IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.04.2025

PRONOUNCED ON : 23.04.2025

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.Nos.10348, 10352 & 10355 of 2025
and
W.M.P.Nos.11654, 11655, 11657 to 11659 & 12695 of 2025

W.P.No.10348 of 2025:

Tamil Nadu State Marketing Corporation Limited,
(TASMAC)
Represented by the Managing Director,
CMDA Towers-II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008. ... Petitioner

Vs.

Directorate of Enforcement,
Represented by Assistant Director,
Chennai Zonal Officer II,
No.2, 5th and 6th Floor,
BSNL Administrative Building,
Kuskumar Road, Nungambakkam,
Chennai 600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus, directing the respondent, their men, employees,

subordinates, agents or any other persons claiming or acting through or under them Not to Harass the officials/employees of the petitioner under the guise of investigation under the Prevention of Money Laundering Act, 2002.

For Petitioner : Mr.Vikram Chaudhri
Senior Advocate
Assisted by Mr.Stalin Abhimanyu
Additional Government Pleader

For Respondent : Mr.S.V.Raju
Additional Solicitor General of India
Assisted by Mr.Zoeb Hussain and
Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.N.Ramesh
Special Public Prosecutor (ED)

W.P.No.10352 of 2025:

Tamil Nadu State Marketing Corporation Limited,
(TASMAC)
Represented by the Managing Director,
CMDA Towers-II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008. ... Petitioner

Vs.

Directorate of Enforcement,
Represented by Assistant Director,
Chennai Zonal Officer II,
No.2, 5th and 6th Floor,
BSNL Administrative Building,
Kuskumar Road, Nungambakkam,
Chennai 600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to

issue Writ of declaration, in so far as it relates to the search and seizure proceedings conducted under Section 17 of the Prevention of Money Laundering Act, 2002 from 06.03.2025 to 08.03.2025 as without jurisdiction, illegal and arbitrary.

For Petitioner : Mr.Vikas Singh
Senior Advocate
Assisted by Mr.Stalin Abhimanyu
Additional Government Pleader

For Respondent : Mr.S.V.Raju
Additional Solicitor General of India
Assisted by Mr.Zoeb Hussain and
Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.N.Ramesh
Special Public Prosecutor (ED)

W.P.No.10355 of 2025:

1.The State of Tamil Nadu,
Represented by the Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai 600 009.

2.Tamil Nadu State Marketing Corporation Limited,
(TASMAC)
Represented by the Managing Director,
CMDA Towers-II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008. ... Petitioners

Vs.

Directorate of Enforcement,
Represented by Assistant Director,
Chennai Zonal Officer II,
No.2, 5th and 6th Floor,
BSNL Administrative Building,

Kushkumar Road, Nungambakkam,
Chennai 600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of declaration, that the power of the respondent, so far as it relates to investigation, enquiry etc. of an offence of money laundering in relation to a predicate offence arising out of and within territorial limits of a State without the consent of the concerned State, is violative of basic structure of federalism and separation of powers, and therefore, such enquiry, investigation etc., by the respondent can be carried out only at the request of the State Agencies / State Government, or by or under the directions of the Constitutional Courts.

For P1	: Mr.P.S.Raman Advocate General Assisted by Mr.Edwin Prabhakar State Government Pleader and Mrs.E.Ranganayaki Additional Government Pleader
For P2	: Mr.Vikram Chaudhri Senior Advocate Assisted by Mr.Stalin Abhimanyu Additional Government Pleader
For Respondent	: Mr.S.V.Raju Additional Solicitor General of India Assisted by Mr.Zoeb Hussain and Mr.AR.L.Sundaresan Additional Solicitor General of India Assisted by Mr.N.Ramesh Special Public Prosecutor (ED)

COMMON ORDER

S.M.SUBRAMANIAM, J.

Three writ petitions have been filed. The writ petition in W.P.No.10348 of 2025 has been filed by the Tamil Nadu State Marketing Corporation Limited (TASMAC), seeking the issuance of writ of mandamus, to direct the respondent, their men, employees, subordinates, agents or any other persons claiming or acting through or under them not to harass the officials/employees of the petitioner under the guise of investigation under the Prevention of Money Laundering Act, 2002 [hereinafter referred to as 'PMLA'].

2. The second writ petition in W.P.No.10352 of 2025 filed by TASMAC seeking a writ of declaration, in so far as it relates to the search and seizure proceedings conducted under Section 17 of Prevention of Money Laundering Act, 2002 from 06.03.2025 to 08.03.2025, were without jurisdiction, and therefore, illegal and arbitrary.

3. The third writ petition in W.P.No.10355 of 2025 has been filed by the State of Tamil Nadu, seeking a writ of declaration that the power of the respondents so far as it relates investigation, inquiry etc., of an offence of

money laundering in relation to a predicate offence arising out of and within the territorial limits of the State without the consent of the concerned State, is violative of basic structure of federalism and separation of powers. Therefore, such inquiry, investigation, etc., by the respondent can be carried out only at the request of the State Agencies/State Government or by or under the directions of the Hon'ble Constitutional Courts.

4. The said Original prayer sought to be amended in W.M.P.No.12695 of 2025 as follows: (i) To Read down and/or read into the expression “person” occurring in Section 2(1)(s) of the PML Act and hold that the same envisages a particular class and category to be included in its ambit, sweep and scope which certainly does not extend to any Authority, Regulator or Officer of Central or State Governance etc., (ii) To Hold and declare that the only obligation on the officers of any State Government under the Act is to assist the authorities in the enforcement thereof, (iii) To direct the respondent Enforcement Directorate to call upon only those officers of the State who have been authorised and notified under Section 54(1)(j) of PML Act thereof by the Central Government to assist them for enforcement of the provisions thereof, (iv) To Direct the respondents to request such assistance from the State Government or its Officers only in terms of Section 54 and not under Section 17 or 50 etc., (v) To Direct the

respondents not to enter into and exercise any power of search and seizure in terms of Section 17 of the PML Act at any premises of the Government of the State of Tamil Nadu be it any office of any Corporation under it as well, (vi) To hold and declare the action of the respondents in entering into the premises of the Tamil Nadu State Marketing Corporation Limited (TASMAC) to be illegal, unconstitutional and invalid and accordingly, set aside the proceedings carried out in pursuance thereto.

5. The brief facts in these writ petitions are that the TASMAC is a company incorporated under the Companies Act, 1956, on 23.05.1983. It is wholly owned by the Government of Tamil Nadu, with its Registered Office in Chennai. TASMAC has been vested with the exclusive privilege of wholesale supply of Indian Made Foreign Liquor ('IMFL') for the entire State of Tamil Nadu, as per Section 17(C)(1-A)(a) of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937). It has taken over the wholesale distribution of IMFL from the Private Sector in the whole State of Tamil Nadu in May 1983. In addition, TASMAC also engages in retail business. Currently, the distribution of IMFL and Beer items to the licensees is being carried out through 43 depots of TASMAC located throughout the State. TASMAC manages nearly 5,000 retail units across the State of Tamil Nadu.

6. These writ petitions have been filed consequent to a search conducted by the Directorate of Enforcement at the TASMAC Headquarters and its connected locations. The search commenced at 11:55 A.M. on 06.03.2025 (Thursday) and continued for three days until 11:40 P.M. on 08.03.2025 (Saturday). The search was conducted on the 4th and 5th Floors of the Head Office of TASMAC in Egmore, Chennai, by several officers of the respondent, including two Assistant Directors and other Enforcement Officers.

