

COMPILATION OF CASE LAWS

Prevention of Money Laundering Act, 2002 • Prohibition of Benami Property Transactions Act, 1988

INDEX

PART I – PREVENTION OF MONEY LAUNDERING ACT, 2002

1. Vijay Madanlal Choudhary & Ors. v. Union of India & Ors. ... Pages 1–9

Supreme Court of India (Three-Judge Bench) – Order dated 27.07.2022 in SLP (Crl.) No. 4634 of 2014 and connected matters

Record of proceedings accompanying the landmark judgment upholding the constitutional validity of the core PMLA machinery – arrest under Section 19, attachment, search and seizure, the twin bail conditions under Section 45 and the statutory presumptions – while holding that supply of the ECIR to the accused is not mandatory.

2. Ram Kishor Arora v. Director, Directorate of Enforcement & Anr. ... Pages 10–51

Delhi High Court – W.P. (Crl.) 2408/2023, decided 22.09.2023 (Dinesh Kumar Sharma, J.)

Arrest by the ED upheld: where the grounds of arrest are notified in writing at the time of arrest and endorsed under the arrestee's own signature, with detailed disclosure in the remand application, the mandate of Section 19(1) stands satisfied and no violation of Articles 14, 21 or 22 is made out.

3. Pankaj Bansal v. Union of India ... Pages 52–69

Supreme Court of India – [2023] 155 taxmann.com 39 (SC), decided 03.10.2023 (A.S. Bopanna and Sanjay Kumar, JJ.)

Merely reading out the grounds of arrest is not due compliance with Section 19(1) of the PMLA; a written copy of the grounds must be furnished to the arrestee as a matter of course. The arrest of the M3M directors and the consequent remand were accordingly quashed.

4. Prabir Purkayastha v. State (NCT of Delhi) ... Pages 70–111

Supreme Court of India – 2024 INSC 414 (NewsClick / UAPA matter)

Extends Pankaj Bansal beyond the PMLA: communication of the grounds of arrest in writing is a constitutional imperative flowing from Article 22(1), and non-supply vitiates the arrest and the remand ab initio. The appellant's arrest under the UAPA was declared invalid and he was directed to be released.

5. Manish Sisodia v. Directorate of Enforcement ... Pages 112–133

Supreme Court of India – (2024) 12 SCC 660 (B.R. Gavai and K.V. Viswanathan, JJ.)

Bail granted after about seventeen months of incarceration with the trial yet to commence; prolonged pre-trial detention offends the right to speedy trial under Article 21, and the principle that bail is the rule and jail the exception holds good even for offences subject to Section 45 of the PMLA.

6. V. Senthil Balaji v. Deputy Director, Directorate of Enforcement ... Pages 134–158

Supreme Court of India – 2024 INSC 739 (Abhay S. Oka and A.G. Masih, JJ.)

Where the trial of the scheduled offence and of the PMLA complaint is unlikely to conclude within a reasonable time, the twin conditions of Section 45 cannot become an instrument of indefinite incarceration; constitutional courts may grant bail on the ground of delay notwithstanding the statutory restrictions.

7. Pavana Dibbur v. Directorate of Enforcement ... Pages 159–189

Supreme Court of India – 2023 INSC 1029 (Abhay S. Oka and Pankaj Mithal, JJ.)

A person need not be an accused in the scheduled offence to be prosecuted under Section 3 of the PMLA, provided a link with the proceeds of crime is shown; however, criminal conspiracy under Section 120B IPC is a scheduled offence only where the conspiracy is to commit an offence itself included in the Schedule.

8. Vijayraj Surana v. Assistant Director, Enforcement Directorate ... Pages 190–223

Madras High Court (Division Bench) – 2024:MHC:3345, W.P. Nos. 14782, 14786 & 14787 of 2024, decided 28.08.2024
Quashing of the predicate FIR on purely technical or jurisdictional grounds (the investigation having been entrusted to the SFIO) does not automatically efface the ECIR, particularly where proceeds of crime stand prima facie traced in the ED's parallel investigation; the writ petitions were dismissed.

9. Seema Garg & Ors. v. Joint Director, Directorate of Enforcement, Jalandhar ... Pages 224–238

Appellate Tribunal for SAFEMA, FEMA, NDPS, PMLA & PBPT Act, New Delhi – FPA-PMLA-2419–2421/JL/2018, decided 09.08.2019
Attachment of properties traceable to laundered VAT-refund proceeds confirmed; the powers of confiscation or release of attached property vest exclusively in the Special Court under Section 8, and neither the Tribunal nor the asset reconstruction company claimant could exercise or invoke them at that stage.

10. Axis Bank Ltd. & Ors. v. Deputy Director, Directorate of Enforcement, Hyderabad ... Pages 239–244

Appellate Tribunal under SAFEMA, New Delhi – FPA-PMLA-5386, 5395, 5409, 5424 & 5638/HYD/2023 (Karvy matter), decided 22.05.2025
In cases of fraud committed against financial institutions, the ED should first endeavour to trace and attach the actual proceeds of crime before attaching mortgaged properties of equivalent value; the secured creditors were relegated to the Special Court under Sections 8(7) and 8(8) for release of the attached assets.

PART II – PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988

11. Union of India & Anr. v. Ganpati Dealcom Pvt. Ltd. (Review) ... Pages 245–251

Supreme Court of India – 2024 INSC 799, Review Petition (C) No. 359 of 2023 in C.A. No. 5783 of 2022, order dated 18.10.2024
Review allowed: the judgment dated 23.08.2022, which had declared the unamended 1988 Act and the retroactive operation of the 2016 Amendment unconstitutional, stands recalled in its entirety, and Civil Appeal No. 5783 of 2022 is restored for fresh adjudication before a Bench nominated by the Chief Justice.

12. Niharika Jain & Ors. v. Union of India & Ors. ... Pages 252–411

Rajasthan High Court, Jaipur Bench – S.B. Civil Writ Petition No. 2915/2019 and connected matters
The Benami Transactions (Prohibition) Amendment Act, 2016, being substantive and penal in character, operates prospectively from 01.11.2016 and cannot be applied retrospectively to transactions entered into before that date; the authorities were directed to examine each case on that footing.

13. Manjula & Ors. v. D.A. Srinivas ... Pages 412–557

Supreme Court of India – 2026 INSC 465, C.A. No. 7370 of 2026, decided 08.05.2026 (J.B. Pardiwala and R. Mahadevan, JJ.)
Comprehensive restatement of Benami law: a claim founded on a benami transaction cannot be judicially enforced; the 2016 amendments are held declaratory and retrospective; the fiduciary exception is construed narrowly; and once a judicial declaration of benami attains finality, confiscation follows without fresh recourse to Sections 24 to 26.

14. Yoosaf N.A. v. Initiating Officer (BPU), Kochi ... Pages 558–570

Appellate Tribunal under SAFEMA, New Delhi – FPA-PBPT-1005/KOCHI/2019, decided 14.05.2026
Seized cash of Rs. 50.13 lakh whose providers of consideration were untraceable attracts Section 2(9)(D); the attachment was confirmed, and a mere willingness to offer the sum to income-tax does not oust proceedings under the PBPT Act, the two enactments operating in distinct fields with distinct objects.

15. Mangathai Ammal (Died) through LRs v. Rajeswari & Ors. ... Pages 571–599

Supreme Court of India – C.A. No. 4805 of 2019, decided 09.05.2019 (L. Nageswara Rao and M.R. Shah, JJ.)

The burden of establishing benami rests squarely on the person alleging it; payment of consideration is not by itself decisive and the intention of the parties, gathered from the surrounding circumstances, governs. The Court also noted that the 2016 Amendment would not apply retrospectively, and held the suit properties (barring two ancestral items) to be the self-acquired properties of the purchaser.

16. DCIT, Mumbai v. M/s Nibhodh Trading Pvt. Ltd. & Ors. ... Pages 600–617

Appellate Tribunal under SAFEMA, New Delhi – FPA-PBPT-2497/MUM/2023, decided 05.11.2024

Revocation of the attachment upheld where the Department failed to prove that the consideration flowed from the alleged beneficial owners; clauses (B) to (D) of Section 2(9) cannot be applied retrospectively to transactions preceding 01.11.2016, Section 2(9)(A) alone reaching earlier transactions.

17. ACIT (BPU-2) v. Gainful Multitrade (P.) Ltd. ... Pages 618–627

Appellate Tribunal SAFEMA, New Delhi – [2026] 182 taxmann.com 401, FPA-PBPT-2245–2247 & 2249 (MUM) of 2022, decided 12.01.2026

Attachment founded solely on income-tax material, alleging benami routing of share application money through shell entities, was rightly revoked; in the absence of proof of consideration provided by, or benefit flowing to, a beneficial owner, and with contradictory invocation of Sections 2(9)(A) and (D), no benami transaction is made out.

18. M/s Prism Scan Express Pvt. Ltd. & Ors. v. Initiating Officer, DCIT (BPU-2), Mumbai ... Pages 628–675

Appellate Tribunal for SAFEMA, New Delhi – FPA-PBPT-1079, 1080 & 1085/MUM/2020 (Bhageria group), decided 15.12.2023

Attachment of the demat and bank accounts of two companies held to be benamidars of the promoter group confirmed on the evidence; procedural objections regarding non-supply of the reasons to believe under Section 24(1) and alleged non-compliance with Rule 5 of the 2016 Rules were rejected on facts.

19. Initiating Officer & DCIT (Benami Prohibition) v. M/s Manpreet Estates LLP & Anr. ... Pages 676–695

Appellate Tribunal for SAFEMA, New Delhi – FPA-PBPT-206/MUM/2018, decided 26.03.2019 (Justice Manmohan Singh, Chairman)

The Department's appeal concerning ten Khar (Mumbai) flats alleged to be held benami for the beneficial owner was dismissed; the onus of proving benami must be strictly discharged on legal evidence of a definite character, and conjecture or surmise is no substitute for proof.

20. Krishna Sudama Marketing Private Limited v. Union of India & Ors. ... Pages 696–719

Calcutta High Court – WPA No. 16821 of 2022, decided 22.03.2024 (Sabyasachi Bhattacharyya, J.)

Writ challenge to summons under Section 19 and provisional attachment under Section 24 declined at the threshold; the Benami Act is a self-contained code and the noticee must work out its defence before the Adjudicating Authority under Section 26 and thereafter in appeal under Sections 30 and 31.

21. Binapani Paul v. Pratima Ghosh & Ors. ... Pages 720–732

Supreme Court of India – C.A. No. 8098 of 2004, decided 27.04.2007 (S.B. Sinha and Markandey Katju, JJ.)

The source of the purchase money, though an important criterion, is not conclusive of benami; the determinative factor is the intention of the parties, gathered from the six classic circumstances, and the burden rests heavily on the party alleging the transaction to be benami.

22. Thakur Bhim Singh (Dead) by LRs & Anr. v. Thakur Kan Singh ... Pages 733–746

Supreme Court of India – AIR 1980 SC 727 : (1980) 3 SCC 72, decided 21.12.1979

The locus classicus distinguishing the two categories of benami transactions and holding that the real character of the transfer is governed by the intention of the person who provided the consideration, with the burden on the party asserting benami; on the facts, the patta was held not to be benami.

Note on conflict of authority: On the retrospectivity of the 2016 Amendment, Niharika Jain (Item 12) and the observations in Mangathai Ammal (Item 15) take the prospective view, whereas Manjula v. D.A. Srinivas (Item 13), decided on 08.05.2026, holds the amendments declaratory and retrospective; the recall of Ganpati Dealcom (Item 11) has meanwhile left the earlier declaration of unconstitutionality without force. Page references correspond to the pagination of the compilation (pp. 1–746); the index pages precede page 1. Each entry above is hyperlinked – clicking anywhere on an entry takes you to the first page of that judgment.

ITEM NO.1501

COURT NO.3

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 4634/2014

(Arising out of impugned final judgment and order dated 30-04-2014 in CRLA No. 1132/2012 passed by the High Court Of Judicature At Bombay)

VIJAY MADANLAL CHOUDHARY & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No. 2104/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 59849/2021 - INTERVENTION APPLICATION)

WITH

SLP(C) No. 28922/2011 (XII-A)SLP(C) No. 29273/2011 (XII-A)SLP(CrI) No. 9987/2015 (II-C)SLP(CrI) No. 10018/2015 (II-C)

IA No. 134177/2021 - INTERVENTION/IMPLEADMENT)

SLP(CrI) No. 10019/2015 (II-C)

IA No. 20299/2015 - appln. for exempt from filing c/c.

IA No. 134181/2021 - INTERVENTION/IMPLEADMENT)

SLP(CrI.)...CRLMP No. 21254/2015 (II-B)

IA No. 138127/2021 - INTERVENTION/IMPLEADMENT)

T.P.(CrI.) No. 151-157/2016 (XVI-A)

IA No. 6531/2016 - STAY APPLICATION)

CrI.A. No. 1270/2017 (II-C)

IA No. 99001/2021 - CLARIFICATION/DIRECTION

IA No. 44917/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT

No. 85552/2018 - GRANT OF INTERIM RELIEF)

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DEEPAK SINGH
Date: 2022.07.27
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Reason: I am the signatory

CrI.A. No. 391-392/2018 (II-C)

IA No. 87756/2021 - APPLICATION FOR TAGGING/DETAGGING

IA No. 89201/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 28162/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES

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Mr. Narender Kumar Verma, AOR

Mr. Pranav Sachdeva, AOR

Mr. K. Paari Vendhan, AOR

Ms. Uma Devi. M, AOR

UPON hearing the counsel the Court made the following

O R D E R

Hon'ble Mr. Justice A.M. Khanwilkar pronounced the judgment of the Bench comprising His Lordship, Hon'ble Mr. Justice Dinesh Maheshwari and Hon'ble Mr. Justice C.T. Ravikumar.

The conclusion and operative order of the judgment read as under:

"CONCLUSION

1. 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 *Roger Mathew*.

(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 predicated 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*; and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money-laundering, 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; 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.

ORDER

T.P. (Crl.) No. 150/2016, T.P. (Crl.) Nos. 151-157/2016, T.P. (C) No. 1583/2018 and T.P. (Crl.) No. 435/2021

1. These transfer petitions are disposed of with liberty to the private parties to pursue the proceedings pending before the High

Court. The contentions, other than dealt with in this judgment, are kept open, to be decided in those proceedings on its own merits. It would be open to the parties to pursue all (other) contentions in those proceedings, except the question of validity and interpretation of the concerned provision(s) already dealt with in this judgment.

T.C. (Crl.) Nos.3/2018 and 4/2018

2. In these transferred cases, the parties are relegated before the High Court by restoring the concerned writ petition(s) to the file of the concerned High Court to its original number limited to consider relief of discharge/bail/quashing, as the case may be, on its own merits and in accordance with law. It would be open to the parties to pursue all (other) contentions in those proceedings, except the question of validity and interpretation of the concerned provision(s) already dealt with in this judgment. The transferred cases are disposed of accordingly.

W.P. (Crl.) Nos. 169/2020, 370/2021, 454/2021 and 475/2021

3. (a) These writ petitions involve issues relating to Finance Bill/Money Bill. Hence, the same are delinked, to be heard along with Civil Appeal No.8588 of 2019 titled '*Roger Mathew vs. South Indian Bank Ltd. & Ors.*'.

W.P. (Crl.) Nos. 251/2018 and 532/2021

(b) In these writ petitions, as the relief claimed was only regarding the validity and interpretation of the provisions of the 2002 Act, the same are disposed of in terms of this judgment.

W.P. (Crl.) Nos. 152/2016, 202/2017, 26/2018, 33/2018, 75/2018, 117/2018, 173/2018, 175/2018, 184/2018, 226 of 2018, 309/2018, 333/2018, 9/2019, 16/2019, 49/2019, 122/2019, 127/2019, 139/2019, 147/2019, 205/2019, 217/2019, 244/2019, 272/2019, 283/2019, 289/2019, 300/2019, 308/2019, 326/2019, 365/2019, 367/2019, 39/2020, 259/2020, 60/2020, 91/2020, 239/2020, 267/2020, 366/2020, 385/2020, 404/2020, 429/2020, 18/2021, 19/2021, 21/2021, 27/2021, 66/2021, 179/2021, 199/2021, 207/2021, 239/2021, 263 of 2021, 268/2021, 282/2021, 303/2021, 305/2021, 323/2021 and 453/2021

(c) In these writ petitions as further relief of bail/discharge/quashing has been prayed, the same are disposed of in terms of this judgment with liberty to the private parties to pursue further reliefs before the appropriate forum, leaving all contentions in that regard open, to be decided on its own merits.

