IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE S RACHAIAH

WA NO. 497 OF 2024

BETWEEN:

SRI. R M MANJUNATH GOWDA,
S/O RAMAPPA GOWDA,
AGED 62 YEARS,
R/O KARAKUCCHI,
SIRIGEREPONT,
SHIVAMOGGA - 577 211.

...APPELLANT

(BY SRI. JAYAKUMAR S.PATIL, SENIOR COUNSEL FOR
SRI. VARUN JAYAKUMAR PATIL, ADVOCATE)

AND

1 . DIRECTORATE OF ENFORCEMENT,
MINISTRY OF FINANCE AND
DEPARTMENT OF REVENUE,
III FLOOR, B BLOCK, BMTC,
K.H.ROAD, SHANTINAGAR,
BANGALORE - 560 027.

2 . ASSISTANT DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
III FLOOR, B BLOCK, BMTC,
K.H.ROAD, SHANTINAGAR,
BANGALORE - 560 027.

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASGI A/W
SRI. MADHUKAR M DESHPANDE, CGC)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO ALLOW THE APPEAL, BY SETTING ASIDE THE ORDER DATED 20.02.2024 IN WRIT PETITION NO. 22780/2023 PASSED BY THE LEARNED SINGLE JUDGE, ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.02.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, **V KAMESWAR RAO J**., DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR JUSTICE V KAMESWAR RAO
AND
THE HON'BLE MR JUSTICE S RACHAIAH

CAV JUDGMENT

(PER: THE HON'BLE MR JUSTICE V KAMESWAR RAO)

The challenge in this appeal is to an order dated 20.02.2024 passed by the learned Single Judge in WP No.22780/2023 with a further prayer to grant the prayers made in the writ petition. The prayers made in WP No.22780/2023 are the following:

"Wherefore, this Hon'ble Court, be pleased to:

a. Issue a Writ of mandamus or any other appropriate writ, order or direction calling for the records from the office of the Respondents connected to the impugned proceedings F.No. ECIR/BGO/05/2021, and

b. Issue a Writ of certiorari or any other appropriate writ, order or direction & quash the summons

dated 06/10/2023 in F.No. ECIR/BGO/05/2021 as per Annexure A issued in the name of the Petitioner by the Respondent No.2 is illegal and bad at Law and

c. *Consequentially Issue a Writ of certiorari or any other appropriate writ, order or direction quashing all consequential and incidental proceedings/action Initiated against the Petitioner in F.No.ECIR/BGO/05/2021 is illegal and bad at Law.*

d. *Issue a writ of mandamus, or any other appropriate writ, order or direction, forbearing the Respondent from proceedings in any manner contrary to Law.*

e. *Pass any order or directions as this Hon'ble Court deems fit in the circumstances of the case in the interest of justice."*

2. Some of the facts to be noted for the purpose of decision in this appeal are, the appellant herein was the Chairman of Shivamogga DCC Bank for a period of 23 years from 1997 to 2020. An FIR in Crime No.325/2014 was registered by Doddapete Police Station, Shivamogga and a charge sheet dated 18.10.2014 was filed alleging offences punishable under Sections 409, 120B, 201 read

with Section 37 of IPC. The Court took cognizance and registered CC No.1849/2014 which was later renumbered as CC No.2775/2019 for the offences punishable under Sections 409, 201, 120B read with Section 37 of IPC. In this case, the appellant was not arraigned as an accused. Subsequently, on a further investigation under Section 173(8) of Cr.PC, a charge sheet was filed against the appellant in CC No.2775/2021 for the offences punishable under Sections 409 and 202 read with Section 36 of IPC. That apart, a case in Crime No.4/2014 dated 29.05.2014 was registered against the appellant for the offences under Sections 13(i)(e) read with 13(ii) of the Prevention of Corruption Act, 1988 ('PC Act' for short) and a charge sheet dated 20.03.2018 was filed.

3. The case of the appellant before the learned Single Judge was that, there was no scheduled offence against the appellant which could form the basis of initiating proceedings under the Prevention of Money Laundering Act, 2002 ('PMLA' for short). Though the appellant was arraigned as accused No.15 in

Crime No.325/2014, his name was dropped and thereafter an additional charge sheet was filed on 30.07.2021 in Crime No.325/2014 alleging commission of offences under Sections 409, 202 read with Section 36 of IPC which are not the offences mentioned in paragraph No.1 of Part-A of the Schedule to the PMLA. It was also the case of the appellant that offence under Section 13(i)(e) of the PC Act is not a schedule offence under the PMLA unless there is an allegation under Sections 13(i)(a) to (d) of the PC Act.

4. The learned Single Judge while dismissing WP No.22780/2023, has referred to the judgment of the Supreme Court in the case of ***Vijay Madanlal Choudhary and Others -Vs.- Union of India and Others [2022 SCC OnLine SC 929]*** to hold that, it is a well settled law that an offence under PMLA is attracted only when any of the offences mentioned in the schedule to the PMLA is registered. The learned Single Judge stated that, the Authorities under the PMLA cannot prosecute any person on notional basis or on the

assumption that a scheduled offence has been committed unless it is so registered with the jurisdictional Police or pending enquiry or trial by way of a complaint before a competent forum. The learned Single Judge has also held that, it is also equally well settled that registration of an ECIR cannot be equated to the registration of an FIR as the said document is an internal document for the purposes of the respondent. The learned Single Judge has also held that, proceeds of crime as defined under Section 2(1)(u) of the PMLA is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. The learned Single Judge also held that, position of law is well settled that when once the accused is acquitted in the predicated offence or if it is quashed by a Court of competent jurisdiction or if he is discharged, there can be no offence under the provisions of the PMLA. The finding of the learned Single Judge in paragraphs No.24 to 26 are the following:

> *"24. A perusal of Section 50(2) of the PMLA leaves no doubt that the Enforcement Directorate has the power to summon any person whose*

attendance it considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under the PMLA.