7. The Enforcement Directorate (ED) in their counter has stated that multiple F.I.Rs have been registered by the Tamil Nadu Department of Vigilance and Anti-Corruption on the issue that TASMAC shops are collecting excess amount than the actual Market Retail Price (MRP). That the staff are selling some foreign liquors, which rarely come in the market at exorbitant prices i.e., upto Rs.500/- excess than the actual rate. Further, some supervisors also admitted that they are collecting the excess amount than the MRP depending upon the brand of the liquor from Rs.10/- to Rs.100/-; and that they not only collect the excess amount from the cash purchasers, but also collect the excess amount even from customers, who purchased the liquor through credit and debit cards etc.

8. F.I.Rs were registered by the Tamil Nadu Department of Vigilance and Anti-Corruption, alleging that during various joint surprise checks, unaccounted cash was found at the Retail Vending Shops and District Manager Offices of TASMAC. It was also alleged that officers at the level of District Managers and Senior Regional Managers are indulging in high level of corruption by collecting illegal gratification or bribe from the retail TASMAC shops through the shop supervisors of the TASMAC shops, for favouring them by way of not conducting surprise inspection and allowing them to sell liquor at higher rates than the prescribed rates fixed by the Government. Regional Managers of TASMAC are indulging in collection of bribes for transfer and posting of TASMAC Staff.

9. F.I.Rs have been registered on the issue of representatives of breweries approaching the officials of TASMAC to take off high stake from their respective companies by way of illegal gratification. Also F.I.Rs have been registered on the issue of daily bribes being paid to District Managers, Supervisor, etc.

10. The F.I.Rs are registered mainly under Sections 7, 12 and 13 of Prevention of Corruption Act, 1988, which are also the Scheduled offence under PMLA.

11. Based on the same, the Enforcement Directorate had conducted search and seizure at TASMAC Headquarters and other connected locations by invoking Section 17 of PMLA. The search and seizure procedures are well contemplated within the ambit of Prevention of Money Laundering Act, 2002. Section 17 has clearly detailed about it and the same has been upheld in ***Vijay Madanlal Choudhary and Others vs. Union of India and Others***[1]***.***

12. Section 17 (1) reads as follows;

> *"(1) Where 1[the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section,]* ***on the basis of information in his possession, has reason to believe*** *(the reason for such belief to be recorded in writing) that any person-*
>
> *(i) has committed any act which constitutes money-laundering, or*
>
> *(ii) is in possession of any proceeds of crime involved in money-laundering, or*
>
> *(iii) is in possession of any records relating to money-laundering,2[or]*
>
> *2[(iv) is in possession of any property related to crime,]*
>
> *then, subject to the rules made in this behalf, he may*

1. 2022 SCC Online SC 929

authorise any officer subordinate to him to-

(a) enter and search any building, place, vessel, vehicle or aircraft ***where he has reason to suspect that such records or proceeds of crime are kept****;*

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or2[property, if required or] make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:"

13. Section 17 in explicit terms has clearly mentioned under clause (a), that on authorisation, the concerned officer can enter and search any building based on adequate reasons of suspicion that such records or documents are kept. Further clause (b) holds legal seizure of any record or property found as a result of such search and clause (f) allows examination on oath any person who is found to be in possession of any record or property in respect of all matters relevant to the investigation under the Act.

14. And the said provision has been already discussed in detail in ***Vijay Madanlal's*** case cited *supra.* Further Section 17 has been upheld in ***Vijay Madanlal's*** case. Hence, the vires of this provision is not the point of contention in the present case.

15. Mr.Vikram Chaudhri, the learned Senior Counsel appearing for the Petitioner has relied on the judgement in ***Arvind Kejriwal vs Directorate of Enforcement***[2], where the Hon'ble Supreme Court has elaborately dealt with the Power to arrest under Section 19 of the PMLA. The argument of the learned senior counsel for the petitioner that Section 17 is no less rigorous in its procedural thresholds than Section 19 cannot be accepted. It is impossible to draw a comparison between search and arrest. Such strict parameters as laid down in Section 19 cannot be applied across all the provisions. Section 19 is far more serious as it pertains to the personal liberty of an individual being curtailed. But under Section 17, it deals with a premature exercise of only search and seizure which cannot be measured in the same scales as arrest.

16. Search is conducted in different circumstances from that of arrest. The arrest demands more degree of certainty and actual materials to carry

2. 2024 INSC 400

out the arrest of a person. But in terms of search there is lower degree of certainty required to effectuate a search.

17. The comparison as submitted by the learned Senior counsel for the petitioner between Section 17 and Section 19 in no terms can be entertained as the grounds and powers of arrest is completely different from search and seizure as contemplated under Section 17 of the Act. Arrest is deprivation of one's right to personal liberty, whereas in search and seizure, the scope is tested vis-a-vis right to privacy and freedom of movement. So a tabular comparison of these both Sections cannot yield justice to the legislative intent set out under both these Sections. Arrest is several notches higher when compared to a search conducted. The intent itself differs, hence the principles as envisaged under Section 19 cannot find place under Section 17.

18. It is to be noted that the preconditions set out in Section 17 has self bridled itself in operation. Moreover safeguards under Sections 17 and 62 ensure a mechanism to cut down the misuse of the provision, if any. Further Section 17 of PMLA has been already upheld in ***Vijay Madanlal's*** case cited supra. So the vires of this provision need not be tested in the present case.

19. **The only question for consideration is, Whether the preconditions set out in Section 17 has been complied with or not?**

20. The condition precedent for launch of investigation under PMLA is primarily presence of scheduled offence. The ED in their counter have submitted that investigation was taken up against TASMAC based on multiple F.I.R's registered across the State of Tamil Nadu, on the malpractice of corruption, against many officers/staff/employees of TASMAC for the offences committed by them under Prevention of Corruption Act which is a scheduled offence under the schedule appended to PMLA.

21. And a search was conducted based on the above input. According to the Panchnama, the actual search began at 11:55 A.M. on 06.03.2025 and ended on 11:40 P.M. on 08.03.2025.

22. Section 17 states that the PMLA authority should have 'reason to believe' and those reasons to believe have to be recorded in writing. In the instant case, the ED in their counter have stated as follows: "The petitioner's allegation that "reasons to believe" were not properly documented in writing

as required under Section 17 of PMLA is categorically denied. The search authorization dated 05.03.2025 is on the basis of written reasons to believe, as mandated by Section 17(1) of the PMLA.

23. It is submitted that the said "reasons to believe" documentation is an internal, confidential investigative record that cannot be disclosed at this stage of investigation as it would prejudice ongoing investigation and potentially alert other suspects".

24. In the case of ***Radhika Agarwal vs Union of India***[3]***,*** the ambit of judicial review pertaining to arrest under Special legislations was dealt with. This Court is not placing absolute reliance on this judgment as it mainly deals with arrest under Section 19 PMLA. But we are limiting ourselves to referring to this judgment only to the extent of examining the contours of the term 'reasons to believe'.

25. In the ***Radhika Agarwal's*** case *supra*, in the judgment rendered by Justice Sanjiv Khanna, reliance was on ***Arvind Kejriwal*** judgment cited *supra* and stated that reason to believe must not only be recorded in writing but also the nexus between the materials in possession and reason to believe must be ascertained on judicial review. Also in the same case, in the

3. 2025 SCC Online SC 449

concurring judgment rendered by Justice Bela Trivedi, it was observed that Sufficiency or adequacy of materials on the basis of which such belief is formed by the authorising officer, would not be a matter of scrutiny by the Courts at such a nascent stage of inquiry or investigation.

26. So the fair question that arises is what is the extent to which the scope of Judicial review can travel in ascertaining the contours of “reasons to believe” set out in Section 17.

27. Going by the observations made in the concurring judgment rendered by Justice Bela Trivedi, this Court is of the opinion that when the parameters of arrest itself is as much as only to ensure the recording of reasons to believe in writing and not to go further into scrutiny of sufficiency or adequacy of materials based on which belief is formed, then here the threshold of Section 17 search being much lesser than arrest, then the only point of scrutiny by Courts is to ensure whether procedure of 'reasons to believe' to be recorded in writing is complied with or not. And such reason to believe must be formed based on some information in possession. And in the absence of any malafideness there is no need for further scrutiny by the Court at this nascent stage.