Crl. A. Nos. 1269/2017, 1270/2017, 223/2018, 391-392/2018, 793-794/2018, 1210/2018 and 682/2019

SLP (Crl.) Nos. 4634/2014, 9987/2015, 10018/2015, 10019/2015, 993/2016, 1271-1272/2017, 2890/2017, 5487/2017, 1701-1703/2018, 1705/2018, 5444/2018, 6922/2018, 8156/2018, 5350/2019, 8174/2019, 9652/2019, 10627/2019, 260/2020, 3474/2020, 6128/2020, 609/2021, 734/2021, 1355/2021, 1403/2021, 1440/2021, 1586/2021, 1855/2021, 1920/2021, 2237/2021, 2250/2021, 2435/2021, 2818/2021, 3228/2021, 3274/2021, 3439/2021, 3514/2021, 3629/2021, 3769/2021, 3813/2021, 3921/2021, 4024/2021, 4834/2021, 5156/2021, 5174/2021, 5252/2021, 5457/2021, 5652/2021, 5696-97/2021, 6189/2021, 7021-23/2021 and 8429/2021

SLP (C) Nos. 28394/2011, 28922/2011, 29273/2011 and 8764-67/2021

Diary Nos. 9360/2018, 9365/2018, 17000/2018, 17462/2018, 20250/2018 and 22529/2018, 8626/2021 and 11605/2021

4. These appeals/petitions are de-tagged and ordered to be listed separately before appropriate Bench as the impugned judgment in the concerned case deals with the prayer for bail/discharge/quashing. This relief will have to be decided on case-to-case basis. Accordingly, these matters be listed separately before appropriate Bench. The Registry to do the needful in this regard.

WP (Crl.) Nos. 336/2018, 173/2019, 212/2019, 253/2019, 261/2019, 266/2019, 273/2019, 285/2019, 288/2019, 298/2019, 299/2019, 306/2019, 346/2019, 09/2020, 35/2020, 49/2020, 52/2020, 240/2020 and 329/2020

WP (C) Nos. 1401/2020 and 56/2021

SLP (Crl.) Nos. 1534/2018, 2971/2018, 7408/2018, 11049/2018, 11839/2019, 1732/2020, 2023/2020 and 6303/2020;

WP (Crl.) Nos. 119/2019, 239/2019, 263/2019, 36/2020, 124/2020, 137/2020, 140/2020, 142/2020, 145/2020, 228/2020, 69/2021, 359/2021 and 520/2021

SLP (Crl.) Nos. 1114/2018, 1115/2018, 618/2020, 2814/2020, 6456/2020, 6660/2020, 6338/2021 and 6847/2021;

WP (Crl.) Nos. 118/2019, 267/2019, 286/2019, 287/2019, 303/2019, 305/2019, 309/2019, 313/2019, 28/2020, 61/2020, 89/2020, 90/2020, 93/2020, 184/2020, 221/2020, 223/2020, 285/2020, 286/2020, 410/2020, 411/2020, 04/2021, 06/2021, 33/2021, 40/2021, 47/2021, 144/2021 and 301/2021

SLP (Crl.) Nos. 244/2019, 3647/2019, 4322-24/2019, 4546/2019, 5153/2019, 9541/2019, 647/2020, 3366/2020, 5536/2020, 1031/2021, 1072/2021, 1073/2021, 1107/2021, 2050-54/2021 and 6834/2019

SLP (C) No. 20310/2021

Diary No. 31616/2021;

WP (Crl.) Nos. 05/2020, 311/2020, 380/2020, 387/2020 and 11/2021,
SLP (Crl.) Nos. 4078/2018, 8111/2019 and 6172/2020, Transferred
Case (Crl.) No. 5/2018, Diary No. 41063/2015

5. In these cases, the challenge is regarding the validity and interpretation of other statutes (other than 2002 Act), such as Indian Penal Code, 1860, Code of Criminal Procedure, 1973, Customs Act, 1962, Prevention of Corruption Act, 1988, Companies Act, 2013, Central Goods & Services Act, 2017, etc. Hence, the same are delinked and be placed before the appropriate Bench "group-wise/Act-wise" as indicated above. The Registry to do the needful in that regard.

6. The interim relief granted in the petitions/appeals which are disposed of in terms of this order, to continue for a period of four weeks from today, to enable the private parties to take recourse to appropriate remedies before the concerned forum, if so advised.

7. The interim relief granted in petitions/appeals, which are delinked and ordered to be listed separately or otherwise, shall continue for four weeks from today, with liberty to the parties to mention for early listing of the concerned case including for continuation/vacation of the interim relief."

Pending applications in the disposed of matters, if any, stand disposed of.

(DEEPAK SINGH)

COURT MASTER (SH)

(VIDYA NEGI)

ASSISTANT REGISTRAR

[Signed reportable judgment is placed on the file]

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **RESERVED ON – 19.09.2023.**
DATE OF DECISION ON – 22.09.2023

+ W.P.(CRL) 2408/2023 & Crl. M.A. No.22680/2023 (for interim relief).

RAM KISHOR ARORA

..... Petitioner

Through: Mr.Abhishek Manu Singhvi, Sr.Adv.
with Mr.R.K.Handoo, Mr.Yoginder Handoo, Mr.Siddharth Bhatti, Mr.Aditya Chaudhary, Mr.Ashwin Kataria, Mr.Garvit Solank, Mr.Bhupendra Premi and Mr.Yatin Dev, Advts.

versus

DIRECTOR, DIRECTORATE OF ENFORCEMENT & ANR.

..... Respondents

Through: Mr.Zoheb Hossain, Spl.counsel for ED with Mr.Vivek Gurnani, Mr.Baibhav, Advts. and Mr.Mohit Godara, AD for ED

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. The present petition has been filed under article 226/227 of the Constitution of India r/w section 482 Cr.P.C. for an appropriate writ, order or direction declaring the arrest of the petitioner as illegal and violative of his fundamental rights guaranteed to him under art. 14, 20 and 21 of the constitution of India and consequently forthwith directing release of the petitioner.
2. In the writ petition it has been submitted that the Petitioner was arbitrarily and illegally arrested on 27.06.2023 by Respondent No.2 and was not informed/served the grounds of his arrest. On 28.06.2023 when the petitioner was produced before the learned Special Judge an application was moved seeking copy of ground of arrest which was opposed by the ED and the learned Special Judge directed the ED to file the reply in this regard that the ground of arrest had not been supplied/served upon the petitioner.
3. On 10.07.2023, reply to the application seeking grounds of arrest was filed by the Enforcement Directorate wherein it was claimed that the grounds of arrest were informed to the Petitioner and he was made to read and sign the same. However, the ED refused to supply/serve copy of the same to the Petitioner. The petitioner has stated that a bail application was moved on 13.07.2023 which was rejected on 22.07.2023 by the learned Special Judge and the petitioner was remanded to judicial custody thereafter.
4. The petitioner has also submitted that the Id. NCLAT, New Delhi in Company Appeal (AT) (INS) 406/2022 has passed an order fixing 31.08.2023 as the deadline for completing all process of due diligence and submission of the term sheet of interim finance within two weeks

thereafter before the tribunal after completing all the formalities. In the present petition the petitioner has raised following question of law:

- a) Whether grounds of arrest need to be orally informed or given in writing?
 - b) Whether the petitioner's fundamental rights have been violated as he has not been informed/served the grounds of his arrest (that are in writing) and thereby also denying him the right to consult and be defended by his legal practitioner?
 - c) Whether the fundamental right of the petitioner guaranteed to him under Art. 21 of the Constitution of India has been violated by depriving him of his life and personal liberty – subjecting him to an illegal arrest by setting the criminal law in motion contrary to the procedure established by law?
 - d) Whether the Petitioner's arrest is contrary to s. 19 of the Prevention of Money Laundering Act, 2002 – thereby violating the Petitioner's fundamental right under Art. 21 read with Art. 14 of the Constitution of India?
5. That the petitioner has submitted in his petition that ED has violated the fundamental right of the Petitioner under Article 22(1) of the Constitution of India, as the Petitioner has been arrested without being informed/communicated/served the grounds of arrest and by denying him right to consult and be defended by a legal practitioner of his choice.
 6. The petitioner submitted that the petitioner had filed the writ petition on 02.08.2023 before the Hon'ble Supreme Court of India, as there were conflicting views on this issue. In a judgment dated 13.11.2017,

titled “*Moin Akhtar Qureshi vs. UOI*” in W.P (Crl.) No.2465/17, the Division Bench of this Hon’ble Court held that the competent authority is not obliged to inform/serve the order of arrest or grounds of such arrest to arrestee simultaneously with his arrest, while this view has been doubted in the case of *Rajbhushan Omprakash Dixit vs. UOI* in W.P. (Crl.) 363/2018 dated 19.02.2018 which was referred to a larger bench. However, it has been submitted that the law on the same has now been settled by the Hon’ble Supreme Court of India in the case of *V. Senthil Bala ji v. State represented by Deputy Director & Ors.* 2023 SCC Online SC 934 whereby it has been submitted that the concerned officer is at liberty to arrest while performing his mandatory duty of recording the reasons and the said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. The petitioner stated that it was inter alia held that any noncompliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. The petitioner stated that in the present case this direction has been completely violated. The petitioner has also taken a plea that the arrest of the petitioner on 27.06.2023 by Enforcement Directorate has jeopardised the interests of almost 17000 (approx.) homebuyers, as well as the Settlement-cum-Resolution Plan that had been approved by Hon’ble NCLAT by order dated 10.06.2022, which was also approved by the Hon’ble Supreme Court by order dated 11.05.2023.

7. The petitioner has submitted that Section 19 of the PMLA has not been followed in the present case. It has been further submitted that the

procedure followed in arresting the petitioner is illegal and contrary to the well settled principles of law.

8. The petitioner has relied upon *State of Punjab Vs, Ajaib Singh*, AIR 1953 SC 10, wherein it was inter alia held that a person to be arrested is to be informed of the grounds for his arrest before he is actually arrested.
9. The petitioner has also relied upon *Madhu Limaye and Ors.*, 1969(1) SCC 292. The petitioner has submitted that the grounds of arrest that admittedly are in writing and ran into several pages have to be informed to the petitioner in writing and non-furnishing of the same violates the fundamental rights of the petitioner under Art. 20(1) of the Constitution of India.
10. The petitioner has submitted that his fundamental right under Article 21 has also been violated by subjecting him to an illegal arrest by setting the criminal law in motion contrary to the procedure established by law.
11. The petitioner has also challenged the provisional attachment of the properties by the ED.
12. After hearing the parties, thus court was of the view that there are important questions of law which require consideration and thus, notice was issued.
13. In response to this, ED has filed the counter affidavit and submitted that there has been a sufficient compliance with Section 19 of the PMLA and Article 22(1) of Constitution of India. It has been submitted that there were sufficient reasons to believe that the Petitioner, Ram Kishor Arora, was involved in the commission of offence of money-

laundering as specified under Section 3 of PMLA 2002 and that there are sufficient evidences on record, which clearly bring out that the above specified offence is being perpetually committed with full disregard to the statutory provision with an intention to launder money and therefore petitioner was arrested on 27.06.2023.

14. ED has submitted that the arrest was affected in full compliance of Section 19 of PMLA and that after going through the grounds of arrest, the arrestee on last page in his own handwriting wrote that-*"I have been informed and have also read the above mention grounds of arrest"*.
15. It has also been submitted that the Information/ details regarding arrest of the Petitioner were duly communicated to his son Mr. Mohit Arora. ED has submitted that the petitioner was duly produced before the learned Special Judge and on due consideration, the petitioner was remanded firstly to ED custody and then to the judicial custody.
16. In the counter affidavit it has been submitted that the legality of arrest cannot be questioned after a competent court has passed an order on remand which is a judicial function. In this regard reliance has been placed on *Serious Fraud Investigation Office vs. Rahul Modi* (2019) 5 SCC 266 and *Kanu Sanyal v. Distt. Magistrate, Darjeeling*, (1974) 4 SCC 141.
17. ED submitted that a writ petition challenging the legality of arrest would not stand if a person is in custody in pursuance of a judicial order. Reliance has been placed State of *Maharashtra v. Tasneem Rizwan Siddiquee*, (2018) 9 SCC 745.

18. In the counter affidavit, it has been submitted that since the accused has been validly remanded to custody, the present petition is not maintainable.
19. Reliance has been placed upon *Basanta Chandra Ghose v. King Emperor*, 1945 SCC OnLine FC 3, *Naranjan Singh Nathawan v. State of Punjab*, (1952) 1 SCC 118 : 1952 SCC OnLine SC 4, *Talib Hussain v. State of J&K*, (1971) 3 SCC 118, *Col. B. Ramachandra Rao (Dr) V. State of Orissa*, (1972) 3 SCC 256, *Sanjay Dutt v. State through CBI, Bombay (II)*, (1994) 5 SCC 410, *Bhagwan Singh V. State of Rajasthan*, 2005 SCC OnLine Raj 861 : (2006) 1 RLW 790, *Saurabh Kumar v. Jailor, Koneila Jail*, (2014) 13 SCC 436, *State of Maharashtra v. Tasneem Rizwan Siddiquee*, (2018) 9 SCC 745 : (2019) 1 SCC (Cri) 386 : 2018 SCC OnLine SC, *Serious Fraud Investigation Office v. Rahul Modi*, (2019) 5 SCC 266, *State v. H. Nilofer Nisha*, (2020) 14 SCC 161.
20. It is submitted that informing grounds of arrest is sufficient compliance with section 19 of the PMLA and there is no legal requirement of supplying a copy of grounds of arrest. It was submitted that in the remand order dated 28.06.2023 which was passed by learned Special Judge specifically noted that there was nothing to suggest from the case file produced by IO that the arrest of the accused has been effected in violation of provision of Section 19 of the PMLA or that the same was otherwise illegal. Learned Special Judge has specifically mentioned that IO has not only recorded the reasons for his belief about accused's being guilty of the offence of money laundering under Section 3 of the PMLA, but the said grounds are also found to have been informed to

the accused. The ED has placed reliance upon *Moin Akhtar Qureshi vs. UOI* 2017 SCC OnLine Del 12108 and *Chhagan Chandrakant Bhujbal vs. Union of India* 2016 SCC OnLine Bom 9938.

21. It has further been submitted that it is an admitted position that within 24 hours of the arrest, the arrestee was supplied with the remand application which virtually contained all the grounds of arrest and therefore the legal requirement of informing the grounds of arrested “as soon as may be” stood fulfilled both as per the statutory requirement under S. 19(1) of the PMLA as well as the constitutional mandate under Article 22 (1) of the Constitution of India. It has been submitted that the expression “as soon as may be” in the context of Article 22(5) has been interpreted by the Hon’ble Supreme Court in *K.M. Abdulla Kunhi v. Union of India* , (1991) 1 SCC 476 wherein it was held that there can be no hard and fast rule and there is no period prescribed either under the Constitution or under the law so long as the legal requirement of informing is not dealt with supine indifference, slackness or callous attitude in respect of the same. Reliance is placed on *Rajbhushan Omprakash Dixit vs. Union of India (supra)* in which was submitted that it was a well settled preposition that interim order do not have any precedential value. Reliance has been placed upon *Sundeep Kumar Bafna vs. State of Maharashtra (2014) 16 SCC 623*.
22. ED further submitted that the Hon’ble Supreme Court by way of its order dated 15.03.2018, passed in SLP (Crl) diary no. 9360/2018, was pleased to transfer to itself, the abovementioned case of *Rajbhushan Omprakash Dixit vs. Union of India (supra)* and the same was registered as Transferred Case (Crl.) No. 3 of 2018 and was tagged

with SLP (Crl) 4364/2014 i.e., *Vijay Madanlal* Batch of matters and the said issue has been decided by the Hon'ble Supreme Court in *Vijay Madanlal (supra)* at Para 458 and 459 and is no longer res integra.

