pandey* as per incuriam, it is not possible to do so. As stated earlier, the decision in *Birendra Kumar Pandey* has, after referring to the decisions in *Poolpandi* and *Jugal Kishore Samara,* issued directions regarding the lawyer's presence. Whenever such prayers have come before the court for consideration, both in Apex Court and in this Court, the counsel for Directorate of Enforcement has taken the stand that allowing lawyers presence as above is the position of law. We find no reason as to why this legal position be deviated in the case of the present Applicant. This does not interfere with the investigation in any manner, and there is no specific reason why the Applicant should not be made entitled to this direction as in all other cases of investigation under PMLA, and the prayer deserves to be grated.

51. To recapitulate, under the provisions of PMLA, the issuance of summons is part of the investigation. The High Courts would not interfere and interdict a lawful investigation under its powers under section 482 of Cr.P.C. unless exceptional circumstances as per the settled law are present. None of these grounds exists in the present case. There is no jurisdictional error in the issuance of

summonses as they have been issued by the officers duly authorized under the PMLA. The object and purpose of PMLA show that it not only confers powers on the authority to investigate the offence of money laundering but a duty to investigate it in the larger public interest. The Applicant, without any valid reason, has refused to co-operate with the investigation by not attending the summonses issued by the authorities. The Applicant has failed to establish the case of legal and factual malice on the part of the Respondent-Directorate in proceeding with the investigation in question. As regards the merits of the factual aspect, in oral argument, nothing is shown to us as to why we should hold in favour of the Applicant. Suffice it to note that the predicate offence was registered pursuant to the directions issued by the Division Bench of this Court. Once it is concluded that no case is made out for interference under section 482 of Cr.P.C. and the application is disposed of, the relief of granting 'no coercive steps' order cannot now become a consequential relief. As regards prayer for permission to appear through electronic mode and not to compel the presence of the Applicant is concerned, it is the discretion of the Directorate of Enforcement as to the mode of questioning, and no case is made out that it is abused. The stage under section 19 of the PMLA has not arisen in this case for us to consider and comment upon these prayers concerning arrests. The Supreme Court, in the order dated 16 August 2021, has referred to the remedies available to the Applicant under Cr.P.C., which includes section 438 of Cr.P.C. This remedy is also available to those who

apprehend arrests. In case the Applicant has any apprehension of arrest, he may, like any other person, avail of the said remedy by approaching the competent court on its own merits. The observations in this judgment in that regard are in the context of jurisdiction under section 482 of Cr.P.C. The legal question of applicability of certain provisions of Cr.P.C. to the investigation under the PMLA, upon which these prayers are based, is under consideration of the Supreme Court in the petition filed by the Applicant, and we are not called upon to decide these legal issues. As regards prayer for transfer of investigation to a special investigating team, in view of the finding that the Applicant has failed to establish factual or legal malice in the investigation carried out by the Respondent- Directorate, the prayer for transfer cannot be considered. As regards the part of prayer regarding audio/ video-graphing of CCTV camera is concerned, the same is not shown to fall under any of the provisions of the PMLA. As regards the prayer of the presence of the Applicant's lawyer at a visible distance (beyond audible range) during questioning, the same is justified.

52. To conclude, the Applicant has failed to make out a case for exercise of jurisdiction under 482 of Cr.P.C. to quash the impugned summonses and for order directing Respondent Nos.1 and 2 not to take coercive steps against the Applicant. Like any other person apprehending arrest the Applicant can, if so advised, approach the competent court relief under section 438 of Cr.P.C. to

be decided on its own merits. In view of the preceding discussions and findings, other prayers are rejected, except the prayer of allowing Applicant's lawyer to remain present during the questioning at a visible distance but beyond the audible range, which is granted.

53. Accordingly, the following order:

i) Prayer clauses (a), (c), (d), (e), (f), (g) (i) of the Application are rejected.

ii) Prayer clause (b) is rejected, however, the statutory remedy of Applicant to approach the competent court under section 438 of Cr.P.C. is kept open to considered by the court on its own merits.

ii) Prayer clause (h) is partly granted only to the extent that if the Applicant so requests, the Respondent no. 1 and 2 shall permit the Applicant's lawyer to remain present during the questioning at a visible distance but beyond the audible range.

54. Application is disposed of in the above terms.

(SARANG V. KOTWAL, J.) (NITIN JAMDAR, J.)