28. Therefore, the Courts need not go into the merits or scrutinies the reasons. The fact that the authority had recorded the reasons to believe in writing as explicitly mandated under Section 17 based on information in possession is sufficient to conduct search. Sufficiency or adequacy of the information cannot be gone into by the Court at this stage of search and seizure which involves collection and gathering of evidence.

29. This point further finds agreement on the premise that the object of conducting search itself is to gather evidence, then how can there be a precondition that the ED should be in possession of credible material evidence before conducting search. That would defeat the object of search under Section 17. It is only after a search is conducted that credible evidence be gathered to establish the offence of money laundering. If the DoE has all the relevant material evidence even before conducting the search then there is no requirement to conduct such search operation at all. Hence the requirement of actual material evidence before forming reasons to believe as contemplated under Section 19 cannot be accorded to Section 17 of PMLA.

30. On the point of judicial scrutiny of subjective satisfaction of the authority recording reasons to believe, it is well settled that the merits of the

subjective satisfaction arrived at by the authorising officer cannot be gone into by the Courts. Courts cannot substitute their own belief with that of an investigating officer. The judicial review powers of the Courts is limited only to the extent as to whether the reasons to believe is recorded in writing before conducting search. The scope of Judicial review is limited to this alone and cannot go beyond or examine the subjective satisfaction of the investigating officer.

31. In the instant case, to verify the recording of the reasons to believe, the respondent DoE had submitted in a sealed cover the copy of 'reasons to believe' for conducting the search before this Court. This Court did not go into the merits of the reasons but merely verified whether the reasons to believe authorising the search is recorded in writing and after being satisfied with the same returned the sealed cover to the Learned Special Public Prosecutor appearing for DoE. Further it is also pertinent to note that the DoE in their counter have specified that the information in possession includes F.I.R's alleging commission of scheduled offences by public servants. Hence the information is not mere hearsay or unrelated information but is relevant to the belief formed and hence the standard as required under Section 17 satisfied.

32. Once the reasons to believe under Section 17(1) is recorded, the second part of Section 17 permits authorisation of officers to conduct search on the basis of reasons to suspect, a significantly lower threshold.

33. Section 17 (a) explicitly states that an authorised officer may enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept.

34. The learned Additional Solicitor General of India relying upon an internal note titled "Why TASMAC head office is covered u/s 17 of PMLA" demonstrated that the head office of TASMAC was specifically covered under Section 17 of PMLA because it is a central repository, and custodian of records relating to key operational domains, retail sales, supply orders, tender processes, staff transfers, and inspections all of which were implicated in the predicate offences. Hence reasons for search being conducted at TASMAC headquarters has been explained by the DoE and hence needs no further review.

35. Mr.Vikas Singh, learned Senior Counsel contended that the ED has not disclosed the FIR which forms the basis for the registration of the ECIR. It was submitted that since jurisdiction of the ED is entirely derivative,

it is imperative for the ED to disclose the precise FIR that constitutes the scheduled offence under the Act, as the offence of money laundering under Section 3 read with Section 2(1)(u) is inextricably linked to the existence of a valid and subsisting scheduled offence.

36. A reading of the facts reveals that the precise FIR sought for by the petitioner is linked to the reasons to believe. On examination of Section 17, there is no explicit procedure stipulated that the copy of reasons to believe must be served on the person on whom search is conducted. And ED have argued that the disclosure of the reasons to believe can lead to concealment of evidence and may jeopardise the investigation. This court feels that search is a preliminary stage and is not as serious as an arrest as in the case of arrest there is a curb on right to personal liberty Though in the case of search, right to privacy is curbed to a certain extent, it should also be understood that search and seizure procedure under any laws in force including Criminal Procedure Code can be conducted only by curbing right to privacy to a limited extent. So search and seizure is a preliminary process only and under Section 17 there is an inbuilt mechanism whereby clause 2 states as follows:

*"**17(2)** The authority, who has been authorised under sub-section (1) shall, immediately after search*

> *and seizure 3 [or upon issuance of a freezing order], forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed."*

Hence, the Petitioner can approach the Adjudicating authority for appropriate remedies if necessary.

37. The reason this Court cannot order the copy of reason to believe to be produced is:

(A) Such omnibus direction that all search must be conducted by serving a copy of reason to believe might lead to concealment or destruction of evidence thereby jeopardising the investigation.

(B) Further Section 17 is a preliminary stage where based on some information in possession the ED search is conducted and if no prima facie case is made out, automatically all action is dropped, but if any incriminating evidence is found then the matter moves towards trial and always the issue of reasons to believe can be tested before the trial court.

(C) There is an alternate mechanism under the Act whereby the Adjudicating authority can be approached, to whom the reasons to believe recorded in writing will be served and appropriate remedy can be sought

thereunder.

(D) The reasons to believe under arrest is different and more serious as compared to a search, hence the same thresholds of arrest cannot be applied here.

38. And the contention that Enforcement Case Information Report (ECIR) was not shared with the Petitioner finds no merit as this proposition is already settled in ***Vijay Madanlal's*** case whereby ECIR was held to be an internal document and need not be shared.

39. In ***Vijay Madanlal's*** case, it was held as under,

> *.....*
>
> *"**458.** The next issue is : whether it is necessary to furnish copy of ECIR to the person concerned apprehending arrest or at least after his arrest? Section 19(1) of the 2002 Act postulates that after arrest, as soon as may be, the person should be informed about the grounds for such arrest. This stipulation is compliant with the mandate of Article 22 (1) of the Constitution. Being a special legislation and considering the complexity of the inquiry/investigation both for the purposes of initiating civil action as well as prosecution, non-supply of ECIR in a given case cannot be faulted. The ECIR may contain details of the material in possession of the Authority and*

recording satisfaction of reason to believe that the person is guilty of money-laundering offence, if revealed before the inquiry/investigation required to proceed against the property being proceeds of crime including to the person involved in the process or activity connected therewith, may have deleterious impact on the final outcome of the inquiry/investigation. So long as the person has been informed about grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution. Moreover, the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the Court is free to look into the relevant records made available by the Authority about the involvement of the arrested person in the offence of money-laundering. In any case, upon filing of the complaint before the statutory period provided in 1973 Code, after arrest, the person would get all relevant materials forming part of the complaint filed by the Authority under Section 44(1)(b) of the 2002 Act before the Special Court.

***459**. Viewed thus, supply of ECIR in every case to person concerned is not mandatory. From the submissions made across the Bar, it is noticed that in some cases ED has furnished copy of ECIR to the person before filing of the complaint. That does not mean that in every case same procedure must be followed. It is enough, if ED at the time of arrest, contemporaneously discloses the grounds of such*

arrest to such person. Suffice it to observe that ECIR cannot be equated with an FIR which is mandatorily required to be recorded and supplied to the accused as per the provisions of 1973 Code. Revealing a copy of an ECIR, if made mandatory, may defeat the purpose sought to be achieved by the 2002 Act including frustrating the attachment of property (proceeds of crime). Non-supply of ECIR, which is essentially an internal document of ED, cannot be cited as violation of constitutional right. Concededly, the person arrested, in terms of Section 19 of the 2002 Act, is contemporaneously made aware about the grounds of his arrest. This is compliant with the mandate of Article 22(1) of the Constitution. It is not unknown that at times FIR does not reveal all aspects of the offence in question. In several cases, even the names of persons actually involved in the commission of offence are not mentioned in the FIR and described as unknown accused. Even, the particulars as unfolded are not fully recorded in the FIR. Despite that, the accused named in any ordinary offence is able to apply for anticipatory bail or regular bail, in which proceeding, the police papers are normally perused by the concerned Court. On the same analogy, the argument of prejudice pressed into service by the petitioners for non-supply of ECIR deserves to be answered against the petitioners. For, the arrested person for offence of money-laundering is contemporaneously informed about the grounds of his arrest; and when produced before the Special Court, it

is open to the Special Court to call upon the representative of ED to produce relevant record concerning the case of the accused before him and look into the same for answering the need for his continued detention. Taking any view of the matter, therefore, the argument under consideration does not take the matter any further."