23. ED further submitted that after the decision the Hon'ble Supreme Court has transferred back the said case i.e., *Rajbhushan Omprakash Dixit (supra)* to this Court. It was pointed out that the Hon'ble Supreme Court at Para 469 of *Vijay Madanlal* specifically inter alia directed that:
"In these transferred cases, the parties are relegated before the High Court by restoring the concerned writ petition(s) to the file of the concerned High Court to its original number limited to consider relief of discharge/bail/quashing, as the case may be, on its own merits and in accordance with law. It would be open to the parties to pursue all (other) contentions in those proceedings, except the question of validity and interpretation of the concerned provision(s) already dealt with in this judgment. The transferred cases are disposed of accordingly."
24. ED has also relied upon the debates of Constituent Assembly wherein the suggestions to quantify the time-period to inform the grounds of arrest was found to be unnecessary and it was observed by Dr. B.R. Ambedkar that in any case informing such grounds of arrest cannot be later than 24 hours when the grounds for arrest and further custody are required to be informed to the Magistrate itself in the presence of the accused. It is submitted that it is well settled that Constituent Assembly Debates are the best aid for interpreting the provisions of the Constitution a reference has been made to *S.R. Chaudhari v. State of Punjab & On. (2001) 7 SCC 126 (para 33)* *Special Reference No. 1 of 2002, In re (Gujarat Assembly Election matter) (2002) 8 SCC 237*.

25. ED has further submitted that that even Article 22(1) provides that “*No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest*”. It is submitted that the petitioner was communicated and made aware of the grounds of his arrest by the ED and the ground being raised before this Court is merely that a physical copy of the same was not provided to him. It is submitted that this is not a case where petitioner is unaware of the prosecution case and the reason for his arrest.
26. In the case of *Madhu Limaye, (1969) 1 SCC 292*, this Court referred to and reiterated the observations of *Viscount Simon in Christie v. Leachinsky, (1947) 1 All ER* where it was inter-alia held that:

“The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained. Lord Simonds gave an illustration of the circumstances where the accused must know why he is being arrested: There is no need to explain the reasons of arrest if the arrested man is caught red-handed and the crime is patent to high Heaven.”
27. Learned special counsel for ED submitted that in PMLA a person is arrested only under Section 3 of PMLA unlike IPC where a person can be arrested for various offences.
28. Reliance has also been placed upon *State of Punjab v. Baldev Singh, (1999) 6 SCC 172*, wherein it was inter alia held that, it is, however, not necessary to give the information to the person who is searched about his right in writing. It was inter alia held that it is sufficient if such information is communicated to the person concerned

orally and as far as possible in the presence of some independent and respectable persons witnessing the arrest and search.

29. Reliance has also been placed upon *Soni Natverlal Prabhudas and Ors. vs. State of Gujarat and Ors.*, *Vijaysingh Chandubha Jadeja vs. State of Gujarat* , (2011) 1 SCC 609.
30. ED submitted that the reliance placed on *V. Senthil Balaji v. State*, 2023 SCC OnLine SC 934 by the petitioner is absolutely misplaced as the same procedure was followed in the case of *V. Senthil Balaji*, at the time of arrest and the Apex Court did not find any fault with it. Additionally, that the judgment of the Hon'ble Supreme Court in the said case only requires the information to be served, which can even be done orally. It has been submitted that in this case the information of grounds of arrest was given in writing. It is submitted that it is undisputed that the petitioner had read and acknowledged the written grounds of arrest and also signed the same in his own handwriting.
31. Reliance has been placed upon ***Khimji Raja Harijan v. District Magistrate, 1987 SCC OnLine Guj 98***, wherein it was held that *oral intimation to the members of the household of the order of detention and the place of detention would substantially comply with the directions by the Supreme Court and would not vitiate the order of continued detention*. ED has also placed reliance upon *Pranab Chatterjee v. State of Bihar*, (1970) 3 SCC 926.
32. Moreover, the ED submits that there will be no presumption that the particulars of the offence of the grounds for which the applicant was arrested were not conveyed to him by the person who arrested him, or by police and this fact is to be proved positively by the person who

alleges non-compliance with these provisions. Reliance has been placed upon *Vimal Kumar Sharma vs. State of U.P. and Ors.* MANU/UP/0602/1995, *Sher Bahadur Singh and Ors. vs. State of U.P. and Ors.* (25.05.1992 - ALLHC) : MANU/UP/0263/1992.

33. It has been submitted by the ED that the only manner in law by which the accused can seek release under PMLA is upon fulfilment of the twin conditions prescribed under section 45 of the PMLA, 2002. It has been submitted that the bail application of the petitioner has already been dismissed and that order has not been challenged. In the counter affidavit the facts have also been made which are not being detailed herein.
34. Dr. Abhishek Manu Singhvi, learned senior counsel for the petitioner along with Sh. R.K. Handoo submitted that even as per written submissions and counter affidavit of the ED grounds of arrest have not been served to the petitioner as yet.
35. Dr. Abhishek Manu Singhvi further submitted that from 17.11.2021 to 23.03.2023 petitioner had appeared before ED on 12 occasions and has submitted about 15,000 pages of documents. It was further pointed out that in the 26 FIRs filed against petitioner, the petitioner was neither arrested nor any charge-sheet has been filed.
36. Dr. Singhvi, learned senior counsel for the petitioner, further submitted that the petitioner was illegally arrested on 27.06.2023 and admittedly ground of arrest were not served or furnished.
37. Learned senior counsel submitted that the argument of ED that the remand application constitutes grounds of arrest is pernicious. It has been submitted that the grounds of arrest can never be equated with a

judicial remand application. It was submitted that it is not only a statutory procedural safeguard but also a constitutional obligation on the respondent to supply the grounds of arrest.

38. Dr. Singhvi further submitted that this court is bound to rely on *V. Senthil Balaji*. He submitted that the Hon'ble Supreme Court speaking through *V. Senthil Balaji*(Supra) has made it crystal clear that grounds of arrest have to be served upon the arrestee and non-supply of it would vitiate the entire proceeding. Dr. Abhishek Manu Singhvi submitted that in no manner the *Vijay Madanlal Choudhary*(Supra) and *V. Senthil Balaji* (Supra) are irreconcilable. Dr. Abhishek Manu Singhvi also submitted that *V. Senthil Balaji* cannot be termed as an *incuriam* judgment.
39. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that rather the ED should not be insisting that the court follow the judgment of *Vijay Madanlal Choudhary* and ignore the judgment of *V. Senthil Balaji*. Learned senior counsel submitted that *Vijay Madanlal Choudhary* judgment is oriented towards elaborating/ examining validity of law as it was a batch of matters challenging validity of law, whereas *V. Senthil Balaji* is fact-based matter where an individual was concerned and there is no irreconcilable conflict between the two.
40. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that *V. Senthil Balaji* has in fact aided in the advancement of law taking the law further from *Vijay Madanlal Choudhary*. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that *Vijay Madanlal Choudhary* also does not state that grounds of arrests need not be supplied, neither does it say that they be furnished well after arrest.

Learned senior counsel submitted that the judgment in *Vijay Madanlal Choudhary* arose out of batch of matters examining constitutional validity of law and was aimed at clarifying the law, whereas *V. Senthil Balaji* is more an individual based matter where the law laid down in *Vijay Madanlal Choudhary* were considered in the particular facts and circumstances of the case.

41. Dr. Abhishek Manu Singhvi, learned senior counsel relied on *Vijay Madanlal Choudhary* to underline the importance of procedural safeguards and its necessity to ensure fairness, objectivity and accountability.
42. Dr. Singhvi, learned senior counsel referred to Para-322 of *Vijay Madanlal Choudhary*(*Supra*) wherein it was inter alia held as under:

“Section 19 of the 2002 Act postulates the manner in which arrest of person involved in money-laundering can be effected. Subsection (1) of Section 19 envisages that the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government, if has material in his possession giving rise to reason to believe that any person has been guilty of an offence punishable under the 2002 Act, he may arrest such person. Besides the power being invested in high-ranking officials, Section 19 provides for inbuilt safeguards to be adhered to by the authorised officers, such as of recording reasons for the belief regarding the involvement of person in the offence of money-laundering. That has to be recorded in writing and while effecting arrest of the person, the grounds for such arrest are informed to that person. Further, the authorised officer has to forward a copy of the order, along with the material in his possession, in a sealed cover to the Adjudicating Authority, who in turn is obliged to preserve the same for the prescribed period as per the Rules. This safeguard is to ensure fairness, objectivity and

accountability of the authorised officer in forming opinion as recorded in writing regarding the necessity to arrest the person being involved in offence of money-laundering. Not only that, it is also the obligation of the authorised officer to produce the person so arrested before the Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, within twenty-four hours. This production is also to comply with the requirement of Section 167 of the 1973 Code. There is nothing in Section 19, which is contrary to the requirement of production under Section 167 of the 1973 Code, but being an express statutory requirement under the 2002 Act in terms of Section 19(3), it has to be complied by the authorised officer.”

43. Learned senior counsel further submitted that in *Vijay Madanlal Choudhary* reliance was placed on *Premium Granite vs. State of Tamil Nadu* 1994 2 SCC 691 to indicate that reasons are required to be noted while exercising discretionary power to check arbitrariness and referred to Para 325 wherein it was held as under:

“The safeguards provided in the 2002 Act and the preconditions to be fulfilled by the authorised officer before effecting arrest, as contained in Section 19 of the 2002 Act, are equally stringent and of higher standard. Those safeguards ensure that the authorised officers do not act arbitrarily, but make them accountable for their judgment about the necessity to arrest any person as being involved in the commission of offence of money-laundering even before filing of the complaint before the Special Court under Section 44(1)(b) of the 2002 Act in that regard. If the action of the authorised officer is found to be vexatious, he can be proceeded with and inflicted with punishment specified under Section 62 of the 2002 Act. The safeguards to be adhered to by the jurisdictional police officer before effecting arrest as stipulated in the 1973 Code, are certainly not comparable. Suffice it to observe that this power has been given to the high-ranking officials with further

conditions to ensure that there is objectivity and their own accountability in resorting to arrest of a person even before a formal complaint is filed under Section 44(1)(b) of the 2002 Act. Investing of power in the high-ranking officials in this regard has stood the test of reasonableness in Premium Granites, wherein the Court restated the position that requirement of giving reasons for exercise of power by itself excludes chances of arbitrariness. Further, in Sukhwinder Pal Bipan Kumar, the Court restated the position that where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such highest authority will not be abused. Additionally, the Central Government has framed Rules under Section 73 in 2005, regarding the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the Adjudicating Authority and the period of its retention. In yet another decision in Ahmed Noormohmed Bhatti, this Court opined that the provision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional merely because the authority vested with the power may abuse his authority.”

44. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that even in the counter affidavit of ED, there is no submission of conflict between *Vijay Madanlal Choudhary(Supra)* and *V. Senthil Balaji(Supra)*. Learned senior counsel submitted that there was nothing in the *Vijay Madanlal Choudhary* which has been negated by *V. Senthil Balaji(Supra)*. Learned senior counsel submitted that the reliance placed by respondent/ED on Para459on *Vijay Madanlal Choudhary* is misplaced as it deals with ECIR and not grounds of arrest. Learned senior counsel submitted that ED may be justified by certain judgments in not providing ECIR. However, ED is not at all at liberty to not

provide grounds of arrest as judgments after judgments have stated that grounds should be communicated as soon as may be and cannot be interpreted to take liberty of not submitting yet till this stage.

45. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that petitioner has not come under Habeas Corpus petition but challenging the very basis of arrest due to non-providing of grounds of arrest whereas the purpose of Habeas Corpus is served the moment person is brought before court. It has been submitted that in the present petition the scope of the court to consider the legality of the arrest is very wide.
46. Learned senior counsel has placed reliance upon *V. Senthil Balaji* and submitted that the facts were different and the grounds of arrest were provided but were denied by accused. Hence, they were served to the family of the accused. Learned senior counsel has placed reliance upon *V. Senthil Balaji* to bolster the submission that officer should supply / serve reasons and non-compliance would vitiate the arrest.
47. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that *V. Senthil Balaji* is completely in sync with *Vijay Madanlal Choudhary* and the law laid down has merely been followed and advanced. Learned senior counsel has invited the attention of the court to the rules and has placed reliance upon the Prevention of Money Laundering (the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the adjudicating authority. Hence its period of retention) Rules 2005. Learned senior counsel submitted that Rule 2(g) provides which is as under:

g) “material” means any information or material in the possession of the Director or Deputy Director or Assistant

Director or any authorised officer, as the case may be, on the basis of which he has recorded reasons under sub-section (1) of section 19 of the Act;

48. It has further been submitted that Rule 2(h) provides the definition of order which is as under:

h) “order” means the order of arrest of a person and includes the grounds for such arrest under sub-section (1) of section 19 of the Act;

49. Reference has also been made to Rule 3 which deals with the manner of forwarding a copy of the order of arrest and the material to the adjudicating authority as well Rule 6 which deals with the forms of the record.
50. Learned senior counsel has also invited the attention to Form-3, “Arrest order”. Learned senior counsel submitted that the rules provided are elaborate enough and aimed at creating procedural safeguards in case of arrest.
51. Dr. Abhishek Manu Singhvi, learned senior counsel has invited the attention to Para-12 of the reply of the ED where it is submitted that informing the grounds of arrest to a person is a sufficient compliance. However, learned senior counsel submitted grounds need to be served/furnished/given in writing to enable a person to take recourse as permissible by law. Learned senior counsel submitted that remand application does not get equated to supplying and grounds of arrest. Learned senior counsel, in the alternative and without prejudice to the submissions, submitted that the petitioner is also before NCLAT in some matter. The NCLAT had given 2 weeks’ time to explore options

to resolve the agony of 17,000 home buyers and that is likely to be extended soon.

52. Learned senior counsel submitted that that petitioner is required for conduct of 25 ongoing projects which caters the needs of 17,000 customers. Learned senior counsel submitted that the petitioner has sufficient roots in the society and has an annual turnover of 2700 cr. Learned senior counsel submits that an alternative the petitioner may be released on interim bail to protect the interest of 17,000 home buyers.
53. In the rejoinder, Dr. Abhishek Manu Singhvi, learned senior counsel and Mr. R.K. Handoo have further reiterated that *Vijay Madanlal Choudhary* has not been violated at all by *V. Senthil Balaji*. Dr. Abhishek Manu Singhvi, learned senior counsel submits that ED is misusing its power to the hilt and therefore counter balancing against ED is necessary. Learned senior counsel also submitted that the matter involving personal liberty requires a different perspective by the court. Learned senior counsel has submitted that if a liberal approach is not taken all safeguards will be negated. Learned senior counsel has submitted it cannot be comprehended why ED is shying away from giving the grounds of arrest to the petitioner.
54. Zoheb Hossain, learned special counsel for the ED submits that there has been sufficient compliance with Section 19 of the PMLA and Article 22(1) of the Indian Constitution. He submits that it was based on 26 FIRs, the Enforcement Directorate initiated an investigation against the Petitioner and M/s Supertech Limited, recording ECIR No. ECIR/ 21/STF/2021 on September 9, 2021. He further submits that

throughout the investigation, the ED issued 12 summons under Section 50 PMLA to the Petitioner, spanning from November 17, 2021, to March 29, 2023. The learned Counsel submits that there is substantial evidence on record indicating that the was involved in the offense of money laundering as defined in Section 3 of the PMLA 2002 and that he knowingly participated in activities connected to the proceeds of crime, projecting it as clean property.