25. It could be that the Enforcement Directorate requires the attendance of the petitioner to give evidence or to produce any records in respect of the schedule offences committed by the other accused. After all, the allegation was that the accused No.1 had the benevolence of the accused No.15 / petitioner herein and therefore, he was bound to assist the Enforcement Directorate and this did not in any way prejudice the petitioner. This apart, the petitioner was accused of an offence in Crime No.4/2014 for the offences under Section 13(1)(e) read with Section 13(ii) of the P.C. Act, 1988 and a charge sheet was filed on 20.03.2018. It could be that the summons was issued to the petitioner in that regard. Under the circumstances, the petitioner cannot challenge the issuance of summons and his apprehension that he is sought to be prosecuted for an offence registered against him in C.C No.2775/2021 under the PMLA is unwarranted as the offences alleged against him are not schedule offences under the PMLA. In this regard, it is apposite to refer to the findings recorded by the Hon'ble Apex Court in the case of Vijay Madanlal Chowdhary and others:

"467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:

(i) The question as to whether some of the amendments to the Prevention of Money-laundering Act, 2002 could not have been enacted by the Parliament by way of a Finance Act has not been examined in this judgment. The same is left open for being examined along with or after the decision of the Larger Bench (seven Judges) of this Court in the case of Rojer Mathew 705.

(ii) The expression "proceedings" occurring in Clause (na) of Section 2(1) of the 2002 Act is contextual and is required to be given expansive meaning to include inquiry procedure followed by the Authorities of ED, the Adjudicating Authority, and the Special Court.

(iii) The expression "investigation" in Clause (na) of Section 2(1) of the 2002 Act does not limit itself to the matter of investigation concerning the offence under the Act and is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act.

(iv) The Explanation inserted to Clause (u) of Section 2(1) of the 2002 Act does not travel beyond the main provision predicating tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence.

(v) (a) Section 3 of the 2002 Act has a wider reach and captures every process and

activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(b) Independent of the above, we are clearly of the view that the expression "and" occurring in Section 3 has to be construed as "or", to give full play to the said provision so as to include "every" process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money-laundering on its own, being an independent process or activity.

(c) The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected.

(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money laundering. The Authorities under the 2002 Act cannot prosecute any person

on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

(vi) Section 5 of the 2002 Act is constitutionally valid. It provides for a balancing arrangement to secure the interests of the person as also ensures that the proceeds of crime remain available to be dealt with in the manner provided by the 2002 Act. The procedural safeguards as delineated by us hereinabove are effective measures to protect the interests of person concerned.

(vii) The challenge to the validity of sub-section (4) of Section 8 of the 2002 Act is also rejected subject to Section 8 being invoked and operated in accordance with the meaning assigned to it hereinabove.

(viii) The challenge to deletion of proviso to sub-section (1) of Section 17 of the 2002 Act stands rejected. There are stringent safeguards provided in Section 17 and Rules framed thereunder. Moreover, the pre-condition in the proviso to Rule 3(2) of the 2005 Rules cannot be read into Section 17 after its amendment. The Central

Government may take necessary corrective steps to obviate confusion caused in that regard.

(ix) The challenge to deletion of proviso to sub-section (1) of Section 18 of the 2002 Act also stands rejected. There are similar safeguards provided in Section 18. We hold that the amended provision does not suffer from the vice of arbitrariness.

(x) The challenge to the constitutional validity of Section 19 of the 2002 Act is also rejected. There are stringent safeguards provided in Section 19. The provision does not suffer from the vice of arbitrariness.

(xi) Section 24 of the 2002 Act has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act and cannot be regarded as manifestly arbitrary or unconstitutional.

(xii) (a) The proviso in Clause (a) of sub-section (1) of Section 44 of the 2002 Act is to be regarded as directory in nature and this provision is also read down to mean that the Special Court may exercise judicial discretion on case-to-case basis.

(b) We do not find merit in the challenge to Section 44 being arbitrary or unconstitutional. However, the eventualities referred to in this section shall be dealt with by the Court concerned and by the Authority concerned in accordance with the interpretation given in this judgment.

(xiii) (a) The reasons which weighed with this Court in Nikesh Tarachand Shah for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the

relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.

(b) We are unable to agree with the observations in Nikesh Tarachand Shah distinguishing the enunciation of the Constitution Bench decision in Kartar Singh 708; and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money-laundering, 706 Supra at Footnote No.3 707 Supra at Footnote No.3 708 Supra at Footnote No.190 537 including about it posing serious threat to the sovereignty and integrity of the country.

(c) The provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness.

(d) As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigours of Section 45 may apply.

(xiv) The beneficial provision of Section 436A of the 1973 Code could be invoked by the accused arrested for offence punishable under the 2002 Act.

(xv) (a) The process envisaged by Section 50 of the 2002 Act is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; 538 and the Authorities under the 2002 Act (referred to in Section 48), are not police officers as such.

(b) The statements recorded by the Authorities under the 2002 Act are not hit by Article 20(3) or Article 21 of the Constitution of India.

(xvi) Section 63 of the 2002 Act providing for punishment regarding false information or failure to give information does not suffer from any vice of arbitrariness.

(xvii) The inclusion or exclusion of any particular offence in the Schedule to the 2002 Act is a matter of legislative policy; and the nature or class of any predicate offence has no bearing on the validity of the Schedule or any prescription thereunder.

(xviii) (a) In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime.

(b) Supply of a copy of ECIR in every case to the person concerned is not mandatory,

it is enough if ED at the time of arrest, discloses the grounds of such arrest.

(c) However, when the arrested person is produced before the Special Court, it is open to the Special Court to look into the relevant records presented by the authorised representative of ED for answering the issue of need for his/her continued detention in connection with the offence of money-laundering.

(xix) Even when ED manual is not to be published being an internal departmental document issued for the guidance of the Authorities (ED officials), the department ought to explore the desirability of placing information on its website which may broadly outline the scope of the authority of the functionaries under the Act and measures to be adopted by them as also the options/remedies available to the person concerned before the Authority and before the Special Court.

(xx) The petitioners are justified in expressing serious concern bordering on causing injustice owing to the vacancies in the Appellate Tribunal. We deem it necessary to impress upon the executive to take corrective measures in this regard expeditiously.

(xxi) The argument about proportionality of punishment with reference to the nature of scheduled offence is wholly unfounded and stands rejected."