40. The submission that TASMAC officials were forced to acknowledge the search warrant cannot be appreciated. It is in fact the duty of the officials, being public servants, that they ought to cooperate with an investigating agency when they want to conduct search in a TASMAC office.

41. Also, in the Prevention of Money laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Materials to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005, Rule 3(4) explains the Procedure relating to search and it reads as follows:

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

42. And as per this Rule, on production of authorisation, it is the duty

of the person in-charge of the building to allow the authority to conduct search. Further the Panchnama also states that in the present case, the authorisation was already shown and explained to one, Shri Ramadurai Murugan, DRO/General Manager (GM)(R&V) and that the authorisation was signed at 11.55 Hours as a token of having seen the same.

43. Further Section 17 nowhere obligates giving a copy of search warrant. It is merely produced to get the authorisation of the person in-charge of the building before conducting a search. And the Panchnama also reveals the following;

> *"The Panchas (independent witnesses) have confirmed that the Search Authorisation No. 26/2025 was shown and explained to them as well as one Shri Ramadurai Murugan, District Revenue officer/General Manager (GM) (R&V) and Shri Ramadurai Murugan had signed the authorisation at 11.55 AM and the independent witnesses have signed on the Search Authorisation at 13:50 hrs." And subsequently Mr. M. Jothi Shankar, DGM (Purchase & Sales), entered the premises at around 16:00 hours as he was in a meeting which was held on 4th Floor of the same building. Shri M. Jothi Shankar also signed on the authorisation as a token of having seen the same".*

It was submitted that a similar practice was even followed at the 4th Floor of TASMAC office.

44. The petitioner further submitted that the Respondent took oral statements from their officers including the TASMAC Managing Director, General Manager (Administration and Wholesale), Deputy General Manager (Purchase and sale) and also asked 100 questions on tender process, price fixation of liquor, FL2 licenses, indent details etc. and typed the same and got signatures. This process according to the petitioner was recorded under illegal detention, threat and coercion.

45. This submission finds no merit as nowhere has any of the aforementioned officials filed a complaint stating that they were coerced. Further the Panchnama also does not reveal any such allegation. How can both the Government of Tamil Nadu and TASMAC file an affidavit stating that such coercion happened when there is no material to prove the same. How does the Government assume that their officials were harassed, if at all, in the absence of any internal enquiry or complaints from the concerned officials.

46. The string of allegations levelled out of no viable basis or material

has caused an illusionary scenario.

47. The PMLA statute empowers the Directorate of Enforcement to conduct search and seizure according to procedure laid down in Section 17 along with its corresponding Rules. Section 17(1)(f) of PMLA and Rule 3(2)(f) of the Search and seizure Rules permit the Directorate of Enforcement to examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under the PMLA. And Sub Clause (c) of Sub-Section (1) of Section 17 of PMLA clearly permits seizure of any record found as a result of the search.

48. The submission of the petitioner downplays a normal search and seizure operation conducted within the ambit of PMLA. Seizure of relevant material document which might serve as evidence before courts of law is part and parcel of procedure established by law. This cannot be termed as forcible seizure.

49. Moreover, the Panchnama which is prepared after a search carries details of seized materials and the procedure adopted during search and also it contains signature of independent Panch witness. In the case on

hand the Panchnama states that, "*the search was conducted in a peaceful manner and no damage to the person or property was caused during the course of search. No coercion, threat, inducement, promise or any other external influence was used against the inmates".* Hence, no procedural infirmity has been found. It is also to be noted that the Petitioner have nowhere disputed the credibility of the Panch witness in the Panchnama. So the validity of the panchnama is not a matter of dispute in the current petition.

50. It is surprising that certain TASMAC officials had given an affidavit that they were unlawfully confined during a search operation. The search operation was conducted by a lawful investigating agency and it is a matter of procedure that during raids and surprise searches, the employees would be detained inside the premises to prevent leakage of information and also prevent any destruction of evidence. Also, it is a government owned company which is a public place and not a private home. So, the cooperation of the employees are essential to conduct a smooth search operation.

51. However, individual affidavits by four officers i.e Dr.S.Visakan, I.A.S., (Managing Director of TASMAC), Mr. S.P.Santhanam (Chief

Accounts Officer/ General Manager (Finance) (I/c) in TASMAC), Mrs.S.Anandpriya (Company Secretary in TASMAC) and Mrs.Madheswari (Tahsildar/Section officer in TASMAC) were submitted alleging that they were harassed by the Respondent agency. There are allegations made by the State of Tamil Nadu and TASMAC that their employees were not provided food or rest and that their right to life and personal liberty was infringed by the respondent agency. But there is no sound evidence or material to prove the same. Such vague allegations especially when investigation is in progress cannot be entertained. In the absence of concrete material to prove the same, this court cannot normally interfere and stall an investigation. The materials produced before the Court shows that there was a search conducted under Section 17 and in compliance of the procedural safeguards set out in Section 17 and its Rules. Further, it appears on the face of it that the employees as an after thought submitted the affidavits alleging violation of fundamental rights.

52. The Petitioner further submits that the employees of TASMAC were not allowed to communicate with anyone in the outside world and that proper rest was not given thereby causing severe physical and psychological distress. Further the TASMAC in their affidavit on behalf of their employees claim that several employees were being subjected to

prolonged detention for nearly 60 hours deprived of basic human necessities.

53. But the Panchnama reveals no such harassment meted out to employees. The Panchnama reveals the presence of independent witnesses throughout the proceedings and they have attested to the voluntary nature of the statements. The contents also show that adequate rest was provided. The counter affidavit filed by the DoE in para 25 have stated that "…*Statements under Section 17 of PMLA, 2002* were recorded in a phased manner, wherein proper rest, food, interpersonal interactions, leaving or entering premises were ensured. The perusal of the statements recorded would prove the same…"

54. Also the Directorate of Enforcement has categorically denied the petitioner allegations. In the counter affidavit it has been stated that the process of voluntary statements under Section 17 of PMLA did not last for continuous 60 hours, as alleged. Required periodical breaks for health, food and rest were given. Some of the TASMAC officials stayed back in the premises on their own and not at the instance of the ED officials. And more specifically it was submitted that GM Admin was asked to leave on 07.03.2025 after completion of her statement, however, she stayed back as

per her own will and choice. It was also submitted that, certain TASMAC employees requested the ED officers to retain their subordinates for their assistance citing various reasons and therefore the Directorate did not object to the same. Hence they stayed back as per their free will and convenience. Also it was submitted that medical accommodations was made for Shri.M.Jothi Shankar due to his cardiac condition, allowing him to leave the premises early.

55. Further violation of such fundamental rights of individuals cannot be proved without them filing formal complaints and such individuals ought to have filed separate writ petitions for any such infringement. This Court cannot take a vague allegations against a Central investigating agency. Moreover the allegations that in a government company which is also a public place visited by general public, there is absence of basic human necessities is too far-fetched an argument.