55. Mr. Zoheb Hossain has submitted that subsequently, on June 27, 2023, the Petitioner was arrested in accordance with Section 19 of PMLA. The grounds of arrest were provided in writing to the arrestee, Ram Kishor Arora, who, after reading them, affixed his signature on each page. Additionally, in his own handwriting on the last page, Ram Kishor Arora stated, "I have been informed and have also read the above mentioned grounds of arrest." Furthermore, information about the arrest of Petitioner was communicated to his son, Mr. Mohit Arora. This fact is affirmed by Ram Kishor Arora himself in the Arrest Memo dated June 27, 2023, where he wrote that he had informed his son Mohit about his arrest.
56. Learned Special counsel the Ed submits that on June 28, 2023, the Petitioner was presented before Ld. ASJ-05, Patiala House Courts, New Delhi wherein, after examining the Grounds of Arrest and the case file, the Ld. ASJ concluded that there was no indication that the arrest was conducted in violation of Section 19 of the PMLA. The Investigating Officer had duly recorded the reasons for their belief, and these grounds were also conveyed to the Accused/Petitioner Ram Kishor Arora. Consequently, the Ld. ASJ, after due consideration of

the remand application dated June 28, 2023, remanded the accused to ED custody until July 10, 2023. The counsel submits that therefore, in view of these facts, it is misguided to assert that there was insufficient material for the investigating officer to effect the arrest under Section 19. The alleged grounds and legal questions raised have no relevance in the broader context of the case, where there was abundant material and meticulous compliance. He further submits that upon an application by the ED seeking judicial custody of the petitioner, he was remanded to judicial custody vide order dated 10.07.2023 and hence the legality of the initial arrest and remand cannot be sought to be challenged at this stage. Reliance in this regard is placed on the findings of the Hon'ble Supreme Court on this issue in the case of *Serious Fraud Investigation Office vs. Rahul Modi* (2019) 5 SCC 266:

“It is true that the arrest was effected when the period had expired but by the time the High Court entertained the petition, there was an order of extension passed by the Central Government on / 4- 12 - 2018. Additionally , there were judicial orders passed by the Judicial Magistrate as well as the Special Court, Gurugram, remanding the accused to custody. If we go purely by the law laid down by this Court with regard to exercise of jurisdiction in respect of habeas corpus petition, the High Court was not justified in entertaining the petition and passing the order.”

57. That reliance in this regard is also placed on the decision of the Hon'ble Supreme Court in the case of *Kanu Sanyal v. Distt. Magistrate, Darjeeling*, (1974) 4 SCC 141 (Para 4), *State of Maharashtra v. Tasneem Rizwan Siddiquee*, (2018) 9 SCC 745 (Para 10), *Basanta Chandra Ghose v. King Emperor*, 1945 SCC OnLine FC

3, *Naranjan Singh Nathawan v. State of Punjab*, (1952) 1 SCC 118 : 1952 SCC OnLine SC 4 (Para 10), *Talib Hussain v. State of J&K*, (1971) 3 SCC 118 at page 121, *Col. B. Ramachandra Rao (Dr) v. State of Orissa*, (1972) 3 SCC 256, *Sanjay Dutt v. State through CBI, Bombay (II)*, (1994) 5 SCC 410, *Bhagwan Singh v. State of Rajasthan*, 2005 SCC OnLine Raj 861 : (2006) 1 RLW 790, *Saurabh Kumar v. Jailor, Koneila Jail*, (2014) 13 SCC 436, *State v. H. Nilofer Nisha*, (2020) 14 SCC 161

58. It is submitted that the legislative scheme under the PMLA does not provide for '*supplying a copy*' of the grounds of arrest to the arrestee at the time of arrest and that informing the arrestee of the grounds of arrest as required in Section 19 of the PMLA is sufficient compliance of the requirements of Article 22 of the Constitution of India. That in the present case, the remand order dated 28.06.2023, records as under: \

"I have examined the grounds of arrest. There is nothing to suggest from the case file produced by IO that arrest of the accused has been effected in violation of provision of Section 19 of the PMLA or that the same was otherwise illegal as the IO is found to have not only recorded the reasons for his belief about accused's being guilty of the offence of money laundering under Section 3 of the PMLA, but the said grounds are also found to have been informed to the accused. The investigating agency has complied with the provisions of law while arresting the applicant/accused."

59. To buttress this, the court's attention is invited to the decision of the Division Bench of this Hon'ble Court in the case of *Moin Akhtar Qureshi vs. UOI* 2017 SCC OnLine Del 12108 (Para 65-74), which held that there is no legal requirement to communicate grounds of

arrest in writing. Reliance has also been placed on *Chhagan Chandrakant Bhujbal vs. Union of India 2016 SCC OnLine Bom 9938*.

60. The learned special counsel submits that it is an admitted position that within 24 hours of the arrest, the arrestee was supplied with the remand application which virtually contains all the grounds of arrest and therefore the legal requirement of informing the grounds of arrested “as soon as may be” stood fulfilled. The expression “as soon as may be” in the context of Article 22(5) has been interpreted by the Hon’ble Supreme Court in *K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 at Para 12* to mean that there can be no hard and fast rule and there is no period prescribed either under the Constitution or under the law so long as the legal requirement of informing is not dealt with with supine indifference, slackness or callous attitude. Reliance has been placed on *Moin Akhtar Qureshi vs. UOI 2017 SCC OnLine Del 12108*, *Chhagan Chandrakant Bhujbal vs. Union of India 2016 SCC OnLine Bom 9938*.
61. It is further submitted that the reliance placed by petitioner on the order of this Hon’ble Court in *Rajbhushan Omprakash Dixit vs. Union of India* is misplaced as the same is merely an interim order; which do not have precedential value. In this regard, reliance is placed on the decision of the Hon’ble Supreme Court in the case of *Sundeeep Kumar Bafna vs. State of Maharashtra (2014) 16 SCC 62*. Additionally, it is submitted that the Apex court in *Vijay Madanlal* decided the issue by stating “*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.*” Reliance in the regard to show that quantifying the time-

period to inform the grounds of arrest was found to be unnecessary is also placed on the *Constituent Assembly Debates and S.R. Chaudhari v. State of Punjab & Ors.* (2001) 7 SCC 126 (para 33) *Special Reference No. 1 of 2002, In re (Gujarat Assembly Election matter)*, (2002) 8 SCC 237 (para 15 , 16 ,18), *Madhu Limaye*, (1969) 1 SCC 292, *Viscount Simon in Christie v. Leachinsky*, (1947) 1 All ER 567. (Para 11, at p.1144 of Cri LJ), *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.

62. The learned special counsel for the ED further submitted that the reliance placed on *V. Senthil Balaji v. State*, 2023 SCC OnLine SC 934 by the petitioner is absolutely misplaced as the same procedure was followed in the case of *V. Senthil Balaji*, at the time of arrest, which the Hon'ble Supreme Court did not find any fault. Reliance in this regard is placed on *Khimji Raja Harijan v. District Magistrate*, 1987 SCC OnLine Guj 98, *Pranab Chatterjee v. State of Bihar*, (1970) 3 SCC 926. Moreover, it is also submitted it cannot be presumed that the arrestee was not informed go his grounds of arrest. To buttress this contention, the court's attentions brought to *Vimal Kumar Sharma vs. State of U.P. and Ors.* MANU/ UP/0602/1995, her *Bahadur Singh and Ors. vs. State of U.P. and Ors.* (25.05.1992 - ALLHC) : MANU/UP/0263/1992
63. It is further submitted that besides the above-mentioned submissions, the Petitioner herein has filed an application dated 28.06.2023 seeking Grounds of Arrest and the same is pending adjudication, thus, the present petition needs to be kept in abeyance till the time the abovementioned Application is decided.
64. The Id. Counsel for ED submits that the Petitioner had filed a Bail Application dated 12.07.2023 before the Ld. Trial Court wherein a

detailed order was passed dated 22.07.2023 stating that there is sufficient material on record showing commission of money laundering to the tune of Rs. 600 crores. The petitioner by way of the Present Writ petition has inter alia sought his release during the pendency of the present Writ Petition which can not be done without the satisfaction of this Hon'ble Court of the Twin Conditions enshrined under Section 45 of PMLA, 2002. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Vijay Madanlal Chaudhary vs. Union of India & Ors.*, 2022 SCC OnLine SC 929, which rejected the challenge to the abovementioned mandatory twin conditions u/s 45 of the PMLA and cemented its constitutional validity. Further reliance in this regard is placed on *Bimal Kumar Jain and Naresh Jain vs. Directorate of Enforcement*, Bail Appln. 112/2021 and 122/2021, *Christian Michel James vs. Directorate of Enforcement - Bail Appln. 2566/2021*, *Raj Singh Gehlot vs. Directorate of Enforcement Bail Appln. 4295/2021*, *Gautam Thapar vs. Directorate of Enforcement Bail Appl. 4185/2021*, *Sajjan Kumar vs. Directorate of Enforcement – Bail Appln. 926/2022*)

65. The counsel submits that the material placed on record is sufficient to persuade this Hon'ble Court that no satisfaction, as required u/s 45 of the PMLA, can be reached.
66. In order to respond to the questions of law raised by the petitioner the court is required to first prefer to the relevant provisions of law Section 19 of the PMLA provides as under:

“19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason

to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the 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 order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a ¹[Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the ²[Special Court or] Magistrate's Court."

67. Reading of Section 19(1) of the PMLA makes it clear that the concerned officer must have a reason to believe on the basis of material in his possession that the accused person is guilty of an offence punishable under this Act. The statute also makes it clear that such reason has to be recorded in writing. However, the law mandates that the officer may arrest such person and shall "as soon as may be" inform him of the grounds of such arrest. The perusal of the section also makes it clear that it is not mandatory that a person must be arrested even if there are reasons to believe which have been recorded in writing.

However, if the officer proceeds with the arrest, he shall inform the arrestee the grounds for such arrest “as soon as may be”.

68. The perusal of Section 19(2) makes it clear that if a person has been arrested in under Section 19(1) the officer shall forward a copy of the order along with the material in his possession to the adjudicating authority in a sealed envelope in the manner that has been prescribed. Thus, Section 19(2) makes it clear that the reasons to believe along with the grounds for arrest have to be recorded in writing and then be forwarded to the adjudicating authority immediately after arrest. This has to be read along with the Rule 2 of the Prevention of Money Laundering (the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the adjudicating authority. Hence its period of retention) Rules 2005. Rule 2(g) of therein provides that the “material” means any information or any material in the possession of the officer means the material on the basis of which he has recorded the reasons to believe that any person has been guilty of an offence. Section 2(h) also provides that the “order” means the order of arrest of a person and it includes the ground for such arrest under Section 19(1). In addition to this, Section 19(3) provides that the arrested person shall be within 24 hours be taken to the Special Court, Judicial Magistrate or MM as the case may be. Thus, the conjoint reading of Rule 2, Section 19(1) and Section 19(2) makes it clear that before affecting the arrest of an accused the following prerequisites are essential:

- a. There must be material in the possession of the concerned officer indicating the reason to believe, which

are recorded in writing, that any person has been guilty of an offence.

b. If the officer proceeds to arrest; the grounds for such arrest shall be informed to him, “as soon as may be”.

69. Section 19(2) re-emphasizes that the material in his possession as defined under Section 2(g) has to be referred to the adjudicating authority.
70. Rule 3 of the 2005 rules also provides an additional safeguard in the form of the arresting officer having to prepare an index of the copy of the order (which has been defined under Section 2(h) so as to include grounds for such arrest under Section 19(1) and the material as defined under Rule 2(g)), and sign each page of such index of the copy of the order.
71. Rule(7) also provides that the arresting officer shall maintain register and other records such as Acknowledgement Register, Daak Register and shall ensure that necessities entries are made in made in the register immediately as soon as the copy of the order and the material are forwarded to the adjudicating authority. Thus, if Section 19 and Rule 2(g) and Rule 2(h) and rule 3(1) and Rule 7 are taken together, it can be construed that the legislature has provided enough safeguards and provided a complete mechanism for affecting the arrest of an accused person. Such safeguards provided by the legislature have been aptly explained by the Hon’ble Supreme Court in *V. Senthil Balaji* wherein it was inter alia held as under:

“39. To effect an arrest, an officer authorised has to assess and evaluate the materials in his possession.

Through such materials, he is expected to form a reason to believe that a person has been guilty of an offence punishable under the PMLA, 2002. Thereafter, he is at liberty to arrest, while performing his mandatory duty of recording the reasons. The said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. Any non-compliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. Under sub-section (2), the Authorised Officer shall immediately, after the arrest, forward a copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the Adjudicating Authority, in a sealed envelope. Needless to state, compliance of sub-section (2) is also a solemn function of the arresting authority which brooks no exception.”

72. It is evident from the perusal of above para that keeping in mind the personal liberty and the constitutional safeguards, the Apex court made it mandatory to comply with the prerequisites stipulated under Section 19 and Rule 2(g), 2(h), 3(1) and 3(7). Moreover, if any of such rules are not complied with or if there is a non-compliance of the mandate under Section 19(1), it would vitiate the very arrest. It is pertinent to mention here that the rules are framed as an aid to the statute framed by the legislature and must be read in *ejusdem generis* with each other.
73. The question which lies at the heart of the entire case of the petitioner is that the grounds of arrest have to be supplied in writing to the accused contemporaneously at the time of arrest and if the same are not supplied in writing to the accused, the mandate of Section 19(1) is not complied with and thus, proceedings stands vitiated.

74. *Per contra* the case of the ED is that the mandate of the law has to be read as provided by the statute. The case of the ED is that the statute provides that the grounds of arrest have to be informed to the arrestee as soon as it may be possible, and it is not necessary that copy of such grounds of arrest have to be served to the arrestee contemporaneously at the time of the arrest. In this regard, the Hon'ble Supreme Court in *Vijay Madanlal Choudhary* made the following observation:

“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.”

75. The reading of Para 458 and 459 which has been relied upon by both the parties makes it clear that the Apex Court in *Vijay Madanlal Choudhary* inter alia held that so long as the person has been informed about the grounds of his arrest, it is sufficient compliance of the mandate of Article 22(1) of the Constitution. It has also been inter alia held that it is enough if ED at the time of arrest contemporaneously discloses the grounds of such arrest to such person. Thus it cannot be said that the law laid down in *V. Senthil Balaji* is any way *per incurium* or irreconcilable with the judgment of Hon’ble Supreme Court in *Vijay Madanlal Choudhary*. However, as has been held and relied upon by the Hon’ble Supreme Court in *V. Senthil Balaji* that the decision of a court cannot be read like a statute out of context and in ignorance of the requisite provisions. It was inter alia held in *Commissioner of Central Excise Bangalore v. Shri Kumar Agencies Civil Appeal No.4872-4892 of 2000* as under:

“4. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid’s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become

necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. V. Horton* (1951 AC 737 at p.761), Lord Mac Dermot observed:

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.”

In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said, “Lord Atkin’s speech.....is not to be treated as if it was a statute definition It will require qualification in new circumstances.” Megarry, J in (1971) 1 WLR 1062 observed: “One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament.” And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said:

“There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.”

5. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a

single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

“Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”

76. In this regard, reference can also be made to *Goa Real-estate and Construction vs. UOI* wherein it was inter alia held as under:

“31. It is well settled that an order of a court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should not be read in isolation and out of context. On perusal of para 10 of the judgment, it is abundantly clear that even under the 1991 Notification which is the main notification, it was stipulated that all development and activities within CRZ will be valid and will not violate the provisions of the 1991 Notification till the management plans are approved. Thus, the intention of legislature while issuing the Notification of 1991 was to protect the past actions/transactions which came into existence before the approval of the 1991 Notification.”

77. In *V. Senthil Balaji* it is not disputed that the arrest memo was prepared and though the grounds of arrest furnished; the applicant declined to acknowledge them. The Apex Court also recorded in Para7 of the judgment that the information pertaining to the arrest was also intimated to his brother, sister-in-law and wife.
78. It is also necessary to refer to the submissions made by the appellant in *V. Senthil Balaji* case. The appellant in that case had primarily raised 4 issued.
 - a) There is no power vested under the PMLA 2002 to seek custody in favour of unauthorised officer as such unauthorised officer is not a police officer and therefore Section 162 of Cr.P.C. with particular reference to a remand in his favour is not available.
 - b) Being a beneficial legislation non-compliance of Section 41A of Cr.P.C. would vitiate the orders of remand.
 - c) The outer limit of 15 days of custody to the police from the date of arrest has worked itself out therefore no court can extend it under any circumstances.
 - d) The High Court has committed an error in not appreciating the legislative scheme and the time line in the light of Article 22 of Constitution of India.
79. Thus, apparently the interpretation of Section 19 as held in *Vijay Madanlal Choudhary* was not specifically raised before in *V. Senthil Balaji* case. However, the Apex Court in *V. Senthil Balaji*, while discussing the provision of PMLA and in particular Section 19, specifically held that an authorised officer has to assess and evaluate the material in his possession and through such material he is expected

to form a reason to believe that a person has been guilty of a offence under the PMLA. Thereafter, he is at liberty to arrest by performing his mandatory duty of recording the reasons. It was further inter alia held that the said exercise has to be followed by way of information of the grounds of arrest being served on the arrestee. The Apex Court said that any non-compliance of the Section 19(1) of PMLA would vitiate the arrest itself. The Hon'ble Supreme Court further referred to Section 19(2) PMLA. The law laid down by the Hon'ble Supreme Court is binding on all courts as is provided in Article 141 of the Constitution of India. However, the directions of the court have to be read in the totality. The Apex Court in this case has specifically mentioned that all the requisite mandates of Section 19(1) have to be followed in letter and spirit.