26. The reliance placed by the learned senior counsel for the petitioner on the judgment of the

Hon'ble Apex Court in the case of Y. Balaji (referred supra) that stay of a predicate offence eclipses a scheduled offence is inapplicable to the facts of this case as the summons is not issued by the respondents on the premise that a schedule offence is registered against the petitioner. Likewise, the judgment relied by him in the case of CBI v. Ramesh Gelli (referred supra) is also inapplicable as Section 13 was made a schedule offence by virtue of Act 16 of 2018. Even otherwise, there is nothing on record to prejudge the case whether the summons was issued in respect of the charge sheet filed against the petitioner under Section 13(1)(e) read with Section 13(ii) of the P.C Act, 1988 or to take further steps in the matter of the investigation into the offences against the co-accused. Therefore, all the contentions urged by the learned senior counsel for the petitioner in assailing the summons issued to the petitioner are liable to be rejected and are accordingly, rejected. Consequently, W.P. No.22780/2023 filed by the petitioner lacks merit and is dismissed."

Submissions:

5. At the outset, Sri. Aravind Kamath, learned ASGI for the respondents would submit that, the present appeal filed by the appellant is not maintainable in as much as the appellant consciously chose to file a writ

petition under Article 226 of the Constitution of India read with Section 482 of Cr.PC knowing well that it would be listed before the learned Single Judge assigned with the roster for hearing petitions filed under Section 482 of Cr.PC. Had the appellant not filed it under Section 482 of Cr.PC, the petition would have been listed before the learned Judge having roster WP-GM. Having chosen to go before the Court that exercised the 482 roster, the appellant's petition must be treated as one having been filed under Sec.482, and consequently, no intra-court appeal lies against an order passed on such petitions. On this plea of Sri. Kamath on the maintainability of the appeal, Sri. Jayakumar S.Patil, learned Senior Counsel for the appellant would submit that the writ petition was filed for quashing of the summons and all the proceedings initiated against the appellant, which can only be filed under Article 226 of the Constitution. He has relied upon the judgment of the Supreme Court in the case of ***Vijay Madanlal Choudhary*** (supra), more specifically paragraphs No.456 and 457 to contend that

PMLA is a complete code by itself and the provisions of Cr.PC/BNSS will not apply regarding inquiry/investigation till filing of a complaint under section 44 of the PMLA. According to him, ECIR cannot be equated to FIR under Cr.PC/BNSS. Therefore, the provisions of Cr.PC/BNSS will not apply in respect of ECIR registered. Therefore, the inherent powers under section 482 of Cr.PC will not apply in cases where quashing of ECIR and summons is sought and as such, the order under appeal is an order passed under Article 226 of the Constitution of India and writ appeal filed invoking Section 4 of the Karnataka High Court Act, 1961 is maintainable.

6. On merit, it was the submission of Sri. Patil that, search and seizure of the residence of the appellant was conducted on 05.10.2023. The summons dated 06.10.2023 were served by hand. The summons read as follows:

> I. Original Aadhar card, Passport size photo and passport

II. Details of all immovable properties held in your name and in the name of your family members

III. Details of all bank accounts and movable properties held in your name and in the name of your family members

IV. Copies of ITRs filed by you from last 15 year along with annexure

7. According to him, the search and seizure coupled with the contents of summons clearly shows that the appellant is treated as an accused for an offence under PMLA. Therefore, the contention that the summons are issued for recording statement etc., is false. He stated, the respondent-Authority has not filed any statement of objection at the stage of Writ Petition or in the present Writ Appeal thereby withholding the information that the present appellant is treated as an accused for an offence under PMLA.

8. In this regard, he has placed before this Court the copies of summons issued to wife of the appellant, and one Sri. Nagabhushan an employee of the bank and

a Co-Accused in CC No.2634/2019, CC No.2775/2019 and CC No.2776/2019, which reads as follows, "To depose your Statement".

9. Sri. Patil's submission was that, the respondents claim that proceeds of crime arising out of the case FIR 325/2014 dated 17-07-2014, Doddapete Police Station, Shimoga (Now CC No.2634/2019, CC No.2775/2019 and CC No.2776/2019) involves schedule offence is a misconceived argument.

10. The appellant herein was initially named as Accused No. 15 as could be seen from charge sheet (Annexure-C). The appellant was taken in custody and released on bail. Thereafter in the final report/charge sheet, the appellant is discharged/dropped from the case with shara "offence as against Accused 15 is not proved hence, dropped from the charge-sheet".

11. That again FIR crime No. 16/2021 was filed on 26-02-2021 at Jayanagar Police Station, Shimoga treating appellant herein as Accused No.1 for the offences under section 120-B, 168, 200, 403, 405, 409,

418, 419, 420, 424, 425, 427, 467, 468, 474 read with section 34 IPC in-respect of the very incident referred in FIR 325/2014.

12. The Appellant challenged FIR 16/2021 in WP No.8294/2021. The said writ petition was allowed by order dated 31.08.2021 and the said FIR for all the aforesaid IPC offences was quashed.

13. According to Sri. Patil, again in the case arising out of FIR No.325/2014, further investigation was taken up under section 173(8) of Cr.PC and a final report/charge sheet dated 31.07.2014 was submitted. The present appellant is shown as Accused 15 and offence alleged are 409, 202 read with 36 of IPC, the cognizance of this final report/charge sheet has not taken as yet. He stated, the offences under Sections 409, 202 read with 36 of IPC are not scheduled offences under PMLA.

14. Thus according to Sri. Patil (as per Annexure-C), final report/charge sheet the offence against the appellant Accused 15 not proved and

therefore dropped from the charge sheet thus, the Petitioner/Appellant in effect is discharged from the case which involved predicate offence.

15. He also stated, FIR No.16/2021 registered against petitioner/appellant in respect of same offences which includes schedule offences having been quashed as per order dated 31.08.2021 in WP No.8294/2021 and after further investigation alleging offences under section 409, 202 read with 36 IPC the same are not schedule offence, the respondents cannot step in and register ECIR treating the appellant as an accused under PMLA.

16. He has relied upon the judgment of the Supreme Court in the case of ***Vijay Madanlal Choudhary*** (supra) paragraphs No.253, 281 to 283 and 467-v-d to contend, the respondent cannot start the proceedings against any person on notional basis or on the assumption that a schedule offence has been committed unless it is so registered with the jurisdictional police.