56. It is noteworthy that in our country, lakhs of general public from all walks of life visit government offices each day to fight for their basic rights. They wait for hours in government offices to get their work done. In fact for even giving a petition in a government office, a common man have to wait for hours, sometimes days together they have to repeatedly visit the office

inspite of other important commitments to get even a basic work done. But these are unavoidable delays and our general public bears with it. But here an entire government machinery has come forward to file a writ petition stating that a few public officers were made to wait for hours in their offices, which we believe has adequate facilities and definitely has basic human necessities. And moreover this Court is of the view that it is the duty of the TASMAC officials to cooperate with the investigating agencies. In fact they should be more inclined to cooperate with the investigation to get rid of any such corruption or money laundering that might have happened. That is the duty of every public servant. Instead making such flimsy arguments is unpalatable. Our country also sees the operation of Criminal Procedure Code where search and seizure provisions find place. But we don't see much litigations where general public states that there fundamental rights are affected during search by local police or other State investigating agencies. That doesn't mean that there is no such violation but it is just that common man considers it his duty to cooperate with the Police. But it is only in offences of high economic transactions like money laundering that even for a basic exercise of searching a building does all forms of litigation alleging violation of fundamental rights crops in. And even a normal search is made to look like all hell broke loose.

57. Also, this Court is unable to understand as to why the State of Tamil Nadu and the TASMAC had chosen to file this writ petition. The aggrieved could have filed individual writ petitions if their fundamental rights are under threat. But the Tamil Nadu government has filed the writ petition stating that their employees were harassed. Normally it is the individuals aggrieved who approach the Court. Neither the Tamil Nadu Government nor TASMAC are the aggrieved party here. It is shocking that a State Government filed a petition stating that they have been aggrieved. How can a peoples' government be aggrieved because of a search operation conducted in one government owned company? In fact the search operation was conducted to unearth any case of money laundering, if any and to ensure a corruption free operation of TASMAC for which the State government must cooperate with the investigation agency. This raises questions as to whether this present petition was filed to obstruct the smooth conduct of the investigation. The fallacy in the submissions made raises several doubts.

58. These kind of vague and improper writ petitions by Government institutions alleging inhumanity against a statutorily empowered investigating agency ought not to be entertained. This will lead to utter chaos whereby it will lead to complete dilution of the statute itself. Moreover

the allegations on the face of it are whimsical and such allegations without any material or proof will obstruct any lawful investigation in future. Also the prayer sought for is shocking whereby the Government of Tamil Nadu has sought for “to Direct the respondents not to enter into and exercise any power of search and seizure in terms of Section 17 of PML Act at any premises of the government of the State of Tamil Nadu be it any office of any Corporation under it as well”. This is clearly unjustifiable and devoid of any valid reasoning. Further such a prayer implies that the petitioners are in essence seeking a declaration from a Court of Law that the Government of Tamil Nadu alone be exempted from PML Act.

59. The submission of the petitioner company that women were detained during night hours and released at unsafe hours without adequate safety measures has been categorically denied by the Directorate of Enforcement. A perusal of the Panchnama reveals that,

“Further no female staff was forced to stay during the night and were allowed to go home in night keeping all safety measures”

60. The Directorate of Enforcement also submitted that there was no illegal detention of anybody on the searched premises and that several employees of TASMAC opted to go home on the very first day and were

permitted to leave. Rather few persons chose to remain on the searched premises despite an option to leave.

61. Further, the TASMAC office where the search under Section 17 was conducted is in the heart of the Chennai City. It is a Government company and during search, several other employees of TASMAC were present. Also there were independent witnesses who witnessed the entire proceedings and at no point of time during the search was the issue of safety and harassment raised.

62. The Enforcement Directorate submitted that several higher/senior officials [other than the Managing Director, General Manager (Administration and Wholesale) General Manager (Retail Vending)] namely Mr.Jothi Shankar (Deputy General Manager, Purchase and Sales), Mr.S.P.Santhanam (General Manager, Finance) etc., chose to exercise their right and option to leave the searched premises without any kind of hindrance from the authorities of DoE conducting the search. Further, it was contended that the averment that only the clerical and the lower-level staff including the women employees were allowed to leave office while keeping the higher officials detained is ex-facie false, especially since the three individuals who chose to remain in the premises exercised their right under

Sub Rule (8) Rule 3 of the PMLA Search Rules, 2005 to remain on the premises and attend the search proceedings.

63. It is also imperative to examine the terms "custody", "detention" and "arrest" as discussed in detail by the Hon'ble Supreme Court in ***Sundeep Kumar Bafna v. State of Maharashtra***[4], wherein it was held as under:

> .....
>
> *"**16.** It appears to us from the above analysis that custody, detention and arrest are sequentially cognate concepts. On the occurrence of a crime, the police is likely to carry out the investigative interrogation of a person, in the course of which the liberty of that individual is not impaired, suspects are then preferred by the police to undergo custodial interrogation during which their liberty is impeded and encroached upon. If grave suspicion against a suspect emerges, he may be detained in which event his liberty is seriously impaired. Where the investigative agency is of the opinion that the detainee or person in custody is guilty of the commission of a crime, he is charged of it and thereupon arrested. In Roshan Beevi [Roshan Beevi v. State of T.N., 1984 Cri LJ 134: (1984) 15 ELT 289 (Mad)] , the Full Bench of the High*

4. 2014 16 SCC 623

Court of Madras, speaking through S. Ratnavel Pandian, J. held that the terms "custody" and "arrest" are not synonymous even though in every arrest there is a deprivation of liberty is custody but not vice versa. This thesis is reiterated by Pandian, J. in Deepak Mahajan [Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440: 1994 SCC (Cri) 785] by deriving support from Niranjan Singh v. Prabhakar Rajaram Kharote [Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559: 1980 SCC (Cri) 508]. The following passages from Deepak Mahajan [Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440: 1994 SCC (Cri) 785] are worthy of extraction: (SCC p. 460, para 48)

> *"48. Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused person into custody and deal with him according to law. Needless to emphasise that the arrest of a person is a condition precedent for taking him into judicial custody thereof.*

> *To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender. It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice versa and that both the words 'custody' and 'arrest' are not synonymous terms. Though 'custody' may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which is under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequences, vide Roshan Beevi [Roshan Beevi v. State of T.N., 1984 Cri LJ 134: (1984) 15 ELT 289 (Mad)].*

64. An identical averment was raised before the Hon'ble Delhi High Court in the case of ***Gautam Thapar Vs. Directorate of Enforcement[5],*** wherein it was held as under:

....

5. 2021 SCC OnLine Del 4599

*"**13.** Thus Deepak Mahajan (supra); Roshan Biwi (supra) and Harbhajan Singh (supra) all in unison clarify the custody and arrest are not synonymous. In every arrest there is always a custody but in every custody there may not be arrest. Even otherwise, if one look at the scheme of PMLA it shows arrest needs to be made only under Section 19(1) of the Act after completion of process under Section 17(1) and 18 (1) and the accused is to be produced before the concerned court within 24 hours of his arrest under Section 19(1).*

***

***15.** A bare perusal of Section 17(1) and Section 18(1) would show under Section 17(1) the officer authorised in its behalf, has only an information in his possession whereupon he has a reason to believe that any person has committed any act of money laundering etc. Then such person can be searched and his properties/documents can be seized; per Section 18(1) which gives power to search such person if there are reasons to believe he has secreted about his person or anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act. It is only thereafter per Section 19(1) of the Act, if the officer has collected sufficient material then on the basis of material in his possession with a reason to believe such person has been guilty of an offence punishable under this Act,*

the officer may arrest such person and shall inform him of grounds for his arrest."