80. Learned counsel for the petitioner has emphasized upon the word “served” in para 39 of *V. Senthil Balaji(Supra)*. Learned senior counsel submitted that if the Apex Court has used the word “served” it means that the grounds of arrest have to be served in writing to the arrestee. Learned senior counsel submitted that the order cannot be served orally to the arrestee. In this regard, the Black Laws Dictionary (6th Edition, Sentinel Edition, 1891-1991) while defining the word “service” has stated that this term has a variety of meaning dependent upon the context or the sense in which used. In regard to the service of process, the Black Laws Dictionary (6th Edition, Sentinel Edition, 1891-1991) states that the service of writs, complaints, summons, etc. signifies the delivering to or leaving with the party to whom or with whom they

ought to be delivered or left; and when they are so delivered they are then said to have been served.

81. The question is that whether this meaning as given in Black Laws Dictionary has to be taken literally in the present case. The service of the pleadings in a civil case are entirely different in nature and the law has to be interpreted as a whole and it cannot be taken out of context. In the present case, we are dealing with a situation where the arrestee is accused of a serious offence under PMLA. Any sensitive information disclosed prematurely in such cases may hamper the case of the prosecution/investigating agency. It is also pertinent to refer to the court of Justice Benjamin Cardozo of US Supreme Court, as was quoted by the Apex Court in the V. Senthil Balaji case as well, stated that “justice, though due to the accused, is due to the accuser too.” It is also pertinent to mention here that in the PMLA, the legislature in its wisdom has used the word “informed” and has not provided any mode for the same in the statute or in the rules. In absence of any such mode of information being prescribed in the statute, this court has to fall back to the common law. In this regard reference can be made to the division bench judgment of this court in *Moin Akhtar Qureshi vs. UOI* which held as under:

“90. Thus, we agree with Mr. Mahajan that, firstly, there was no illegality in the initial arrest of the petitioner. There was sufficient compliance of Article 22(1) of the Constitution of India, as the petitioner stood informed of the grounds of his arrest when he was permitted to read the same. He was also informed of the same vide the remand application under Section 167 CrPC read with Section 65 of the PMLA moved on 26.08.2017. We also

agree with the submission of Mr. Mahajan that a writ of habeas corpus does not lie in the facts of the present case, since the petitioner was placed initially in ED custody remand, and thereafter in judicial custody by orders passed by a competent court with due application of mind.”

82. It is also necessary to refer to *Chhagan Chandrakant Bhujbal vs. UOI* 2016 SCC Online Bombay 9338. The Supreme Court in *Vijay Madanlal Choudhary* has also referred to that has also inter alia held that so long as the person has been informed about the grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution.
83. The ED has also emphasized that the judgment of *Vijay Madanlal Choudhary* is delivered by a larger bench. The ED has also referred to *Sandeep Bafana Vs. State of Maharashtra* 2014 wherein it was inter alia held as:

“19...A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court it must immediately be clarified that the per Incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.”

84. The plea of the ED is that the ground of arrest were verbatim mentioned in the remand application moved before the court when the petitioner was produced before the court within 24 hours of his arrest.

It is also pertinent to mention here that within 24 hours of his arrest the ED has disclosed the grounds of arrest in the remand application which this court has found to be identical. It is also pertinent to mention that this objection was also raised by the petitioner before the learned Special Judge on 28.06.2023. The learned Special Judge inter alia held that there is nothing to suggest from the case file produced by IO that the arrest of the accused has been affected in violation of Section 19 of PMLA or the same was otherwise illegal as the IO is found to have recorded the reason of his belief about accused being guilty of the offence under PMLA. The learned Special counsel for the ED has also placed before this court the grounds of arrest in which the petitioner has specifically written in his hand that “I have been informed and have also read the above mentioned grounds of arrest”.

85. Learned senior counsel for the petitioner has referred to the Constitutional Bench Judgment of *State of Bombay Vs. Atmaram* to buttress that the grounds of arrest have to be furnished at the time of detention so as to enable the person to make the proper representation. I consider that in view of the specific law laid down on the point in question, the judgment is respectfully distinguished on the facts and circumstances of the case. The judgment cited by the learned senior counsel for the petitioner in *Madhu Limaye and Ors.*, 1969(1) SCC 292 is to the effect that the petitioners in that case were released on the ground that the show cause notices issued satisfied the constitutional requirement. However, it is pertinent to mention here that in *Madhu Limaye* the Apex Court inter alia held that once it is shown that the arrest made by the police officer were illegal, it was necessary for the

state to establish that at the stage of remand, the magistrate directed detention in jail custody after applying his mind to all relevant matters.

86. I consider that in view of the orders passed by learned Special Judge on 28.06.2023 whereby he found sufficient material on the record and recorded a finding that the investigating agency has complied with the provisions of law while arresting the applicant accused this judgement rather favours the ED.
87. As far as the contention of the learned senior counsel for the petitioner to release the petitioner on interim bail or to release him or to pass an order enabling him to attend the meetings in custody, I consider that such order cannot be passed in the present proceedings, particularly, in view of the fact that the bail application has already been rejected by the learned Special Judge vide a detailed order.
88. It is pertinent to mention here that the petitioner is required to visit Bombay to attend the meetings. I consider that it would be impractical to send the petitioner to Bombay in custody for attending the meetings with the financial creditors. It is pertinent to mention here that even for releasing the petitioner on interim bail the rigours of Section 45 have to be satisfied. However, in the peculiar facts and circumstances, if the petitioner so desires the Superintendent Jail may arrange meeting to be held through VC from the jail itself in accordance with the law.
89. Thus the question of law raised by the petitioner are answered as follows:

Q(A). Whether grounds of arrest need to be orally informed or given in writing?

Ans. In view of the crystal clear judgment in *Vijay Madanlal Choudhary(Supra)* read with *V. Senthil Balaji(Supra)* the mandate of Section 19 of the PMLA has to be followed in letter in spirit. In the present case the grounds of arrest were duly given and notified to the petitioner and he endorsed the same in writing under his signature. The core issue is of being “informed” and “as soon as”. It if has been duly notified and brought to the notice at the time of arrest and further disclosed in detail in the remand application, it amounts be be duly informed and served.

Q(B). Whether the petitioner’s fundamental rights have been violated as he has not been informed/served the grounds of his arrest (that are in writing) and thereby also denying him the right to consult and be defended by his legal practitioner?

Ans. In view of answer to Question(A) there is no violation of Fundamental Rights of the petitioner. There is nothing or the record to suggest that petitioner has been denied right to consult and defended by legal practioner.

Q(C). Whether the fundamental right of the petitioner guaranteed to him under Art. 21 of the Constitution of India has been violated by depriving him of his life and personal liberty – subjecting him to an illegal arrest by setting the criminal law in motion contrary to the procedure established by law?

Ans. In view of the discussion made herein above there is nothing on record to suggest that reason to believe “as required under

Section 19(1) of the PMLA was not recorded in writing and, therefore, it cannot be held that petitioner was arrested illegally.

Q(D). Whether the Petitioner's arrest is contrary to s. 19 of the Prevention of Money Laundering Act, 2002 – thereby violating the Petitioner's fundamental right under Art. 21 read with Art. 14 of the Constitution of India?

Ans. The petitioner here failed to show that the arrest of the petitioner is in violation of Section 19 of the PMLA.

90. In view of the discussions made herein above, the petition along with pending applications stands dismissed.

DINESH KUMAR SHARMA, J

SEPTEMBER 22, 2023/AR

[2023] 155 taxmann.com 39 (SC)/[2024] 181 SCL 73 (SC)[03-10-2023]

FEMA, BANKING & INSURANCE : Where appellant was arrested in connection with ECIR registered by Enforcement Directorate (ED) under section 3 of PMLA and ED's Investigating Officer merely read out grounds of arrest of appellant, since this form of communication was not adequate to fulfil compliance with mandate of section 19(1), arrest of appellant and, in consequence, his remand to custody of ED and, thereafter, to judicial custody, could not be sustained

■ ■ ■

[2023] 155 taxmann.com 39 (SC)

SUPREME COURT OF INDIA

Pankaj Bansal

v.

Union of India

A.S. BOPANNA AND SANJAY KUMAR, JJ.
CRIMINAL APPEAL NOS. 3051 TO 3054 OF 2023†
OCTOBER 3, 2023

Section 3, read with section 19, of the Prevention of Money Laundering Act, 2002 - Offence of money laundering - Whether language of section 19 puts it beyond doubt that Authorized Officer has to record in writing reasons for forming belief that person proposed to be arrested is guilty of an offence punishable under 2002 Act - Held, yes - FIRs were registered by certain allottees of residential projects undertaken by 'IREO' Group alleging that promoter of 'IREO' group had not used funds of investors for intended purpose and had diverted/siphoned off same to 'M3M' group through shell companies owned/controlled/managed by 'M3M' group - On strength of said FIRs, ED recorded first ECIR against officials of IREO group - Though, M3M group and appellant, being director of 'M3M' group had not been implicated in any scheduled offences as provided under PMLA and in fact, ECIR did not even find mention name of applicant, applicant had grave apprehension that ED would arrest him as well and, thus, appellant secured interim protection by way of anticipatory bail - Appellant was summoned for interrogation in connection with ECIR, in which he had interim protection - While appellant was there before investigating officer, he was served with second ECIR and was arrested in connection with second ECIR - Division Bench rejected prayer of appellant to quash/set aside his arrest order and consequential proceedings arising therefrom - It was noted that when second ECIR was recorded, it was not clear as to when ED's Investigating Officer had time to properly inquire into matter so as to form a clear opinion about appellant's involvement in an offence under PMLA, warranting his arrest within 24 hours - This was a sine qua non in terms of section 19(1) of PMLA - ED's prompt retaliatory move, upon grant of interim protection to appellant, by recording second ECIR and acting upon it, all within span of a day, so as to arrest appellant, manifested complete and utter lack of bona fides - Further, ED's Investigating Officer merely read out grounds of arrest of appellant and, thus, appellant's arrest was not in compliance with provisions of section 19(1) of PMLA - Whether thus, clandestine conduct of ED in proceeding against appellant, by recording second ECIR immediately after they secured interim protection in relation to first ECIR, did not commend acceptance as it reeked of arbitrary exercise of power - Held, yes - Whether in effect, arrest of appellant and, in consequence, his remand to custody of ED and, thereafter, to judicial custody, could not be

FACTS

- FIRs were registered by certain allottees of residential projects undertaken by IREO group, on the ground of delay in heading own of possession of apartments. It was also alleged that promoters of IREO group diverted funds of invests in M3M group.
- On the strength of these FIRs, the ED recorded Enforcement Case Information Report (the first ECIR) in connection with the money laundering offences allegedly committed by the IREO Group and, its Vice-Chairman and Managing Director. Neither in the FIRs nor in the first ECIR were M3M Group or the appellant director of M3M herein arrayed as the accused. Further, no allegations were levelled against them therein. The ED issued summons to M3M, calling upon it to provide information and documents pertaining to transactions with certain companies. Thereafter, the ED raided the properties of M3M Group and effected seizures of assets and bank accounts.
- Apprehending that action would be taken against them also in the context of the first ECIR, appellant secured interim protection from the High Court in Bail Application. By separate orders passed therein, the High Court noted that appellant had not been named in the first ECIR and that the ED had not yet been able to implicate him in any of the scheduled offences under the Act. Further, the High Court noted that appellant had not even been summoned by the ED in that case. The High Court accordingly granted them interim protection by way of anticipatory bail, subject to conditions, till the next date of hearing, i.e., 5-7-2023.
- In the meanwhile, on the basis of FIRs, the ED recorded second ECIR.
- Summons were issued by the ED to appellant on 13-6-2023 in relation to the first ECIR, requiring him to appear before the ED on 14-6-2023. While appellant was at the office of the ED, in compliance with these summons, appellant was served with fresh summons, requiring him to be present before another Investigating Officer on the same day. Said summons were in connection with the second ECIR. Appellant was arrested on the same day. Arrest was made in connection with the second ECIR, in exercise of power under section 19(1) of the 2002 Act. There, appellant was served with the remand application filed by the ED. The Vacation Judge/Additional Sessions Judge initially passed order holding that custodial interrogation of the arrested person was required and granted their custody to the ED for 5 days with a direction to produce him before the Court. By the later order, his remand to the custody of the ED was extended by 5 more days and thereafter, he was sent to judicial custody.
- Assailing the first remand order appellant approached the Delhi High Court, *vide* writ petition. High Court opined that the appropriate remedy for appellant would be to approach the Punjab & Haryana High Court and challenge the said order of remand. Thereupon, appellant filed the subject writ petition before the Punjab & Haryana High Court which came to be dismissed, *vide* the impugned orders of the Division Bench.
- Appellant did not assail the constitutional validity of section 19 of the 2002 Act but sought 'reading down' and/or 'reading into' the provisions thereof. Further, they asserted that the remand order was passed in a patently routine and mechanical manner by the Vacation Judge/Additional Sessions Judge, Panchkula, without satisfying himself about due compliance with the mandate of section 19 of the 2002 Act, and more particularly, whether the threshold requirements of the provision were duly satisfied. In consequence, they prayed for a direction to quash the remand orders as well as the underlying arrest orders and arrest memos.
- Though the appellants did not challenge the constitutional validity of section 19 of the 2002 Act in their writ petitions and had only sought 'reading down' and/or 'reading into' the provisions thereof.
- Division Bench rejected the prayer of the writ petitioners to quash/set aside their arrest orders along with their arrest memos and the consequential proceedings arising therefrom, including the order passed by the Vacation Judge/Additional Sessions Judge, whereby they were remanded to the custody of the Directorate of Enforcement (ED) and thereafter, to judicial custody.

HELD

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- The way in which the ED recorded the second ECIR immediately after the appellants secured anticipatory bail in relation to the first ECIR, though the foundational FIR dated back to 17-4-2023, and then went about summoning them on one pretext and arresting them on another, within a short span of 24 hours or so, manifests complete and utter lack of *bona fides*. Significantly, when the appellant was before the Delhi High Court seeking anticipatory bail in connection with the first ECIR, the ED did not even bring it to the notice of the High Court that there was another FIR in relation to which there was an ongoing investigation, wherein the appellant stood implicated. The second ECIR was recorded 4 days after the grant of bail and it is not possible that the ED would have been unaware of the existence of FIR at that time. [Para 22]
 - Surprisingly, in its 'Written Submissions', the ED stated that it started its inquiries in respect of this FIR in May, 2023, itself, but strangely, the replies filed by the ED do not state so! It is in this background that this suppression before the Delhi High Court demonstrates complete lack of probity on the part of the ED. Its prompt retaliatory move, upon grant of interim protection to the appellants, by recording the second ECIR and acting upon it, all within the span of a day, so as to arrest the appellants, speaks for itself and we need elaborate no more on that aspect. [Para 23]
 - Further, when the second ECIR was recorded on 13-6-2023 'after preliminary investigations', as stated in the ED's replies, it is not clear as to when the ED's Investigating Officer had the time to properly inquire into the matter so as to form a clear opinion about the appellants' involvement in an offence under the Act of 2002, warranting their arrest within 24 hours. This is a *sine qua non* in terms of section 19(1) of the Act of 2002. Needless to state, authorities must act within the four corners of the statute, as pointed out by the Court in *Devinder Singh v. State of Punjab* [2008] 1 SCC 728 and a statutory authority is bound by the procedure laid down in the statute and must act within the four corners thereof. [Para 24]
 - The failure of the appellant to respond to the questions put to them by the ED would not be sufficient in itself for the Investigating Officer to opine that they were liable to be arrested under section 19, as that provision specifically requires him to find reason to believe that they were guilty of an offence under the 2002 Act. Mere non-co-operation of a witness in response to the summons issued under section 50 of the 2002 Act would not be enough to render him/her liable to be arrested under section 19. As per its replies, it is the claim of the ED that Pankaj Bansal was evasive in providing relevant information. It was however not brought out as to why appellant's replies were categorized as 'evasive' and that record is not placed before the Court for verification. In any event, it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an 'evasive reply'. In *Santosh v. State of Maharashtra* [2017] 9 SCC 714 the Court noted that custodial interrogation is not for the purpose of 'confession' as the right against self-incrimination is provided by article 20(3) of the Constitution. It was held that merely because an accused did not confess, it cannot be said that he was not co-operating with the investigation. Similarly, the absence of either or both of the appellants during the search operations, when their presence was not insisted upon, cannot be held against them. [Para 25]
 - The more important issue presently is as to how the ED is required to 'inform' the arrested person of the grounds for his/her arrest. Section 19 does not specify in clear terms as to how the arrested person is to be 'informed' of the grounds of arrest and this aspect has not been dealt with or delineated in *Vijay Madanlal Choudhary v. Union of India* [2022] 140 taxmann.com 610. Similarly, in *V. Senthil Balaji v. State* [2023] 153 taxmann.com 224, the Court merely noted that the information of the grounds of arrest should be 'served' on the arrestee, but did not elaborate on that issue. Pertinent to note, the grounds of arrest were furnished in writing to the arrested person in that case. Surprisingly, no consistent and uniform practice seems to be followed by the ED in this regard, as written copies of the grounds of arrest are furnished to arrested persons in certain parts of the country but in other areas, that practice is not followed and the grounds of arrest are either read out to them or allowed to be read by them. [Para 26]
 - Article 22(1) of the Constitution provides, *inter alia*, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that section 45 of the 2002 Act enables the person arrested under section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be

entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the 2002 Act. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by article 22(1) of the Constitution and section 19 of the 2002 Act, is meant to serve this higher purpose and must be given due importance. [Para 29]