17. According to Sri. Patil, the respondent sometimes seek to claim that FIR No. 4/2014 dated 30-05-2015 now registered as Special (C)-98/2018 pending before the court of Special Judge, Shimoga alleging offences under section 13 (1) (e) read with 13 (2) of the PC Act, as the schedule offence case. The appellant herein has filed W.P No. 10108/2024 and the interim order of stay is granted in the said Writ Petition. Therefore no proceedings under PMLA can be initiated treating aforesaid FIR 4/2014 Special (C)-98/2018 as the schedule offence.

18. According to Sri. Patil, the following cases were heard by the learned Single Judge and decided vide the impugned judgment:

(i) WP No.22780/2023 challenging the ECIR and the summons issued under PMLA;

(ii) WP No.22989/2023 filed by the appellant challenging the additional charge sheet filed for offence under Sections 409, 202 read with Section 36 of IPC in case FIR No.325/2014 (Now CC No.2634/2019, CC No.2775/2019 and CC No.2776/2019);

(iii) Smt. Shoba accused No.1 in FIR No.325/2014 (Now CC No.2634/2019, CC No.2775/2019 and CC No.2776/2019) had filed WP No.12451/2021, WP No.12423/2021, WP No.12426/2021 challenging the order of the session court which had set aside the discharge order passed by the Trial Court.

19. The submission of Sri. Patil was, all the aforesaid five cases were taken up for hearing together. The appellant who was the petitioner in WP No.22780/2023 (PMLA Case) and WP No.22989/2023 [FIR No.325/2014 (Now CC No.2634/2019, CC No. 2775/2019 and CC No.2776/2019)] contended that case pertaining to PMLA and so-called cases pertaining to IPC offence cases should not be heard jointly as it causes prejudice to the appellant, but it was still decided.

20. According to him, under Section 44(i)(c) of PMLA, the Special Court trying the offence relating to IPC offence case is required to commit the case to special court trialing the PMLA offence if an application filed by the complainant authorised under PMLA.

21. The explanation to Section 44(i) provides that the trial of both sets of offence by the same court shall not be construed as joint trial. These provisions came up for consideration in ***Vijay Madanlal Choudhary*** (supra), wherein, though there is an enabling provision made for both IPC offence and the PMLA offence could be tried by the same court it should be separate trial. Further, the Supreme Court has also held transferring of IPC (schedule offence case) to the Special Court trying PMLA cases is a directory/enabling provision not to be readily resorted to.

22. Therefore according to him, under the PMLA itself, Legislature has recognized the prejudice likely to be caused to the accused and therefore it is observed that trial by the same court should not be readily done and even if same court is trying both the offences still it should be separate trial.

23. He do stated, though the provisions of section 44 of PMLA are not applicable in respect of writ proceedings before this Court, but still the underlying

principle that both cases should be tried separately and trial by the same court should not be readily taken up will be applicable. Therefore the joint hearing of IPC offence/schedule offence case and WP No.22780/2023 filled against ECIR under PMLA has caused prejudice to the appellant. In support of his submission, he has referred to paragraph No.24 of the written submissions filed in WP No.22989/2023.

24. He further submitted that, the respondent has not filed statement of objections or counter to the writ petition. The written note of submissions/synopsis was filed by the respondents on the last date of argument i.e., 15.12.2023 when the case was reserved for judgment. Therefore, the petitioner/appellant was greatly handicapped to put forth his case.

25. In support of his submissions, Sri. Patil has also relied upon the judgments of the Supreme Court in the cases of ***State of Haryana and Others -Vs.- Bhajan Lal and Others [AIR 1992 SC 604]*** and ***Abhishek***

Banerjee and Another -Vs.- Directorate of Enforcement [(2024) 9 SCC 22].

26. On the other hand, Sri. Kamath, apart from his preliminary submission on maintainability, would also state the following:

(i) The appellant has been the Chairman of Shivamogga DCC Bank for a period of 23 years from 1997-2020 (para 2 of WP)1.

(ii) As Chairman, the appellant had administrative control over the bank and its employees. [Accused No.1 in predicate offence, Smt Shobha was appointed during the tenure of the appellant].

(iii) On 17.07.2014, the Doddapete Police registered FIR in Crime No.325/2014 in respect of issuance of fraudulent gold loans issued by the Shivamogga DCC Bank against fake gold, by creating fake documents leading to misappropriation of about Rs.63 crores. Later, the investigation was transferred to CID.

(iv) Police filed charge sheet in Crime No.325/2014 under various sections of IPC including Section 471 and Section 120(B), both of which are scheduled offences under PMLA. In the said charge sheet, appellant was arraigned as Accused No.15.

(v) Additional charge sheet was filed subsequently for offences under Sec.409, 202 r/w 36 of IPC. Though appellant's name was dropped from the first charge sheet, appellant was added back as Accused No.15.

(vi) In a separate proceeding bearing Crime No.4/2014, the appellant has been charged for offences under Section 13(1)(e) and 13(ii) of the PC Act. However, appellant claims that he has challenged the grant of sanction in the said proceedings and that further proceeding has been stayed by this Court.

27. He also, by referring to the judgment of the Supreme Court in ***Vijay Madanlal Choudhary*** (supra) and ***Pavana Dibbur -Vs.- Directorate of Enforcement [(2023) 15 SCC 91]***, stated as under:

(i) Existence of predicate offence is sufficient for the registration of ECIR and commencement of investigation under PMLA.

(ii) The investigation can cover even those that are not accused of the predicate offence.

28. According to him, the aforesaid undisputed facts and the principles of law, the following can be deduced:

(i) There are predicate offences in respect of which proceedings are ongoing before the jurisdictional courts.

(ii) The said proceedings are in respect of issuance of gold loans by the bank, which functioned under the chairmanship of the appellant.

(iii) The appellant, being a chairman of the Bank, which is subject matter of investigation, would be aware of the procedure followed for verification of gold loan applications, approval process, verification of gold and other securities and the issuance of gold loans.

(iv) The appellant has not denied, questioned or doubted the allegations against the accused facing charges of the predicate offence.

(v) The appellant has not denied, questioned or doubted the misappropriation of Rs.63 crore by the accused facing charges of the predicate offence.

(vi) As per Sec.2(1)(u) of PMLA, the said Rs.63 crore forms the 'proceeds of crime'.

(vii) As such, existence of proceeds of crime is not in dispute.