65. On examination of facts and materials available on record, this Court finds it unfortunate that women officers and employees are used as shields to prevent investigations from proceeding. Courts have time and again stressed on gender equality in public service. Women are far more empowered and are more proactive nowadays especially in public service. We see women progressing across different fields. We have women officers in Army, Navy and Air Force ready to defend our country under all situations. We see women parliamentarians stay throughout the night in the Houses of Parliament to take part in discussions on bills and pass legislation for the benefit of the people of our Great Nation. We see women IAS and IPS officers working tirelessly day and night especially during exigencies and emergencies. Women doctors and nurses during COVID-19 worked round the clock even in night shifts to save lives. Across three pillars of governance women are showing their capabilities and rising to the occasion. Let not a government discourage and dis-empower women especially those in public service. We should not underestimate the capabilities of women. It is the duty of public officials to aid and assist in investigations and it is also the responsibility of both the investigation agencies and State Government officials in-charge to protect and ensure

the safety of women. In spite of that, if the woman as an individual feels that her right has been infringed she is fully within her rights to approach the competent court of law. But let not a government try to discourage a woman from moving towards the path of empowerment. We must get rid of the age old stereotypes and ensure a level playing field for women.

66. Moreover it is the duty of the government to ensure a safe and secure environment for women in public places as well as at nights as we see more women going for night shift work and we should encourage and ensure safe movement and secure transport system for women 24/7 rather than tell them that they should refrain from going out at night. Women are equal partakers in Nation building process and especially women in public service are contributing a lot towards the national growth.

67. Gender of public officials should not be used as an excuse to prevent a lawful agency from doing its duty. The DoE has also recorded in their counter that all safety measures was undertaken and women employees were asked to leave at night.

68. Also in counter filed by Directorate of Enforcement, it has been stated that three key officers of TASMAC- Shri.Visakan, MD,

Smt.Sangeetha, GM, and Shri.Jothi Shankar, DGM were examined under oath under Section 17 of PMLA during search proceedings. After 10 days of search all the officers have sent letters to the joint Director/ Assistant director, ED requesting for more time to submit the documents. Nowhere in these letters had there been any mention of irregularities in search proceedings and no retraction of statements under Section 17 have been made by them. Instead they had voluntarily sent letters to Directorate of Enforcement requesting for more time to submit requisite documents , thereby implying that they abide by their statements recorded during search proceedings. No allegations of violation of fundamental rights or coercion was raised by them in those letters to Directorate of Enforcement. Hence, the Directorate of Enforcement contended that this entire petition filed on behalf of TASMAC company is an abuse of process of law.

69. On the submissions that right to privacy has been infringed, it is well settled that right to privacy under Article 21 is subject to reasonable restrictions. And PMLA being statute in force, it is well within its ambit to conduct search and Directorate of Enforcement derives the search and seizure power from Section 17 of the Act. This cannot be termed as breach of privacy.

70. Moreover, the Hon'ble Supreme Court in the decision being relied upon by the petitioner i.e., ***KS Puttaswamy & Another. Vs. Union of India***[6], itself holds that the right to privacy is not an absolute right and would be subject to reasonable restrictions under the law, one such reasonable restriction being crime detection. In this regard, certain observations of the Hon'ble Supreme Court in ***KS Puttaswamy*** (supra) are extracted hereunder:

> *....*
>
> ***"200.*** *In Investigating Directorate : Serious Economic Offences v. Hyundai Motor Distributors (Pty) Ltd. [Investigating Directorate : Serious Economic Offences v. Hyundai Motor Distributors (Pty) Ltd., 2000 SCC OnLine ZACC 14 : (2001) 1 SA 545 (CC)] (2001), the Court was concerned with the constitutionality of the provisions of the National Prosecuting Authority Act that authorised the issuing of warrants of search and seizure for purposes of a "preparatory investigation". Langa, J. delivered judgment on the right to privacy of juristic persons and held that:*
>
> *"… privacy is a right which becomes more intense the closer it moves to the intimate personal sphere of the life of human beings, and less intense as it moves away from that core. This understanding of the right flows… from the value placed on human dignity by the*

6. (2017) 10 SCC 1

Constitution. Juristic persons are not the bearers of human dignity. Their privacy rights, therefore, can never be as intense as those of human beings. However, this does not mean that juristic persons are not protected by the right to privacy. Exclusion of juristic persons would lead to the possibility of grave violations of privacy in our society, with serious implications for the conduct of affairs."

***

310. *While it intervenes to protect legitimate State interests, the State must nevertheless put into place a robust regime that ensures the fulfilment of a threefold requirement. These three requirements apply to all restraints on privacy (not just informational privacy). They emanate from the procedural and content-based mandate of Article 21. The first requirement that there must be a law in existence to justify an encroachment on privacy is an express requirement of Article 21. For, no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement. Second, the requirement of a need, in terms of a legitimate State aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary State action. The pursuit of a legitimate State aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgment.*

Judicial review does not reappreciate or second guess the value judgment of the legislature but is for deciding whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness. The third requirement ensures that the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law. Hence, the threefold requirement for a valid law arises out of the mutual interdependence between the fundamental guarantees against arbitrariness on the one hand and the protection of life and personal liberty, on the other. The right to privacy, which is an intrinsic part of the right to life and liberty, and the freedoms embodied in Part III is subject to the same restraints which apply to those freedoms.

311. *Apart from national security, the State may have justifiable reasons for the collection and storage of data. In a social welfare State, the Government embarks upon programmes which provide benefits to impoverished and marginalised sections of society. There is a vital State interest in ensuring that scarce public resources are not dissipated by the diversion of resources to persons who do not qualify as recipients. Allocation of resources for human development is coupled with a legitimate concern that the utilisation of resources should not be siphoned away for*

extraneous purposes. Data mining with the object of ensuring that resources are properly deployed to legitimate beneficiaries is a valid ground for the State to insist on the collection of authentic data. But, the data which the State has collected has to be utilised for legitimate purposes of the State and ought not to be utilised unauthorisedly for extraneous purposes. This will ensure that the legitimate concerns of the State are duly safeguarded while, at the same time, protecting privacy concerns. Prevention and investigation of crime and protection of the revenue are among the legitimate aims of the State. Digital platforms are a vital tool of ensuring good governance in a social welfare State. Information technology—legitimately deployed is a powerful enabler in the spread of innovation and knowledge.

***

313. *Privacy has been held to be an intrinsic element of the right to life and personal liberty under Article 21 and as a constitutional value which is embodied in the fundamental freedoms embedded in Part III of the Constitution. Like the right to life and liberty, privacy is not absolute. The limitations which operate on the right to life and personal liberty would operate on the right to privacy. Any curtailment or deprivation of that right would have to take place under a regime of law. The procedure established by law must be fair, just and reasonable. The law which provides for the curtailment of the right must also be subject to constitutional safeguards."*

71. Additionally, it is well settled that privacy right is a personal right and cannot be asserted vicariously by a company or Government on behalf of its employees. No such employee has come forward claiming a breach of privacy. Moreover, extraction of information from a mobile phone for the purpose of investigation into a crime cannot be objected to on the ground of privacy even in terms of the judgment in ***K.S. Puttaswamy*** (supra).

72. The action of conducting search under constitutionally valid provisions of the PMLA and for the purpose of collection of evidence to detect and prosecute the offence of money laundering amounts to a reasonable restriction on the right to privacy.

73. The seizure of mobile phone is directly and inextricably related to the investigation and search under PMLA for the purpose of collection of evidence for gathering material to unearth the offence of money laundering and prosecute the offenders. Therefore, since the governmental interest/legitimate state aim of crime detection as held in Puttaswamy is a valid and reasonable restriction on the right to privacy.

74. Also the argument of the petitioner that seizure of mobile phone

during a search under the PMLA is violative of the Right to Speech is as absurd as saying that impounding of a vehicle under the Motor Vehicles Act is violative of the Right to Freedom of Movement.