- The language of section 19 of the 2002 Act puts it beyond doubt that the Authorized Officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the 2002 Act. Section 19(2) requires the authorized officer to forward a copy of the arrest order along with the material in his possession, referred to in section 19(1), to the adjudicating authority in a sealed envelope. Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the adjudicating authority under section 19(2), he/she has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of section 19(1) of the 2002 Act. As already noted hereinbefore, It seems that the mode of informing this to the persons arrested is left to the option of the ED's authorized officers in different parts of the country, i.e., to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person. [Para 30]
- That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as 'B' is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji's* case (*supra*). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of section 19(1) of the 2002 Act, to the arrested person under due acknowledgement, instead of leaving it to the debatable *ipse dixit* of the authorized officer. [Para 32]
- The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in *V. Senthil Balaji's* case (*supra*) are placed on record and it is found that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to appellant have not been produced before Supreme Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for appellant to record and remember all that had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under article 22(1) and the statutory mandate under section 19(1) of the 2002 Act. [Para 33]
- The grounds of arrest recorded by the authorized officer, in terms of section 19(1) of the 2002 Act, would

be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation. [Para 34]

- On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of section 19(1) of the 2002 Act of informing the arrested person of the grounds of arrest, it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in *Moin Akhtar Qureshi v. Union of India* [2017] 88 taxmann.com 66 and the Bombay High Court in *Chhagan Chandrakant Bhujbal v. Union of India* [2017] 78 taxmann.com 143/140 SCL 40, which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of article 22(1) of the Constitution and section 19(1) of the 2002 Act, appellant's arrest was not in keeping with the provisions of section 19(1) of the 2002 Act. Further, as already noted *supra*, the clandestine conduct of the ED in proceeding against the appellant, by recording the second ECIR immediately after he secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellant and, in consequence, his remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained. [Para 35]
- The appeal is accordingly allowed, setting aside the impugned order passed by the Division Bench of the Punjab & Haryana High Court as well as the impugned arrest order and arrest memo along with the order of remand passed by the Vacation Judge/Additional Sessions Judge and all orders consequential thereto. The appellant shall be released forthwith unless their incarceration is validly required in connection with any other case. [Para 36]

CASE REVIEW

Moin Akhtar Qureshi v. Union of India [2017] 88 taxmann.com 66 (Delhi) and *Chhagan Chandrakant Bhujbal v. Union of India* [2017] 78 taxmann.com 143/140 SCL 40 (Bom.) (para 35) distinguished.

Devinder Singh v. State of Punjab [2008] 1 SCC 728 and (para 24) and *V. Senthil Balaji v. State* [2023] 153 taxmann.com 224 (SC) (para 32) followed.

Pankaj Bansal v. Union of India [2023] 154 taxmann.com 670 (Punj & Har.) (para 36) reversed [*See Annex*].

CASES REFERRED TO

Asstt. Director, Directorate of Enforcement v. Lalit Goyal [Prosecution Complaint No. 1 of 2022, dated 14-1-2022] (para 4), *Directorate of Enforcement v. Lalit Goyal* [COMA/01/2022] (para 4), *Directorate of Enforcement v. Basant Bansal* [SLP (Crl.) Nos. 7443 and 7444 of 2023] (para 7), *Vijay Madanlal Choudhary v. Union of India* [2022] 140 taxmann.com 610 (SC) (para 10), *V. Senthil Balaji v. State* [2023] 153 taxmann.com 224 (SC) (para 15), *Madhu Limaye v. State of Bihar* [1969] 1 SCC 292 (para 17), *State of Punjab v. Gurdial Singh* [1980] 2 SCC 471 (para 21), *Collector (District Magistrate) v. Raja Ram Jaiswal* [1985] 3 SCC 1 (para 21), *Ravi Yashwant Bhoir v. District Collector* [2012] 4 SCC 407 (para 21), *Devinder Singh v. State of Punjab* [2008] 1 SCC 728 (para 24), *Santosh v. State of Maharashtra* [2017] 9 SCC 714 (para 25), *Moin Akhtar Qureshi v. Union of India* [2017] 88 taxmann.com 66 (Delhi) (para 27) and *Chhagan Chandrakant Bhujbal v. Union of India* [2017] 78 taxmann.com 143/140 SCL 40 (Bom.) (para 27).

Mukul Rohatgi, Dr. A.M. Singhvi, Randeep Rai, Vikram Chaudhary, Sr. Advs., Vijay Agarwal, Adv., Malak Manish Bhatt, AOR, Ms. Neeha Nagpal, Vijay Nair, Rajat Joneja, Vishvendra Tomar, Mandeep Singh, Anmol Kumar, Yash Verma, Ms. Rubina Virmani, Kunal Dawar, Avishkar Singhvi, Nikhil Rohatgi and Siddhart, Advs. for the Appellant. S.V. Raju, ASG, Zoheb Hossain, Annam Venkatesh, Sairica Raju, Vivek Gurnani, Ankit Bhatia, Madhumitha Kesavan, Ms. Manisha Dubey, Hitarth Raja, Advs. and Mukesh Kumar Maroria, AOR for the Respondent.

JUDGMENT

Sanjay Kumar, J. - Leave granted.

2. Challenge in these appeals is to the orders dated 20-7-2023 and 26-7-2023 passed by a Division Bench of the Punjab & Haryana High Court dismissing CWP No. 14536 of 2023 filed by Pankaj Bansal and CWP No. 14539 of 2023 filed by his father, Basant Bansal. By the order dated 20-7-2023, the Division Bench opined that, as the constitutional validity of section 19 of the Prevention of Money Laundering Act, 2002 (for brevity, 'the Act of 2002'), had been upheld by the Supreme Court, the challenge to the same by the writ petitioners could not be considered only because of the fact that a review petition was pending before the Supreme Court. The prayer of the writ petitioners to that effect was accordingly rejected. By the later order dated 26-7-2023, the Division Bench rejected the prayer of the writ petitioners to quash/set aside their arrest orders along with their arrest memos and the consequential proceedings arising therefrom, including the orders dated 15-6-2023, 20-6-2023 and 26-6-2023 passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, whereby they were remanded to the custody of the Directorate of Enforcement (for brevity, 'the ED') and thereafter, to judicial custody. The Division Bench further held that, keeping in view the gravity of the allegations against them, their prayer to be released from custody did not deserve acceptance and rejected the same. In consequence, the Division Bench dismissed both the writ petitions. Hence, these appeals by Pankaj Bansal and Basant Bansal.

3. The genesis of these appeals is traceable to FIR No. 0006 dated 17-4-2023 registered by the Anti-Corruption Bureau, Panchkula, Haryana, under Sections 7, 8, 11 and 13 of the Prevention of Corruption Act, 1988, read with Section 120B IPC for the offences of corruption and bribery along with criminal conspiracy. The names of the accused in this FIR are:

- (i) Mr. Sudhir Parmar (the then Special Judge, CBI and ED, Panchkula);
- (ii) Mr. Ajay Parmar (nephew of Mr. Sudhir Parmar and Deputy Manager (Legal) in M3M Group);
- (iii) Mr. Roop Bansal (Promotor of M3M Group); and
- (iv) other unknown persons.'

4. Significantly, prior to this FIR, between the years 2018 and 2020, 13 FIRs were gotten registered by allottees of two residential projects of the IREO Group, alleging illegalities on the part of its management. On the strength of these FIRs, the ED recorded Enforcement Case Information Report No. GNZO/10/2021 dated 15-6-2021 (hereinafter, 'the first ECIR') in connection with the money laundering offences allegedly committed by the IREO Group and Lalit Goyal, its Vice-Chairman and Managing Director. Neither in the FIRs nor in the first ECIR were M3M Group or the appellants herein arrayed as the accused. Further, no allegations were levelled against them therein. On 14-1-2022, the ED filed Prosecution Complaint No. 01/2022, titled '*Asstt. Director, Directorate of Enforcement v. Lalit Goyal*', against seven named accused, under section 200 Cr.P.C read with Sections 44 and 45 of the Act of 2002. Notably, M3M Group and the appellants did not figure amongst those named accused. The number of FIRs had also increased from 13 to 30, as per this complaint. This case was numbered as COMA/01/2022, titled '*Directorate of Enforcement v. Lalit Goyal*', and was pending in the Court of Sudhir Parmar, Special Judge. At that stage, the Anti-Corruption Bureau, Panchkula, received information that Sudhir Parmar was showing favouritism to Lalit Goyal, the owner of IREO Group, and also to Roop Bansal and his brother, Basant Bansal, the owners of M3M Group. This led to the registration of FIR No. 0006 dated 17-4-2023. On 12-5-2023, the ED issued summons to M3M India Pvt. Ltd., calling upon it to provide information and documents pertaining to transactions with certain companies. Thereafter, on 1-6-2023, the ED raided the properties of M3M Group and effected seizures of assets and bank accounts. Roop Bansal was arrested by the ED on 8-6-2023 apropos the first ECIR.

5. Apprehending that action would be taken against them also in the context of the first ECIR, Pankaj Bansal and Basant Bansal secured interim protection from the Delhi High Court in Bail Application Nos. 2030 and 2031 of 2023. By separate orders dated 9-6-2023 passed therein, the Delhi High Court noted that Pankaj Bansal and Basant Bansal had not been named in the first ECIR and that the ED had not yet been able to implicate them in any of the scheduled offences under the Act of 2002. Further, the High Court noted that Pankaj Bansal had not even been summoned by the ED in that case. The High Court accordingly granted them interim protection by way of anticipatory bail, subject to conditions, till the next date of hearing, i.e., 5-7-2023. Special Leave Petition (Crl.) Nos. 7384 and 7396 of 2023 were filed by the ED assailing the orders dated 9-6-2023 before this Court and the same are stated to be pending.

6. In the meanwhile, on the basis of FIR No. 0006 dated 17-4-2023, the ED recorded another ECIR, viz., ECIR/GNZO/17/2023, on 13-6-2023 (hereinafter, 'the second ECIR') against:

- (i) Mr. Sudhir Parmar;
- (ii) Mr. Ajay Parmar;
- (iii) Mr. Roop Bansal; and
- (iv) others who are named in the FIR/unknown persons.

However, summons were issued by the ED to Pankaj Bansal and Basant Bansal on 13-6-2023 at 06.15 pm in relation to the first ECIR, requiring them to appear before the ED on 14-6-2023 at 11.00 am. Though the copy of the summons placed before this Court pertains to Pankaj Bansal alone, the email dated 13-6-2023 of the Assistant Director of the ED, bearing the time 06.15 pm, was addressed to both Pankaj Bansal and Basant Bansal and required their compliance with the summons on 14-6-2023 at 11 am. While Pankaj Bansal and Basant Bansal were at the office of the ED at Rajokri, New Delhi, in compliance with these summons, Pankaj Bansal was served with fresh summons at 04.52 pm on 14-6-2023, requiring him to be present before another Investigating Officer at 5.00 pm on the same day. This summons was in connection with the second ECIR. There is lack of clarity as to when summons in relation to the second ECIR were served on Basant Bansal. According to the ED, he was served the summons on 13-6-2023 itself and refused to receive the same. However, it is an admitted fact that Basant Bansal was also present at the ED's office at Rajokri, New Delhi, on 14-6-2023 at 11.00 am. It is also not in dispute that, while he was there, Basant Bansal was arrested at 6.00 pm on 14-6-2023 and Pankaj Bansal was arrested at 10.30 pm on the same day. These arrests, made in connection with the second ECIR, were in exercise of power under section 19(1) of the Act of 2002. The arrested persons were then taken to Panchkula, Haryana, and produced before the learned Vacation Judge/Additional Sessions Judge, Panchkula. There, they were served with the remand application filed by the ED. The learned Vacation Judge/Additional Sessions Judge, Panchkula, initially passed order dated 15-6-2023 holding that custodial interrogation of the arrested persons was required and granted their custody to the ED for 5 days with a direction to produce them before the Court on 20-6-2023. By the later orders dated 20-6-2023 and 26-6-2023, their remand to the custody of the ED was extended by 5 more days and thereafter, they were sent to judicial custody.

7. Assailing the first remand order dated 15-6-2023, Pankaj Bansal and Basant Bansal approached the Delhi High Court, *vide* WP (Crl.) Nos. 1770 and 1771 of 2023. However, by order dated 16-6-2023, the Delhi High Court opined that the appropriate remedy for them would be to approach the Punjab & Haryana High Court and challenge the said order of remand. Holding so, the Delhi High Court dismissed their miscellaneous applications but ordered notice in the writ petitions. Aggrieved by the Delhi High Court's order, Pankaj Bansal and Basant Bansal filed in *Directorate of Enforcement v. Basant Bansal* SLP (Crl.) Nos. 7443 and 7444 of 2023 before this Court. The SLPs were disposed of as withdrawn on 4-7-2023, reserving liberty to approach the Punjab & Haryana High Court against the remand orders. This Court further held that WP (Crl.) Nos. 1770 and 1771 of 2023 before the Delhi High Court were rendered infructuous. Thereupon, Pankaj Bansal and Basant Bansal filed the subject writ petitions before the Punjab & Haryana High Court which came to be dismissed, *vide* the impugned orders of the Division Bench.

8. Though Basant Bansal is not shown as an accused along with his brother, Roop Bansal, in FIR No. 0006 dated 17-4-2023 on the file of the Anti-Corruption Bureau, Panchkula, his name finds mention in the body of the FIR as one of the owners of M3M Group to whom favouritism was shown by Sudhir Parmar, Special Judge. However, the name of Pankaj Bansal does not find mention even in the contents of the FIR. It was the specific case of the father and son in their writ petitions before the High Court that their arrest under the provisions of the Act of 2002 was a wanton abuse of power/authority and an abuse of process by the ED, apart from being blatantly illegal and unconstitutional. They also asserted that the ED acted in violation of the safeguards provided in Section 19 of the Act of 2002. In this milieu, they made the following prayers:

'In view of the facts and circumstances mentioned above, it is, therefore, respectfully prayed that this Hon'ble Court may kindly be pleased to issue appropriate writ(s), order(s) and/or direction(s) to:-

A. Read Down and/or Read Into as well as expound, deliberate upon and delineate the ambit, sweep and scope of section 19(1) of PMLA in consonance with the principles, *inter alia*, enunciated by the Hon'ble Supreme Court in "*Vijay Madanlal Choudhary v. Union of India* 2022 SCC OnLine SC 929" and hold that: -

- i. The expression "material in possession" occurring therein must be confined, circumscribed and limited to legally admissible evidence of sterling quality and unimpeachable character on the basis whereof "reasons to believe" could be recorded in writing that the arrestee is "guilty" of the offence under section 4 of PMLA;
- ii. The word "guilt" occurring therein would qualify a higher yardstick than a mere suspicion and the Ld. Court at the stage of remand is required to apply its judicial mind to the grounds as well as necessity for arrest as, *inter alia*, held in "Arnesh Kumar Versus State of Bihar, (2014) 8 SCC 273" and as accorded imprimatur in "Satender Kumar Antil Versus Central Bureau of Investigation and another 2022 SCC online SC 825";
- iii. The expression 'communicate' occurring therein would definitely entail physical communication and furnishing the grounds of arrest to the arrestee in the context of the obligation for "reason for such belief to be recorded in writing" read with rules 2(1)(g) & 2(1)(h) of the PMLA Rules, 2005 (Arrest Rules) which postulates the meaning of the word "order" to include the grounds of such arrest.'