(viii) To understand the generation of the said proceeds of crime and to detect the money trail, it would be

necessary to understand the *modus operandi* followed by the staff of the bank.

(ix) Being chairman, the appellant would be aware of the processes followed by the bank staff.

29. He stated, in view of the above, the appellant, being the Chairman, would have valuable information about the processes followed for verifying the loan application, verifying security and for grant and issuance of loans. Therefore, the respondent-Authority is well justified in summoning the appellant to record his evidence.

30. That apart it is his submission, summons issued satisfies the requirements under Section 50(2) PMLA. In this regard, his written submissions shows the following table, as to how the summons satisfies the requirements under Section 50 of PMLA:

SI. No.	Ingredients of Sec.50(2)	How such ingredients were satisfied
1	There should be a predicate offence	Crime No.325/2014 is registered for offences u/s 471, 120-B IPC Crime No.4/2014 is registered for offences

		u/s 13(1)(e and 13(ii) of PC Act
2	There should be an investigation under the PMLA	Pursuant to the aforesaid predicate offences being registered, the respondent has registered ECIR/GZO/05/2021. Pursuant to such ECIR registered, investigation is ongoing
3	Power to issue summons lies with Director, Addl director, Joint director, Deputy director or Assistant director	Summons issued by Assistant Director
4	Any person may be summoned for recording evidence or production of documents during the course of investigation or proceeding under the Act	Appellant has been summoned during the course of investigation in respect of ECIR/BGZO/05/2021 for the purpose of production of documents. It is immaterial whether the appellant is an accused in the predicate offence or not
5	Summons is as per format prescribed in Form V under Rule 11 of PML (Forms, Search & Seizure, etc) Rules, 2005	The prescribed format does not require statement of detailed reasons as to why the appellant is summoned

31. He stated, the propositions submitted on behalf of the appellant, if accepted, would be contrary to the law laid down by the Supreme Court. According to him, on behalf of the appellant, the following three propositions in respect of the PMLA were submitted:

(i) Summons has to state why the addressee is summoned.

(ii) A third party can be summoned under Section 50(2), but, not someone who is connected to the case, against whom no predicate offence is alleged.

(iii) Once appellant is dropped from charges of predicate offence, he cannot be summoned, although predicate offence may continue against other accused.

32. He stated, all the above three assertions are *ex facie* contrary to the plain reading of PMLA and to the law declared by the Hon'ble Supreme Court for the following reasons:

(i) Neither the PMLA nor the Rules framed under it stipulate that the summons must contain the reasons for summoning the addressee beyond the prescribed format. Under Sec. 17, prior to conducting search and seizure, the authorities are

bound to record 'reasons to believe' for initiating the action. However, there is no such stipulations under Sec.50. Therefore, it is not necessary to record any reasons.

(ii) Contrary to the contentions on behalf of the appellant, actually a 3rd party cannot be summoned unless the authority considers it necessary to summon for recording evidence or to produce documents during the course of any investigation or proceeding under the Act. An unconnected person cannot be summoned. However, someone like the appellant, who was the chairman of the bank and has access to information, can be summoned.

(iii) Section 50(2) uses the expression "any person" and as such, it is immaterial whether the appellant is accused in the predicate offence or under any proceedings under the PMLA, for the purpose of summoning him.

33. Sri. Kamath's submission was also, the stay of the proceedings under the PC Act does not impede the summons. As per ***Vijay Madanlal Choudhary*** (supra), the offence under PMLA is a standalone offence and is independent of the predicate offence. Regardless of the

stay of the proceedings under the PC Act, the authorities are justified in summoning the appellant to prevent money laundering and to uncover the money trail. Even if the proceedings under the PC Act are quashed, the other predicate offences under the IPC would continue against the other accused. So long as there is a predicate offence, notwithstanding who is the accused therein, the authorities are justified in investigating into the proceeds of crime. In that direction, the authorities have a right to summon any person whose attendance the authorities consider necessary for recording evidence or produce document. As such, stay of the proceedings under the PC Act would not disrobe the authorities from their power to summon a person, who they think is required to depose or produce any documents. Moreover, summoning the appellant does not cause any prejudice to him. Stay of proceedings under the PC Act may affect any proceedings, if any, under Sec.3 of PMLA to prosecute the appellant for the offence of 'money laundering'. However, it does not impede the summoning of the

appellant for recording evidence or for producing documents.

34. Sri. Kamath has also contested the submission of Sri. Patil on hearing of all the petitions together by the learned Single Judge, by stating that joint hearing of all cases was at the behest of the appellant. The appellant had filed WP No.22780/2023 on the ground that the other accused in the predicate offences had filed writ petitions challenging the proceedings and that in such petitions the further proceedings in respect of predicate offences were stayed. The appellant produced copies of the interim order in such petitions and sought to take advantage of such orders in his petition. It is under such circumstances that the learned Single Judge clubbed all petitions together and rightly heard them and disposed them off together. Having taken advantage of the orders in other petitions, the appellant cannot now turn back and claim that the joint hearing has caused prejudice to him. Moreover, no such claim of prejudice was raised before the learned Single Judge.

35. He also argued, writ petition was not maintainable on the following two grounds:

(a) There was no cause of action

35.1. In ***Union of India and Another -Vs.- Kunisetty Satyanarayana [(2006) 12 SCC 28]***, the Hon'ble Supreme Court held that, a mere charge sheet or a show cause notice would not give rise to any cause of action because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. The said principle would squarely apply to the present case. The Respondents have conducted the search and seizure proceedings strictly in accordance with Section 17(1) of the Act. The officers who had issued the authorization and summons had appropriate jurisdiction. The summons does not make any allegations against the appellant and merely requires him to appear before the authority to record his statement. There is no adverse order against the Appellant. Under such circumstances there is no cause of action to file a writ petition.

(b) No legal right of the appellant was violated

35.2. In the aforesaid judgment, the Hon'ble Supreme Court also observed that a mere show cause notice or charge sheet does not infringe the right of anyone. Similarly, in ***Raghav Bahl -Vs.- Enforcement Directorate, Ministry of Finance [2023 SCC OnLine Del 8611]***, the Delhi High Court held that, there is no violation of any fundamental right or even legal right of the appellant warranting interference of the Court at the state of summons.