75. With reference to seizure of mobile phones, the Panchnama reveals the following:

> *"During the course of search proceedings, the officer informed us the panchas that the mobile phones used by Shri. Visakan & Smt Sangeetha contains certain crucial information related to the ongoing enquiry under PMLA and they intend to take dump of the said mobile phones by calling Digital Forensic Analysts. At around 03:00 PM of 06.03.2025, one person Shri Maniratnam Saravanan came to the premises and informed that he is a Digital Forensic Analyst. Before entering the premises, he also offered his personal search which was declined by Shri. Visakan. At around 03.30 PM on 06.03.2025, Ms Jina came to the premises and informed that she is a Digital Forensic Analyst. Before entering the premises, she also offered her personal search which was declined by Shri. Visakan. Thereafter, Shri Maniratnam Saravanan and Ms Jina started taking data backup of 4 mobile phones - three belonging to Shri. Visakan and one belonging to Smt*

Sangeetha, 4 Emails, and one Oracle Server database in our presence and in the presence of Shri. Visakan & Smt Sangeetha."

76. On the point of ensuring data integrity and documentation of data with hash values, details regarding the same is recorded in the Panchanama,

"... the Digital Forensic Analyst have generated hash value reports, digital evidence certificate as per section 63 (4) (c) of the BSA, 2023, has been obtained and the same is attached as Annexure-A to this Panchanama. We, the Panchas along with Shri Visakan and Smt Sangeetha, have signed the forensic reports which have been annexed with the Panchanama and marked as Annexure -- A.

"...The Digital Forensic Analysts also informed that they have generated hash value report of the said digital devices 4 mobile phones and one Oracle Server data as mentioned in below Table -1 to this Panchanama."

77. Also there is a procedure contemplated whereby on completion of search proceedings, the Respondent will have to file an application under Section 17(4) of PMLA, 2002, requesting for retention of such records or

property seized under Section 17(1) before the Adjudicating Authority (PMLA).

78. The respondents have submitted that there was a necessity for seizure of documents as it contains crucial evidence of financial transactions that form part of proceeds of crime and it requires forensic examination. It was submitted that there was a reasonable apprehension of tampering, concealment, or destruction of these documents if left in the custody of the Petitioner.

79. Moreover, TASMAC is a fully government owned Company. The affidavit filed by the TASMAC itself states as follow; "*TASMAC is a company incorporated under the Companies Act, 1965 on 23.06.1983".* In the PML Act, Section 2 (s)(iii) states that "person" includes a company. So when the language of the Section is express and clear and the TASMAC has admitted that it is a company registered under companies Act, there is no necessity for the court to read down this provision. It is settled law that when the plain language of the provision is clear and unambiguous, it does not warrant reading down of the said provision.

80. Further, Section 70 deals with Offences by companies. Sub

Section (1) states that where a person committing a contravention of any of the of the provisions of PMLA or of any Rule, direction or Order made thereunder is a company, every person who, at the time the contravention was committed, was in-charge of, and was responsible to the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Further, the explanation 2 to Section 70 states that for the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.

81. Also the contention of the petitioners that ED has to call upon only those officers of the State who have been authorised and notified under Section 54(j) of PML Act thereof by the Central government to assist them for enforcement of the provisions is clearly unacceptable. This a complete wrong interpretation of the PMLA provisions. Section 50 of the PMLA contemplates the Power of authorities regarding summons, production of documents and to give evidence etc. It is relevant to note that Sub Section (2) to Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon 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 PMLA. In order to achieve these purposes the ED authorities are empowered to get the assistance of the authorities under Section 54 or such authorities under the said Section is empowered to assist the authority., Section 54 pertains to authorities who have duty to assist the enforcement of PMLA, which is distinct from the respondent's powers of search and seizure under Section 17. Further the PMLA operates within its own Statutory frame work and does not require the consent of the State Government to exercise its powers under Sections 17 and 50. In essence, Section 54 casts a responsibility on such authorities to assist the ED. Therefore, this provision does not state that ED must seek assistance from the State government officers only. No such meaning can be derived from the plain language of this provision.

82. The learned Advocate General appearing on behalf of the State submitted that the absence of predicate FIR disclosing a scheduled offence under the PML Act, 2002 render the entire action taken by the DoE including the search conducted on 6th March 2025, without jurisdiction and unsustainable in law. It was contended that according to the scheme of PMLA, every proceeding initiated by the ED must be rooted in a scheduled offence, and any search or seizure must be in connection with proceeds derived from such offence. The AG emphasised that in the absence of a

proper FIR satisfying the statutory requirements, the impugned proceedings are liable to be quashed on this ground alone.

83. The learned Assistant Solicitor General of India in his reply argued that there is no requirement for registration of FIR to initiate actions under PMLA specifically regarding provisional attachment and search. He relied on the ***Vijay Madanlal's*** case wherein the Supreme Court confirmed that provisional attachment can occur without the need for FIR registration under Section 17 PMLA. PMLA is a self contained legislation and the requirement of an FIR or Section 157 report under the Criminal Procedure Code does not apply to searches under PMLA.

84. It is to be noted that prior to 2019 amendment, Section 17 required that no search could be conducted without an FIR or a report being forwarded to a Magistrate. This provision was deleted in 2019, removing the FIR requirement for conducting search and seizure under PMLA.

85. This Court is of the view that by deleting the proviso to Section 17 stipulating that no search can be conducted with respect to a scheduled offence without forwarding a report to Judicial Magistrate under Section 157 Criminal Procedure Code, reliance cannot be placed on such deleted

requirements. The imperative portion of ***Vijay Madanlal*** judgement is extracted below:

> ***"311.*** *.....However, for strengthening the mechanism, including regarding prevention of money-laundering, the Parliament in its wisdom deemed it appropriate to drop the proviso in sub-section (1) of Section 17 of the 2002 Act, thereby dispensing with the condition that no search shall be conducted unless in relation to the scheduled offence a report has been forwarded to a Magistrate under Section 157 of the 1973 Code or a complaint has been filed before a Magistrate in regard to such offence. As it is indisputable that the 2002 Act is a special Act and is a self-contained Code regarding the subject of searches and seizures in connection with the offence of money-laundering under the 2002 Act, coupled with the fact that the purpose and object of the 2002 Act is prevention of money-laundering; and the offence of money-laundering being an independent offence concerning the process and activity connected with the proceeds of crime, the deletion of the first proviso has reasonable nexus with the objects sought to be achieved by the 2002 Act for strengthening the mechanism of prevention of money-laundering and to secure the proceeds of crime for being dealt with appropriately under the 2002 Act."*

86. In any event, in the facts of the present case DoE submitted that,

the FIRs containing the scheduled offence have all been sent to the concerned Judicial Magistrate in terms of Section 157 of Criminal Procedure Code by the concerned Police and therefore the contention of the petitioner that the proviso to Rule 3(2) of the PMLA, Search and Seizure Rules, 2005 has been breached cannot be accepted.

87. Moreover, Paragraph 467 (viii) of ***Vijay Madanlal***, clearly holds that after the amendment of Section 17 of PMLA, the pre-conditions in the proviso to Rule 3(2) cannot be imported into Section 17 of PMLA:

> *"(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."*

88. The respondents submitted that there are 41 F.I.Rs registered in the present case which involve corruption and illegal gratification in the TASMAC operations. These F.I.R's have been registered between 2017 and 2024. The contention that the monetary threshold applicable to offences specified under Part-B of the Schedule would bar investigation under PMLA

is ex facie inapplicable for the reason that the offences under Part-B (with the exception of Section 132 of the Customs Act) have been inserted into Part-A with effect from 15.02.2013 which does not have any monetary threshold. Thus, the petitioner's argument finds no merit.