9. It is, therefore, clear that Pankaj Bansal and Basant Bansal did not assail the constitutional validity of Section 19 of the Act of 2002 but sought 'reading down' and/or 'reading into' the provisions thereof. Further, they asserted that the remand orders were passed in a patently routine and mechanical manner by the learned Vacation Judge/Additional Sessions Judge, Panchkula, without satisfying himself about due compliance with the mandate of Section 19 of the Act of 2002, and more particularly, whether the threshold requirements of the provision were duly satisfied. In consequence, they prayed for a direction to quash the remand orders as well as the underlying arrest orders and arrest memos.

10. Though the appellants did not challenge the constitutional validity of Section 19 of the Act of 2002 in their writ petitions and had only sought 'reading down' and/or 'reading into' the provisions thereof in the light of the judgment of this Court in *Vijay Madanlal Choudhary v. Union of India* [2022] 140 taxmann.com 610/(10) SCALE 577, the Division Bench of the Punjab & Haryana High Court failed to note this distinction and disallowed their prayer under the mistaken impression that they were challenging the constitutional validity of the provision. The finer connotations and nuances of the language used in Section 19 of the Act of 2002, to the extent left uncharted by this Court in *Vijay Madanlal Choudhary's* case (*supra*), were still open to interpretation and resolution and, therefore, the High Court would have been well within its right to undertake that exercise. Be that as it may.

11. Saket Singh, IRS, Deputy Director, Directorate of Enforcement, Gurugram Zonal Office, Rajokri, New Delhi, deposed to the replies filed by the ED before this Court. Therein, he acknowledged that the second ECIR was recorded on 13-6-2023 based on FIR No. 0006 dated 17-4-2023. He stated that the name of Pankaj Bansal and the owners of M3M Group specifically found mention in the said FIR. However, perusal of the FIR reflects that the name of Pankaj Bansal is not mentioned. Reference to 'the owners of M3M Group' was in the context of Roop Bansal and his brother, Basant Bansal, and not in a generic sense, as is now sought to be made out so as to rope in Pankaj Bansal also. Saket Singh further stated that though M3M Group, Pankaj Bansal and Basant Bansal were not named in the connected FIRs of the first ECIR, investigation therein had shown that the promoters of M3M Group were also involved in money laundering. According to him, Basant Bansal refused to accept the summons issued on 13-6-2023 in relation to the second ECIR and did not give any information relating thereto. Manual summons dated 14-6-2023 were stated to have been issued to Pankaj Bansal on 14-6-2023 for his personal appearance and for recording of his statement before the ED's Investigating Officer on the same day. He alleged that Pankaj Bansal accepted the summons but remained evasive in providing relevant information to the ED. He justified the issuance of summons on an immediate basis, by claiming that it was a necessity as the promoters/key persons of M3M Group, including Pankaj Bansal and Basant Bansal, had been deliberately avoiding investigation in the first ECIR as well and were not complying with the previously issued summons on multiple occasions. He alleged that Pankaj Bansal failed to comply with the summons in respect of the first ECIR on multiple occasions, *i.e.*, with the summons dated 4-6-2023, 6-6-2023 and 7-6-2023. Again, this statement is factually incorrect as these summonses were issued to Basant Bansal and not to Pankaj Bansal.

12. Saket Singh then went on to state that when Pankaj Bansal came to the ED's office on 14-6-2023, the Investigating Officer of the second ECIR served a summons upon him and as the Investigating Officer had evidence to show that Pankaj Bansal was guilty of the offence of money laundering, he arrested him after following the due procedure prescribed under the Act of 2002 and the rules framed thereunder. He asserted

that the arrests were made in accordance with section 19 of the Act of 2002 and the information/details regarding the arrests of Pankaj Bansal and Basant Bansal were duly communicated to Mrs. Abha Bansal and Ms. Payal Kanodia over the telephone immediately after their arrests. He stated that the written grounds of arrest were first read out to Basant Bansal but he refused to sign the same. Subsequently, the written grounds of arrest were read over and explained in his language, viz., Hindi, to Basant Bansal in the presence of witnesses and the witnesses signed on the same as a token of correctness. Saket Singh again asserted that issuance of summons on immediate basis was a necessity as both of them had been deliberately avoiding investigation in the other case as well and were not complying with the previously issued summons on multiple occasions. This reiteration is incorrect as the first summons issued to Pankaj Bansal was on 13-6-2023 at 06.15 pm requiring him to appear at 11.00 am on 14-6-2023 in connection with the first ECIR, which he duly complied with, and again, while he was in the ED's office at New Delhi, he was served with the summons in connection with the second ECIR at 04.52 pm requiring him to be present at 5.00 pm, which he again complied with. According to Saket Singh, during the investigation, both of them were found to be actively involved in money laundering and deliberately attempted to withhold information, that was in their exclusive knowledge, which was crucial to establish their roles and to take the money laundering investigation to its logical end. He asserted that they adopted an attitude of non-cooperation during the investigation and the fact that they had bribed the ED Judge to take benefit in the existing proceedings showed that they were capable of influencing witnesses/authorities involved in the case. He alleged that they were capable of tampering with the evidence and hence, Pankaj Bansal was arrested on 14-6-2023 around 10.30 pm on the basis of incriminating evidence. The written grounds of arrest were stated to have been read by Pankaj Bansal in the presence of witnesses and, thereafter, Pankaj Bansal and the witnesses signed on the same.

13. Though much was stated and argued by both sides on the merits of the matter in terms of the involvement of the appellants in the alleged offence of money laundering, we make it clear that we are not concerned with that issue at this point. The only issue for consideration presently is whether the arrest of the appellants under section 19 of the Act of 2002 was valid and lawful and whether the impugned orders of remand passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, measure up. In that context, we may also make it clear that the mere passing of an order of remand would not be sufficient in itself to validate the appellants' arrests, if such arrests are not in conformity with the requirements of Section 19 of the Act of 2002. Though judgments were cited by the ED which held to the effect that legality of the arrest would be rendered immaterial once the competent Court passes a remand order, those cases primarily dealt with the issue of a writ of habeas corpus being sought after an order of remand was passed by the jurisdictional Court and that ratio has no role to play here. The understanding of the ED and its misplaced reliance upon that case law begs the question as to whether there was proper compliance with Section 19(1) of the Act of 2002 and as to whether the learned Vacation Judge/Additional Sessions Judge, Panchkula, correctly considered that issue while passing the remand orders. Therefore, as the very validity of the remand orders is under challenge on that ground, the issue as to whether the arrest of the appellants was lawful in its inception may also be open for consideration.

14. At this stage, it would be apposite to consider the case law that does have relevance to these appeals and the issues under consideration. In *Vijay Madanlal Choudhary's case (supra)*, a 3-Judge Bench of this Court observed that section 65 of the Act of 2002 predicates that the provisions of the Code of Criminal Procedure, 1973, shall apply insofar as they are not inconsistent with the provisions of the Act of 2002 in respect of arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings thereunder. It was noted that section 19 of the Act of 2002 prescribes the manner in which the arrest of a person involved in money laundering can be effected. It was observed that such power was vested in high-ranking officials and that apart, section 19 of the Act of 2002 provided inbuilt safeguards to be adhered to by the authorized officers, such as, of recording reasons for the belief regarding involvement of the person in the offence of money laundering and, further, such reasons have to be recorded in writing and while effecting arrest, the grounds of arrest are to be informed to that person. It was noted that the authorized officer has to forward a copy of the order, along with the material in his possession, to the Adjudicating Authority and this safeguard is to ensure fairness, objectivity and accountability of the authorized officer in forming an opinion, as recorded in writing, regarding the necessity to arrest the person involved in the offence of money laundering. The Bench also noted that it is the obligation of the authorized officer to produce the person so arrested before the Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, within 24 hours and such production is to comply with the requirement of section 167 Cr.P.C. It was pointed out that there is nothing in section 19 of the Act of 2002 which is contrary to the requirement of production under section 167 Cr.P.C and being an express statutory requirement under section 19(3) of the Act of 2002, it has to be complied by the authorized officer. It was concluded that the safeguards provided in the Act of 2002

and the preconditions to be fulfilled by the authorized officer before effecting arrest, as contained in section 19 of the Act of 2002, are equally stringent and of higher standard when compared to the Customs Act, 1962, and such safeguards ensure that the authorized officers do not act arbitrarily, by making them accountable for their judgment about the necessity to arrest any person involved in the commission of the offence of money laundering, even before filing of the complaint before the Special Court. It was on this basis that the Bench upheld the validity of section 19 of the Act of 2002. The Bench further held that once the person is informed of the grounds of arrest, that would be sufficient compliance with the mandate of article 22(1) of the Constitution and it is not necessary that a copy of the ECIR be supplied in every case to the person concerned, as such a condition is not mandatory and it is enough if the ED discloses the grounds of arrest to the person concerned at the time of arrest. It was pointed out that when the arrested person is produced before the Court, it would be open to the Court to look into the relevant records presented by the authorized representative of the ED for answering the issue of need for continued detention in connection with the offence of money laundering. It was, in fact, such stringent safeguards provided under section 19 of the Act of 2002 that prompted this Court to uphold the twin conditions contained in Section 45 thereof, making it difficult to secure bail.

15. This Court had occasion to again consider the provisions of the Act of 2002 in *V. Senthil Balaji v. State* [2023] 153 taxmann.com 224 (SC)/Criminal Appeal Nos. 2284-2285 of 2023, decided on 7-8-2023, and more particularly, Section 19 thereof. It was noted that the authorized officer is at liberty to arrest the person concerned once he finds a reason to believe that he is guilty of an offence punishable under the Act of 2002, but he must also perform the mandatory duty of recording reasons. It was pointed out that this exercise has to be followed by the information of the grounds of his arrest being served on the arrestee. It was affirmed that it is the bounden duty of the authorized officer to record the reasons for his belief that a person is guilty and needs to be arrested and it was observed that this safeguard is meant to facilitate an element of fairness and accountability. Dealing with the interplay between section 19 of the Act of 2002 and section 167 Cr.P.C., this Court observed that the Magistrate is expected to do a balancing act as the investigation is to be completed within 24 hours as a matter of rule and, therefore, it is for the investigating agency to satisfy the Magistrate with adequate material on the need for custody of the accused. It was pointed out that this important factor is to be kept in mind by the Magistrate while passing the judicial order. This Court reiterated that section 19 of the Act of 2002, supplemented by section 167 Cr.P.C., provided adequate safeguards to an arrested person as the Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the Act of 2002. It was held that the Magistrate is under a bounden duty to see to it that section 19 of the Act of 2002 is duly complied with and any failure would entitle the arrestee to get released. It was pointed out that section 167 Cr.P.C. is meant to give effect to Section 19 of the Act of 2002 and, therefore, it is for the Magistrate to satisfy himself of its due compliance by perusing the order passed by the authority under section 19(1) of the Act of 2002 and only upon such satisfaction, the Magistrate can consider the request for custody in favour of an authority. To put it otherwise, per this Court, the Magistrate is the appropriate authority who has to be satisfied about the compliance with safeguards as mandated under section 19 of the Act of 2002. In conclusion, this Court summed up that any non-compliance with the mandate of section 19 of the Act of 2002, would enure to the benefit of the person arrested and the Court would have power to initiate action under section 62 of the Act of 2002, for such non-compliance. Significantly, in this case, the grounds of arrest were furnished in writing to the arrested person by the authorized officer.

16. In terms of section 19(3) of the Act of 2002 and the law laid down in the above decisions, Section 167 Cr.P.C. would necessarily have to be complied with once an arrest is made under section 19 of the Act of 2002. The Court seized of the exercise under section 167 Cr.P.C. of remanding the person arrested by the ED under section 19(1) of the Act of 2002 has a duty to verify and ensure that the conditions in Section 19 are duly satisfied and that the arrest is valid and lawful. In the event the Court fails to discharge this duty in right earnest and with the proper perspective, as pointed out hereinbefore, the order of remand would have to fail on that ground and the same cannot, by any stretch of imagination, validate an unlawful arrest made under section 19 of the Act of 2002.

17. In the matter of *Madhu Limaye v. State of Bihar* [1969] 1 SCC 292 was a 3-Judge Bench decision of this Court wherein it was observed that it would be necessary for the State to establish that, at the stage of remand, the Magistrate directed detention in jail custody after applying his mind to all relevant matters and if the arrest suffered on the ground of violation of article 22(1) of the Constitution, the order of remand would not cure the constitutional infirmities attaching to such arrest.

18. Viewed in this context, the remand order dated 15-6-2023 passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, reflects total failure on his part in discharging his duty as per the expected standard. The learned Judge did not even record a finding that he perused the grounds of arrest to ascertain whether the ED had recorded reasons to believe that the appellants were guilty of an offence under the Act of 2002 and that there was proper compliance with the mandate of section 19 of the Act of 2002. He merely stated that, keeping in view the seriousness of the offences and the stage of the investigation, he was convinced that custodial interrogation of the accused persons was required in the present case and remanded them to the custody of the ED! The sentence - 'It is further (*sic*) that all the necessary mandates of law have been complied with' follows - 'It is the case of the prosecution....' and appears to be a continuation thereof, as indicated by the word 'further', and is not a recording by the learned Judge of his own satisfaction to that effect.

19. In consequence, it would be necessary for us to examine how the appellants were arrested and verify whether it was in keeping with the safeguards in Section 19 of the Act of 2002. In this context, the sequence of events makes for an interesting reading. The first ECIR was registered by the ED on 15-6-2021 and Roop Bansal was arrested in connection therewith on 8-6-2023. Neither of the appellants was shown as an accused therein. However, it is the case of the ED that investigation in relation to the first ECIR is still ongoing. In any event, after the arrest of Roop Bansal, both the appellants secured interim protection by way of anticipatory bail on 09-6-2023, albeit till the next day of hearing, *viz.*, 5-7-2023, from the Delhi High Court. However, both the appellants were summoned on 14-6-2023 for interrogation in connection with the first ECIR, in which they had interim protection. Summons in that regard were served upon them on 13-6-2023 at 06.15 pm. Significantly, the second ECIR was recorded only on that day, *i.e.*, on 13-6-2023, in connection with FIR No. 0006 which was registered on 17-4-2023. Therein also, neither of the appellants was shown as an accused and it was only Roop Bansal who stood named as an accused. In compliance with the summons received by them *vis-à-vis* the first ECIR, both the appellants presented themselves at the ED's office at Rajokri, New Delhi, at 11.00 am on 14-6-2023. While they were there, Pankaj Bansal was served with summons at 04.52 pm, requiring him to appear before another Investigating Officer at 5.00 pm in relation to the second ECIR. As already noted, there is ambiguity as to when Basant Bansal was served with such summons. It is the case of the ED that he refused to receive the summons in relation to the second ECIR and he was arrested at 6.00 pm on 14-6-2023. Pankaj Bansal received the summons and appeared but as he did not divulge relevant information, the Investigating Officer arrested him at 10.30 pm on 14-6-2023.

20. This chronology of events speaks volumes and reflects rather poorly, if not negatively, on the ED's style of functioning. Being a premier investigating agency, charged with the onerous responsibility of curbing the debilitating economic offence of money laundering in our country, every action of the ED in the course of such exercise is expected to be transparent, above board and conforming to pristine standards of fair play in action. The ED, mantled with far-reaching powers under the stringent Act of 2002, is not expected to be vindictive in its conduct and must be seen to be acting with utmost probity and with the highest degree of dispassion and fairness. In the case on hand, the facts demonstrate that the ED failed to discharge its functions and exercise its powers as per these parameters.

21. In this regard, we may note that, though the appellants did not allege colourable exercise of power or *malafides* or malice on the part of the ED officials, they did assert in categorical terms that their arrests were a wanton abuse of power, authority and process by the ED, which would tantamount to the same thing. On that subject, we may refer to the observations of this Court in *State of Punjab v. Gurdial Singh* [1980] 2 SCC 471 :

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"The question, then, is what is *malafides* in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust - that we are accountable for its exercise - that, from the people, and for the people, all springs, and all

must exist". Fraud on power voids the order if it is not exercised *bona fide* for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, *mala fides* or fraud on power vitiates the acquisition or other official act.'