35.3. In ***Kirit Shrimankar -Vs.- Union of India and Others [(2018) 12 SCC 651]***, wherein the writ petition was filed based on averments that during search proceedings no incriminating documents were found and that the officers threatened the appellant of arrest, the Hon'ble Supreme Court refused to intervene and dismissed the petition by observing that it was premature and that the appellant has to work out his remedies as and when any positive action is taken against him. The present petition too is based on similar averments that

no incriminating documents were found during the search and that the officers threatened of arrest. A mere summons does not constitute a positive action entitling the petitioner to question it in a writ petition.

35.4. Following the aforesaid principles, the Kerala High Court too dismissed a writ petition challenging summons issued by ED authorities in ***C.M. Raveendran -Vs.- Union of India [2020 SCC OnLine Ker 7555]***.

35.5. As such, the mere issuance of summons for recording a statement does not infringe or violate any right of the Appellant. Accordingly, the writ petition filed by the Appellant was not maintainable.

36. In view of the above, he prayed this Court to dismiss the above writ appeal with costs in the interest of justice.

Analysis:

37. Having heard the learned counsel for the parties, at the outset we deal with the plea of Sri. Kamath on the maintainability of the appeal in as

much as the appellant consciously chose to file a writ petition under Article 226 of the Constitution read with Section 482 of Cr.PC knowing well that it would be listed before the learned Judge assigned with the roster for hearing petitions filed under Section 482. So, having chosen to invoke Section 482, the impugned order being in a petition under Section 482, no intra-court appeal lies against an order passed in such petition. Hence, the appeal is not maintainable. The plea of Sri. Kamath is *prima facie* appealing. The fact is that, as we have heard the counsel for the parties on merits of the appeal, we, leaving the question of law/the issue open, proceed to decide the appeal on merits.

38. Insofar as the submission of Sri. Patil that once the appellant has been dropped from charges of predicate offence, he cannot be summoned although predicate offence may continue against other accused is concerned, we are not in agreement with the said submission made by Sri. Patil. To answer this plea, it is

necessary to reproduce Section 50 of PMLA, on which Sri. Kamath has relied upon:

> *"**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 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 authorised 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) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director."

Sri. Kamath is right to state, Section 50(2) uses the expression "any person" and as such, it is immaterial whether the appellant is an accused or not as long as the predicate offence is pending in jurisdictional Court for which summoning has been done for recording evidence or production of documents during the course of

investigation or proceedings under the Act. He also justifies the summons to contend that the appellant has been the Chairman of the Shivamogga DCC Bank for a period of DCC Bank for a period of 23 years from 1997-2020. As Chairman, the appellant had administrative control over the bank and its employees. The accused No.1 in the predicate offence Smt. Shobha was appointed during his tenure as a Chairman. The FIR No.325/2014 is in respect of issuance of fraudulent gold loans issued by the Shivamogga DCC Bank against fake gold, by creating fake documents leading to misappropriation of about Rs.63 Crores. The Police have filed a charge sheet in FIR No.325/2014 under various sections of IPC including Section 471 and Section 120(B), both of which are scheduled offences under PMLA and in the said charge sheet, appellant was arraigned as Accused No.15, but the appellant was dropped from the charge sheet; an additional charge sheet was filed for the offences under Sections 409, 202 read with Section 36 of IPC and added back as accused No.15. So, the predicate offence being

pending, the appellant can be summoned. The reliance placed by Sri. Patil on paragraphs No.253 and 281 to 283 of the judgment in the case of ***Vijay Madanlal Choudhary*** (supra) are reproduced as under:

> *"253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence that can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be*

countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of the definition clause "proceeds of crime", as it obtains as of now.

xx xx xx xx xx

281. The next question is: Whether the offence under Section 3 is a stand-alone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the case concerned has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex

consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a court of competent jurisdiction. It is well within the jurisdiction of the court concerned trying the scheduled offence to pronounce on that matter.

282. Be it noted that the authority of the authorised officer under the 2002 Act to prosecute any person for offence of money laundering gets triggered only if there exist proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police [under Section 66(2) of the 2002 Act] for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On

receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.

283. Even though the 2002 Act is a complete code in itself, it is only in respect of matters connected with offence of money laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) PMLA is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution."

The said judgment shall not help the case of the appellant. There is no dispute that there is a predicate offence against the other accused and in furtherance of that, the Authorities are justified in summoning any person whose attendance is necessary for investigation purpose. Sri. Kamath has rightly relied upon paragraph No.295 of the judgment in the case of ***Vijay Madanlal***

Choudhary (supra), wherein the Supreme Court has stated as under:

> *"295. As aforesaid, in this backdrop Amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint*

to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act."

39. Similarly, Sri. Kamath is justified in relying upon the conclusion of the Supreme Court in the case of ***Pavana Dibbur*** (supra) in paragraph No.31.1, which reads as under:

"31.1. It is not necessary that a person against whom the offence under Section 3 PMLA is alleged, must have been shown as the accused in the scheduled offence;"

From the above, it is clear that, for issuance of summons under PMLA, the person need not be an accused in the schedule offence. In fact, paragraph No.425 and 431 on which reliance has been placed by Sri. Kamath, read as under:

"425. Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summons to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression "proceeding" in the earlier part of this judgment

and held that it applies to proceeding before the adjudicating authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summons to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summons which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act. The criticism is essentially because of sub-section (4) which provides that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228IPC. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well established. The Constitution Bench of this Court in M.P. Sharma [M.P. Sharma v. Satish Chandra, (1954) 1 SCC 385 : 1954 SCR 1077 : AIR 1954 SC

300] had dealt with a similar challenge wherein warrants to obtain documents required for investigation were issued by the Magistrate being violative of Article 20(3) of the Constitution. This Court opined that the guarantee in Article 20(3) is against "testimonial compulsion" and is not limited to oral evidence. Not only that, it gets triggered if the person is compelled to be a witness against himself, which may not happen merely because of issuance of summons for giving oral evidence or producing documents. Further, to be a witness is nothing more than to furnish evidence and such evidence can be furnished by different modes. The Court went on to observe as follows : (M.P. Sharma case [M.P. Sharma v. Satish Chandra, (1954) 1 SCC 385 : 1954 SCR 1077 at p. 1088 : AIR 1954 SC 300, para 10] , SCC p. 398, para 11)

> *"11. Broadly stated the guarantee in Article 20(3) is against "testimonial compulsion". It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is "to be a witness". A person can "be a witness" not merely by giving oral evidence but also by producing documents or making intelligible*

gestures as in the case of a dumb witness (see Section 119 of the Evidence Act) or the like. "To be a witness" is nothing more than "to furnish evidence", and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes. So far as production of documents is concerned, no doubt Section 139 of the Evidence Act says that a person producing a document on summons is not a witness. But that section is meant to regulate the right of cross-examination. It is not a guide to the connotation of the word "witness", which must be understood in its natural sense i.e. as referring to a person who furnishes evidence. Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the courtroom. The phrase used in Article 20(3) is "to be a witness" and not to "appear as a witness". It follows that the protection afforded to an accused insofar as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the courtroom but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been

levelled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case."