89. On conclusion, this Court feels that there is a strong disconnection between the averments and the relief sought for in the writ petition. It is imperative that a broader view of the issue needs to be taken at times, where the rights of people at large will be affected. It is without doubt that the *prima facie* allegations and complaints against the Tamil Nadu State Marketing Corporation (TASMAC) are grave in nature. It definitely warrants deeper investigation. But these present writ petitions are filed challenging the very initial step of search conducted based on certain information on record. To find out the truthfulness in the allegations, the primary step is to conduct a search, gathering evidences available and then the natural course of investigation shall progress based on the materials gathered. If there is some evidence, automatically the investigation gains momentum else the Investigating Agency drops all further action. But to even come out with an argument that conducting a search itself is harassment, this is challenging the very foundation of criminal justice system. How can a State Government would file a writ petition stating that

an Investigating Agency cannot enter and conduct a search in a Government Company, that too when allegations are so serious in nature. In fact, it is the Tamil Nadu Directorate of Vigilance and Anti-Corruption, which has registered multiple First Information Reports (F.I.Rs) regarding malpractices of corruption ongoing in TASMAC.

90. Further, the argument that there must be a precondition of getting the consent from the State Government before conducting searches is completely illogical and bereft of conscience. How can a raid or search be conducted in a State Government owned company in a surprise manner if permission is to be obtained beforehand. How can a search by an investigating agency even hold good if such absurd conditions are made. It is against basic principles of criminal justice system. It is common understanding that on commission of any crime, a search is conducted to gather evidence and other relevant materials viable for investigation to progress. Similarly in cases involving PMLA offences, there is the offence of money laundering involved and searches have to be conducted to seize digital evidences and other records in pursuit of the offence. More so in money laundering case, the crime modus is often through digital medium and devices have to be seized to check and trace the movement of money and the nature of laundering can be deduced only through the study of such

digital evidences. Moreover, TASMAC is a State owned company and getting prior consent of the State government is an endeavour which may not successful. On paper, it is a good argument but practically, a reasonable man can be sure that the State government will not consent to an investigating agency conducting searches in their own company.

91. It is by anticipating such procedural and technical difficulties that PMLA has inbuilt within itself a mechanism to investigate and cull out the perpetrators holding such proceeds of crime. This Court is of the view that the Petitioners are embarking on a mission to defeat the very core of PMLA and criminal justice system. Section 1 of PMLA clearly states that the Act extends to the whole of India. The concept of federalism cannot be applied here. Our Constitution is quasi federal in nature but the traces of federalism is applied only for the benefit of the people and not to their detriment. PMLA are legislation to prevent crimes affecting National economic growth. How can concept of federalism be argued in cases concerning offences against National economy. This Court is of the view that the argument of federalism in Special Criminal Legislation like PMLA is untenable and unjustifiable. Federalism though present in limited doses in our Constitution should be utilised only in issues concerning upliftment of the people and not to prevent investigation into crimes or offences which are committed against the Nation

and its people. The State Governments should in fact be open to allow any investigating agency to weed out any offences that is plaguing the State. Instead proposing unrealistic conditions which goes against the very operation of criminal procedures defies the object of the PMLA and the Constitution.

92. A raid or a search by an investigating agency must be discreetly planned and executed to ensure that the offenders are caught off guard. In the present case, it is argued that the petitioner employees were asked to stay and that their mobile phones were seized and hence they were unable to contact their family. But that is how normally a surprise check is conducted. How can an investigating agency conduct a fair and safe search if all the employees are allowed to leave the premises. Any reasonable man would know that if the employees are allowed to go, there is high chance of destruction or concealment of evidence, which would defeat the very purpose of such a search. It is a due process of law, which is well within the ambit of Article 21, that the employees be detained to prevent any untoward methods that may be aimed to sabotage the investigation. This cannot be termed as harassment. Moreover there arises a relevant question as to even going by the petitioner's averment that this is harassment, the relief sought for in the present petition is incommensurate with this argument. The

petition alleges that few officers were harassed as they were detained during a search, but the relief sought for is to direct the respondents not to enter and conduct search at any premises of Government of Tamil Nadu. How can such a petition even be maintainable. If there are charges of harassment, how can one file a petition to state that a search must be declared illegal and that in essence prohibits any future searches as well. This is highly alarming and such petitions ought to be dismissed at threshold. It raises pertinent question as to the intention behind filing such writ petitions, whether is it a strategy to prolong and protract the investigation is a legitimate query that arises.

93. It is without doubt that any structural system in a country with a humongous population as ours struggles with certain unavoidable delays and inconveniences. But can we throw away an entire system for the same. It is impractical to expect a highly comfortable and pleasant ambience for anybody who has to comply with the laws of a country. Laws are made to ensure an order in a society and prevent chaos. It is a by-product that in the pursuit of compliance with such laws there is bound to be some inconvenience for the people. Similarly in legislations where investigation by an authorised agency is one of its facet, inconveniences are bound to arise, but it is expected that fullest cooperation is rendered to ensure that a fair

and speedy justice is delivered. But it is unfortunate that in the present case, a mere search was conducted and the petitioners with complete whimsical arguments have approached this Court seeking for declaring the search itself as illegal. It is agonising that public servants who ought to work for the welfare of the people, have approached this Court stating that they were detained by an investigating agency while conducting a search and that this amounts harassment. How can a procedure established by law be termed as harassment. This is a challenge to the very ethos of criminal justice system.

94. If this court accepts that such a search conducted by an investigating agency is harassment, then it can lead to a floodgate of litigations where each and every citizen of this country bound by the rule of law start alleging harassment on every procedure detailed under our criminal procedure system. Thousands of litigants in this country wait for years with patience praying for Justice which is their constitutional right. But it is unfortunate that the government officers who are public servants cannot tolerate a few hours of detention to ensure a smooth investigation to be conducted. In fact it is their condition of service that they cooperate with any such lawful investigation conducted in their office premises. The officers nowhere have alleged any physical torture. Mere detention and seizing of

cell phones which is normal procedure adopted for conducting a search.

95. Also the offence of money laundering is a crime against the people of our Nation. The arguments of officers being detained for hours during search and that the employees being sent home at odd hours when a search is in progress is inadequate and highly disproportional, when compared to the rights of millions of people of our Great Nation. The search conducted is for the interest and benefit of this Nation. Can a few inconveniences which is product of ‘procedure established by law’ as embedded in Article 21 be equated against the economic rights of the people of this country. It is the mandate of the Constitution to secure to all its citizens Economic Justice. And legislations such as PMLA serve this object by ensuring that offences which jeopardise our National economic growth is dealt with strictly in accordance with law.

96. Finally the submission that has been stressed throughout is that political motive is at play. That this search is based on political vendetta. But whether a Court can go and examine the political forces at play or be a partaker in the political game. Definitely not. That is not the duty of a Court of law. 'A' party comes to power. Then 'B' party alleges that politically motivated action is taken on them. Then B party comes to power and A

alleges that politically motivated action is pressed on them. But are Courts the place to decide this. We can only see the materials before us, the offence committed irrespective of whether it is A or B and apply the laws and ensure Justice is served. The right place to place this submission is before the people of this country. They witness the actions of the persons in power and so the best Judges to decide the case of politics would be the people of our Great Nation. Eventually, what matters the most is the 'Will of the People'.

97. In fine, all the three Writ Petitions are dismissed. The Directorate of Enforcement is at liberty to proceed with all further actions under PMLA. Consequently, all Writ Miscellaneous Petitions are closed and W.M.P.No.12695 of 2025 is dismissed. There shall be no order as to costs.

[S.M.S., J.] [K.R.S., J .]
23.04.2025

JENI/GD
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Assistant Director,
Directorate of Enforcement,
Chennai Zonal Officer II,
No.2, 5th and 6th Floor,
BSNL Administrative Building,
Kuskumar Road, Nungambakkam,
Chennai 600 034.

S.M.SUBRAMANIAM, J.
and
K.RAJASEKAR, J.

JENI/GD

W.P.Nos.10348, 10352 & 10355 of 2025

23.04.2025