(emphasis supplied)

xx xx xx xx xx

431. In the context of the 2002 Act, it must be remembered that the summons is issued by the authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the adjudicating authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the adjudicating authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the adjudicating authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the

summons issued by the authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money laundering. If the statement made by him reveals the offence of money laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from

proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence."

(Emphasis supplied)

40. The Supreme court in the case of ***Directorate of Enforcement -Vs.- The State of Tamil Nadu and Ors. [Petition(s) for Special Leave to Appeal (Crl.) No(s).1959-1963/2024]***, has in paragraphs No.6 to 8, stated as under:

"6. From the bare reading of the said provisions, it clearly transpires that the concerned officers as mentioned therein, have the power to summon any person whose attendance he considers necessary, either to give evidence or produce any record during the course of investigation or proceeding under the PMLA. Since, the petitioner – ED is conducting the inquiry / investigation under the PMLA, in connection with the four FIRs, namely (I) FIR No. 08 2018 dated 23.08.2018 registered by V&AC, Thanjavur, under Sections 120(B), 421, 409, 109 of IPC and Sections 13(1)(c), 13(l)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act) r/w 109 of IPC etc.; (II) FIR No. 03 2020 dated 20.10.2020 registered by V&AC, Dindigul under Sections 41, 109 of IPC

and Section 7(a) of P.C. Act; (III) FIR No. 02 2022 dated 05.02.2022 registered by V&AC, Theni under Sections 7, 13(c), 13(l)(d)(l), 13(l)(a) r/w 13(2) and 12 of P.C. Act, Sections 120(B), 167, 379, 409, 465, 468, 471, 477 r/w 109 of IPC and Sections 7, 8(1), 13(l)(a) r/w 13(2) and 12 of PC Act, as amended; (IV) FIR No. 68/2023 dated 25.04.2023 registered by Murappanadu Police Station, Thoothukudi District, under Section 449, 332, 302 and 506(2) of IPC, and since some of the offences of the said FIRs are scheduled offences under PMLA, the same would be the investigation/ proceeding under the PMLA, and the District Collectors or the persons to whom the summons are issued under Section 50(2) of the Act are obliged to respect and respond to the said summons.

7. The Writ Petitions filed, at the instance of the State Government, challenging such summons issued to the District Collectors prima facie appears to be thoroughly misconceived, and the impugned order passed by the High Court also being under utter misconception of law, we are inclined to stay the operation of the impugned order.

8. Accordingly, the operation and execution of the impugned order is stayed, pending the present SLPs. The District Collectors shall appear and respond to the summons in question issued by the

petitioner – ED on the next date, that may be indicated by the ED."

(Emphasis supplied)

41. Even the Delhi High Court in the case of ***Amit Katyal -Vs.- Directorate of Enforcement [2023 SCC OnLine Del 7119]***, has held that, the Court cannot throttle the investigative process at the stage of issuance of summons. Sri. Kamath is also justified in relying upon the judgment of the Delhi High Court in the case of ***Virbhadra Singh and Anr. -Vs.- Enforcement Directorate and Anr. [2017 SCC OnLine Del 8930]***, wherein in paragraph No.143, the Court has held as under:

"143. It is clear from the above discussion that the Prevention of Money-Laundering Act, 2002 is a complete Code which overrides the general criminal law to the extent of inconsistency. This law establishes its own enforcement machinery and other authorities with adjudicatory powers and jurisdiction. The enforcement machinery is conferred with the power and jurisdiction for investigation, such powers being quite exhaustive to assure effective investigation and with built-in safeguards to ensure fairness, transparency and

accountability at all stages. The powers conferred on the enforcement officers for purposes of complete and effective investigation include the power to summon and examine "any person". The law declares that every such person who is summoned is bound to state the truth. At the time of such investigative process, the person summoned is not an accused. Mere registration of ECIR does not make a person an accused. He may eventually turn out to be an accused upon being arrested or upon being prosecuted. No person is entitled in law to evade the command of the summons issued under Section 50 PMLA on the ground that there is a possibility that he may be prosecuted in the future. The law declared in Nandini Satpathy (supra) concerning the statements under Section 161 Cr.P.C. recorded by the police, and in other pronouncements concerning similar powers of officers of the Customs Department, as noted earlier, provide a complete answer to the apprehensions that have been expressed."

(Emphasis supplied)

42. Similarly, the Supreme Court in the case of ***State of Gujarat -Vs.- Choodamani Parmeshwaran Iyer and Another [2023 SCC OnLine SC 1043]***, in paragraph No.11, has held as under:

"11. We are not convinced with the manner in which the High Court has disposed of both the writ applications filed by the respondents. It was expected of the respondents to honour the summons and appear before the authority for the purpose of interrogation."

43. The Kerala High Court in the case of ***C.M. Raveendran*** (supra), in paragraphs No.6 and 8, has held as under:

"6. The decision of the High Court of Delhi in Virbhadra Singh v. Directorate of Enforcement [2017 SCC OnLine Del 8930] was cited to contend that no person is entitled in law to evade the command of the summons issued under Section 50 of the Act on the ground that he may be prosecuted in future. Attention was drawn to the observations of the Honourable Supreme Court in Pool Pandi v. Superintendent, Central Excise [(1992) 3 SCC 259] on the entitlement of a person summoned under the Customs Act to have the presence of a companion during questioning. The relevant portion of the judgment is extracted hereunder:

"11. We do not find any force in the arguments of Mr. Salve and Mr. Lalit that if a person is called away from his own house and questioned in the atmosphere of the Customs office without the

assistance of his lawyer or his friends his constitutional right under Article 21 is violated. The argument proceeds thus : if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering questions it amounts to mental torture. We are unable to agree. It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice. Mr. Salve was fair enough not to pursue his argument with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The

relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the 'just, fair and reasonable test' we hold that there is no merit in the stand of appellant before us."

xx xx xx xx xx

8. I find substantial force in the preliminary objection regarding maintainability raised by the learned ASG. Exhibit P11 summons is issued under Section 50(2) of the Act. A person issued with summons is bound to attend in person or through authorised agents, as the officer issuing the summons directs, and is bound to state the truth upon any subject respecting which he is examined or makes statements and to produce such documents as may be required. As held by the Apex Court in Kirit Shrimankar, no cause of action arises merely for reason of a person being called upon to state the truth or to make statements and produce documents. I am unable to accept the submission of the learned counsel for the petitioner that the cause of action is based on the repeated summoning of the petitioner in spite of his illness, which gave rise to the reasonable apprehension that the petitioner will be forced to give statements against his will. I find no basis for such apprehension inasmuch as the date for appearance

was changed by the 2nd respondent on three occasions, acceding to the request made by the petitioner. Having commenced an investigation or proceeding, the 2nd respondent cannot be expected to wait indefinitely to suit the petitioner's convenience. As held by the Apex Court in Dukhishyam Benupani, it is not for this Court to monitor the investigation and to decide the venue, the timings, the questions and the manner of questioning. I find the following observations by Justice R.K. Gauba in Virbhadra Singh to be contextually relevant;

> *"Suffice it to observe in this context, and at this stage, that those in public life are expected to be open to probity. Higher the position in life (or polity), higher the obligation (moral, if not legal) to be accountable. Endeavours to stall investigation into their affairs by the law enforcement agencies, particularly on technical grounds, have the potency of giving the impression that there is something to hide." "*

44. Insofar as the reliance placed by Sri. Kamath on the judgment in the case of ***Vilelie Khamo*** (supra) is concerned, the Supreme Court has, in the said judgment, stated as under:

> *"xx xx xx xx xx*

Suffice it is to state that at this stage we are dealing with a summons that has been issued.

In such view of the matter, the impugned order stands set aside and the appellant is at liberty to proceed in pursuance to the summons that had been issued. However, we make it clear that all issues are left open to the respondent, in the event of him being arrayed as an accused."

45. Sri. Patil has referred to the judgment of the Madras High Court in the case of ***K.Govindaraj -Vs.- Union of India and Others [WP No.5402/2024 and connected matters****, decided on 16.07.2024****]***, more particularly on paragraph No.14, wherein reference has been made to the interim order passed by the Supreme Court. In the said order, the Supreme Court has clearly said that the persons to whom summons are issued under Section 50(2) of the Act, are obliged to respect and respond to the said summons. Hence, the said judgment shall not come to the aid of the appellant.

46. So in view of the settled position of law as noted above, suffice it would be to state, there is no illegality in the issuance of summons to the appellant. In

fact on the basis of the aforesaid conclusion of ours, it necessarily follows that a challenge to summons is not maintainable in view of the judgment in the case of ***Kirit Shrimankar*** (supra), wherein the Supreme Court has held, mere summons does not constitute a positive action entitling the petitioner to question it in a writ petition. Similarly, the Supreme Court in the case of ***Kunisetty Satyanarayana*** (supra), has held that mere charge sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is not the case of the appellant that the Officer who had issued summons did not had the appropriate jurisdiction. Sri. Kamath is right in stating that, the summons does not make any allegations against the appellant and merely requires him to appear before the Authority. There is no adverse order against the appellant. Under such circumstances, there was no cause of action to file a writ petition.

47. One of the submissions of Sri. Patil was that, the learned Single Judge should not have decided the petition filed by the appellant and other accused together. According to Sri. Patil, the appellant who was the petitioner in WP No.22780/2023, challenged proceedings under PMLA and in WP No.22989/2023, challenged FIR No.325/2014 as it has caused prejudice to the appellant. He relied upon the provisions of Section 44 of the PMLA to contend that the trial of both sets of offences by the same Court shall not be construed as joint trial. In other words, the same should be held in separate trial. This provision according to him, is recognizing that no prejudice should be caused to the accused. On this submission of Sri. Patil, the submission of Sri. Kamath was, no such plea was raised on behalf of the appellant before the learned Single Judge. In fact according to him, it was at the behest of the appellant that the petitions were clubbed and heard. Suffice it would be to state, we find that the detailed arguments were advanced in the petition before the learned Single

Judge without any objection for separating the writ petition from which the impugned order arises. In fact the plea of Sri. Kamath was also that, the appellant had filed WP No.22780/2023 on the ground that the other accused in the predicate offences had filed writ petitions challenging the proceedings and that in such petitions, the further proceedings in respect of predicate offences were stayed. According to Sri. Kamath, the appellant produced copies of the interim order in such petitions and sought to take advantage of such orders in his petition. In other words it is his submission that, in view of the stand taken by the appellant, the learned Single Judge had heard and decided them together. The submission of Sri. Kamath do *prima facie* reflects that, at the behest of the appellant, the petitions were clubbed together and decided. There is nothing in the impugned order of the learned Single Judge which depicts that such an objection was taken by the appellant during the hearing of the petitions. In the absence of any objection, the writ petition having been heard and decided, surely

the plea advanced by Sri. Patil is an afterthought and is liable to be rejected. It is ordered accordingly. Insofar as the judgments in the cases of ***Bhajan Lal*** (supra) and ***Abhishek Banerjee*** (supra) relied upon by Sri. Patil are concerned, the same shall not have any applicability to the issue in hand, moreso in view of our conclusion above.

48. In view of our discussion made hereinabove, we hold that the present appeal filed by the appellant is totally misconceived; the learned Single Judge is justified in rejecting the writ petition. We also, ***dismiss*** the appeal; the impugned order dated 20.02.2024 passed by the learned Single Judge in WP No.22780/2023 is upheld.

49. In view of dismissal of the appeal, pending application(s), if any, stand *disposed of*.

Sd/-
(V KAMESWAR RAO)
JUDGE

Sd/-
(S RACHAIAH)
JUDGE

PA