A few years later, in *Collector (District Magistrate) v. Raja Ram Jaiswal* [1985] 3 SCC 1, this Court held as under:

'Where power is conferred to achieve a purpose, it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context "in good faith" means "for legitimate reasons". Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated.'

Again, in *Ravi Yashwant Bhoir v. District Collector* [2012] 4 SCC 407, it was held thus:

'*Malafide* exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law.'

22. The way in which the ED recorded the second ECIR immediately after the appellants secured anticipatory bail in relation to the first ECIR, though the foundational FIR dated back to 17-4-2023, and then went about summoning them on one pretext and arresting them on another, within a short span of 24 hours or so, manifests complete and utter lack of *bonafides*. Significantly, when the appellants were before the Delhi High Court seeking anticipatory bail in connection with the first ECIR, the ED did not even bring it to the notice of the High Court that there was another FIR in relation to which there was an ongoing investigation, wherein the appellants stood implicated. The second ECIR was recorded 4 days after the grant of bail and it is not possible that the ED would have been unaware of the existence of FIR No. 0006 dated 17-4-2023 at that time.

23. Surprisingly, in its 'Written Submissions', the ED stated that it started its inquiries in respect of this FIR in May, 2023, itself, but strangely, the replies filed by the ED do not state so! It is in this background that this suppression before the Delhi High Court demonstrates complete lack of probity on the part of the ED. Its prompt retaliatory move, upon grant of interim protection to the appellants, by recording the second ECIR and acting upon it, all within the span of a day, so as to arrest the appellants, speaks for itself and we need elaborate no more on that aspect.

24. Further, when the second ECIR was recorded on 13-6-2023 'after preliminary investigations', as stated in the ED's replies, it is not clear as to when the ED's Investigating Officer had the time to properly inquire into the matter so as to form a clear opinion about the appellants' involvement in an offence under the Act of 2002, warranting their arrest within 24 hours. This is a *sine qua non* in terms of Section 19(1) of the Act of 2002. Needless to state, authorities must act within the four corners of the statute, as pointed out by this Court in *Devinder Singh v. State of Punjab* [2008] 1 SCC 728, and a statutory authority is bound by the procedure laid down in the statute and must act within the four corners thereof.

25. We may also note that the failure of the appellants to respond to the questions put to them by the ED would not be sufficient in itself for the Investigating Officer to opine that they were liable to be arrested under section 19, as that provision specifically requires him to find reason to believe that they were guilty of an offence under the Act of 2002. Mere non-cooperation of a witness in response to the summons issued under section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under section 19. As per its replies, it is the claim of the ED that Pankaj Bansal was evasive in providing relevant information. It was however not brought out as to why Pankaj Bansal's replies were categorized as 'evasive' and that record is not placed before us for verification. In any event, it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an 'evasive reply'. In *Santosh v. State of Maharashtra* [2017] 9 SCC 714, this Court noted that custodial interrogation is not for the purpose of 'confession' as the right against self-incrimination is provided by article 20(3) of the Constitution. It was held that merely because an accused did not confess, it cannot be said that he

was not co-operating with the investigation. Similarly, the absence of either or both of the appellants during the search operations, when their presence was not insisted upon, cannot be held against them.

26. The more important issue presently is as to how the ED is required to 'inform' the arrested person of the grounds for his/her arrest. Prayer (iii) in the writ petitions filed by the appellants pertained to this. Section 19 does not specify in clear terms as to how the arrested person is to be 'informed' of the grounds of arrest and this aspect has not been dealt with or delineated in *Vijay Madanlal Choudhary's* case (*supra*). Similarly, in *V. Senthil Balaji's* case (*supra*), this Court merely noted that the information of the grounds of arrest should be 'served' on the arrestee, but did not elaborate on that issue. Pertinent to note, the grounds of arrest were furnished in writing to the arrested person in that case. Surprisingly, no consistent and uniform practice seems to be followed by the ED in this regard, as written copies of the grounds of arrest are furnished to arrested persons in certain parts of the country but in other areas, that practice is not followed and the grounds of arrest are either read out to them or allowed to be read by them.

27. In this context, reliance is placed by the ED upon the decision of a Division Bench of the Delhi High Court in *Moin Akhtar Qureshi v. Union of India* [WP (Crl.) No. 2465 of 2017, decided on 1-12-2017/[2017] 88 taxmann.com 66/2017 SCC OnLine Del 12108 (Delhi) wherein it was observed that section 19 of the Act of 2002 uses the expression 'informed of the grounds of such arrest' and does not use the expression 'communicate the grounds of such arrest' and, therefore, the obligation cast upon the authorized officer under section 19(1) is only to inform the arrestee of the grounds of arrest and the provision does not oblige the authority to serve the grounds for such arrest on the arrestee. Reliance is also placed by the ED on the judgment of a Division Bench of the Bombay High Court in *Chhagan Chandrakant Bhujbal v. Union of India* [2017] 78 taxmann.com 143/140 SCL 40/2017 Cri LJ (NOC 301) 89/2017 (1) AIR Bom R (Cri) 929, which held that the grounds of arrest are to be informed to the person arrested and that would mean that they should be communicated at the earliest but there is no statutory requirement of the grounds of arrest being communicated in writing.

28. No doubt, in *Vijay Madanlal Choudhary's* case (*supra*), this Court held that non-supply of the ECIR in a given case cannot be found fault with, as the ECIR may contain details of the material in the ED's possession and revealing the same may have a deleterious impact on the final outcome of the investigation or inquiry. Having held so, this Court affirmed that so long as the person is 'informed' of the grounds of his/her arrest, that would be sufficient compliance with the mandate of article 22(1) of the Constitution.

29. In this regard, we may note that article 22(1) of the Constitution provides, *inter alia*, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that section 45 of the Act of 2002 enables the person arrested under section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by article 22(1) of the Constitution and section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.

30. We may also note that the language of section 19 of the Act of 2002 puts it beyond doubt that the authorized officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the Act of 2002. section 19(2) requires the authorized officer to forward a copy of the arrest order along with the material in his possession, referred to in Section 19(1), to the Adjudicating Authority in a sealed envelope. Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the Adjudicating Authority under section 19(2), he/she has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of section 19(1) of the Act of 2002. As already noted hereinbefore, It seems that the mode of informing this to the persons arrested is left to the option of the

ED's authorized officers in different parts of the country, *i.e.*, to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person.

31. That apart, Rule 6 of the Prevention of Money Laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005, titled 'Forms of records', provides to the effect that the arresting officer while exercising powers under section 19(1) of the Act of 2002, shall sign the Arrest Order in Form III appended to those Rules. Form III, being the prescribed format of the Arrest Order, reads as under: -

'ARREST ORDER

Whereas, I..... Director/Deputy Director/Assistant Director/Officer authorized in this behalf by the Central Government, have reason to believe that [name of the person arrested] resident of has been guilty of an offence punishable under the provisions of the Prevention of Money-laundering Act, 2002 (15 of 2003);

Now, Therefore, in exercise of the powers conferred on me under sub-section (1) of section 19 of the Prevention of Money-laundering Act, 2002 (15 of 2003), I hereby arrest the said [name of the person arrested] at hours on and he has been informed of the grounds for such arrest.

Dated at on this day of Two thousand

Arresting Officer

Signature with Seal

To

.....

.....

[Name and complete address of the person arrested]'

Needless to state, this format would be followed all over the country by the authorized officers who exercise the power of arrest under section 19(1) of the Act of 2002 but, in certain parts of the country, the authorized officer would inform the arrested person of the grounds of arrest by furnishing the same in writing, while in other parts of the country, on the basis of the very same prescribed format, the authorized officer would only read out or permit reading of the contents of the grounds of arrest. This dual and disparate procedure to convey the grounds of arrest to the arrested person cannot be countenanced on the strength of the very same arrest order, in the aforestated prescribed format.

32. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji's* case (*supra*). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorized officer.

33. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in *V. Senthil Balaji's* (*supra*) are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were

produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under section 19(1) of the Act of 2002.

34. We may also note that the grounds of arrest recorded by the authorized officer, in terms of section 19(1) of the Act of 2002, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.

35. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in *Moin Akhtar Qureshi's* case (*supra*) and the Bombay High Court in *Chhagan Chandrakant Bhujbal's* case (*supra*), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of article 22(1) of the Constitution and section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of section 19(1) of the Act of 2002. Further, as already noted *supra*, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.

36. The appeals are accordingly allowed, setting aside the impugned orders passed by the Division Bench of the Punjab & Haryana High Court as well as the impugned arrest orders and arrest memos along with the orders of remand passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, and all orders consequential thereto.

The appellants shall be released forthwith unless their incarceration is validly required in connection with any other case.

In the circumstances, we make no orders as to costs.

ANNEX

[2023] 154 taxmann.com 670 (Punjab & Haryana)

HIGH COURT OF PUNJAB & HARYANA

Pankaj Bansal v. Union of India

Ms. Ritu Bahri and Mrs. Manisha Batra, JJ.

Civil Writ Petition Nos. 14536 & 14539 of 2023

July 26, 2023

R.S. Rai, Vikram Chaudhri, Sr. Advocates, **Kunal Dawar, Vipul Sharma**, Ms. **Rubina Virmani**, Ms. **Shruti Mandhotra**, **Mayank Aggarwal**, Ms. **Hargun Sandhu** and **Keshvam Chaudhri**, Advocates for the Petitioner. **S.V. Raju**, Addl. Solicitor General of India, **Jagjot Singh Lalli**, **Lokesh Narang**, Sr. Panel Counsel, **Zoheb Hussain**, Sr. Counsel **Annam Venkatesh**, **Ankit Bhatia**, Ms. **Madhumitha Kesavam**,

JUDGMENT

Ms. Ritu Bahri, J. - The petitioners Pankaj Bansal and Basant Bansal have filed these petitions challenging vires of section 19(1) of the Prevention of Money Laundering Act, 2002 (for short "PMLA") and have further made prayer for quashing the orders dated 15-6-2023, 20-6-2023 and 26-6-2023 (Annexures P-18, P-20 and P-21) respectively whereby they had been ordered to be remanded to the custody of respondent No. 2 and then to judicial custody. Their prayer for declaring section 19(1) of PMLA as unconstitutional had been rejected on 20-7-2023. So far as, the relief claimed by the petitioners for quashing the orders (Annexures P-18, P-20 and P-21) is concerned, before considering the same, certain facts as emanating from the record are required to be mentioned. The same are that several FIRs had been registered against various IREO group of companies viz., IREO Pvt. Ltd., IREO Grace Realtech, IREO Waterfront Pvt. Limited and IREO Fiveriver Pvt. Limited etc. on the basis of complaints submitted by several buyers who had alleged that they had booked plots in projects being developed by the above cited companies and had handed over different amounts of money. However, they had not been handed over the possession of properties sought to be purchased by them and the money paid by them had been siphoned off. Investigations were conducted and it was revealed that IREO group had received several crores of rupees and huge amount of money had been transferred outside India in last some years in the guise of buyback of shares, redemption, purchase of shares etc. on instructions of one Lalit Goyal who was the Managing Director-Vice Chairman of these companies. The said Mr. Lalit Goyal was arrested on 16-11-2021. His statements were recorded several times during the course of investigation and he was booked under the provisions of PMLA. It was revealed during the course of investigation that huge amount of money was diverted to M3M group of companies by IREO group companies after layering of funds and all the companies through which funds were routed by IREO group to M3M group were shell companies owned/controlled/managed by M3M group and its controller only. The involvement of M3M group in money laundering with Mr. Lalit Goyal of IREO group was revealed. The company M/s M3M India Limited was founded by the petitioner Basant Bansal and one Roop Kumar Bansal and the petitioner Pankaj Bansal was also a Director in this group of companies. Sh. Lalit Goyal had been arrested and was subsequently given concession of bail. During the course of investigation, the present petitioners were also found involved in laundering the money diverted by IREO group of companies and were booked along with accused Roop Bansal. They secured concession of anticipatory bail from High Court of Delhi.

2. It is also revealed that on 17-4-2023, FIR No. 0006 was registered at Police Station Anti Corruption Bureau, Panchkula on the basis of some information received against Mr. Sudhir Parmar posted as Special Judge for dealing with cases of Enforcement Directorate and CBI cases at Panchkula on the allegations that he was showing favourism to Lalit Goyal, owner of IREO group of companies, Roop Bansal and his brother Basant Bansal who were owners of M3M and were cited as accused and cases against whom were pending before his Court. As per the source information, Mr. Sudhir Parmar while being posted as Additional District & Sessions Judge, Gurugram and by abusing his official position, had got undue favours from the owners of M3M and IREO group of companies by getting appointed his nephew Mr. Ajay Parmar @ Amrit as a Legal Advisor in M3M company on salary package of approximately Rs. 12 lac per annum which on transfer of Mr. Sudhir Parmar as Special Judge of CBI at Panchkula had been hiked to Rs. 18-20 lacs in connivance with the present petitioners, Roop Bansal and Lalit Goyal. Some audio recordings and screenshots of whatsapp chats were provided. A case under sections 7, 8, 11 and 13 of Prevention of Corruption Act, 1988 and section 120-B of IPC was registered against the above named Sh. Sudhir Parmar, Ajay Parmar, Sh. Roop Bansal and some unknown persons. The petitioners were arrested in FIR No. 6 of 2023 on 14-6-2023 and were initially ordered to be remanded to the custody of Enforcement Directorate and then to judicial custody. In these petitions, they have challenged the orders whereby they had been remanded to custody i.e. orders (Annexures P-18, P-20 and P-21) respectively on the ground that these orders are in violation of procedure established by law and have been passed in a mechanical manner without due application of mind.

3. Learned counsel for the petitioners have argued that the arrest of the petitioners was illegal and in violation of the safeguards laid down under section 19 of PMLA. The remand order had been passed in routine by the Court and the fact that the petitioners were arrested only on the basis of summons without issuance of any warrant by the police and against their constitutional rights were ignored. It was argued by learned counsel that the arrest of the petitioners had been effected without due compliance of provisions of sections 41 and 41-A of the Code of Criminal Procedure and, therefore, it was vehemently argued that the impugned orders as

passed by the Additional Sessions Judge, Panchkula thereby remanding to the petitioners to the custody of respondent No. 2 and then to judicial custody were liable to be set aside.

4. The petitioners further prayed for their release on bail as interim/ad-interim measure. It was vehemently argued by learned counsel for the petitioners that they were in custody since 15-6-2023. Their arrest was in violation of the provisions of Constitution of India. The investigation was likely to take time. The respondent No. 2 had failed to disclose as to why the further custody of the petitioners was required. Nothing incriminating was discovered from them. Hence, prayer has been made for releasing them from custody during the investigation.

5. Mr. S.V. Raju, Additional Solicitor General of India representing the respondents had argued at the outset that since the relief claimed by the petitioners challenging the vires of section 19(1) of the PMLA had already been dismissed on 20-7-2023 by this Court, therefore, the remaining reliefs as claimed by the petitioners could not be entertained by this Court being a Division Bench as the reliefs so prayed could be considered by a Single Bench as per the roster assigned by the High Court. This contention had been resisted by learned counsel for the petitioners by submitting that the petitioners were very much entitled to claim the remaining reliefs from this Court even after rejection of their prayer as to challenge of vires of section 19 of the PMLA. Since we have already considered the question as to vires of provisions of PMLA which was one of the reliefs as claimed by the petitioners and have decided the same, therefore, in our opinion, the remaining reliefs as claimed by the petitioners can also be considered by this Court especially in view of the fact that the petitioners have not raised any objection *qua* the same.

6. The contention further raised by Mr. S.V. Raju was that the orders directing remand of the petitioners to custody of respondent No. 2 and then judicial custody, were judicial functions performed by the Special Court/Additional Sessions Judge on Duty, Panchkula and were passed while dealing with the merits of the matter. The petitioners were in custody on the basis of valid orders passed by a competent Court. The petitions were also not maintainable since as on the date of filing of the same, their custody was on the basis of a valid order. In this context, he relied upon a Constitution Bench Judgment of Hon'ble Supreme Court cited as *Sanjay Dutt v. State* [1994] 5 SCC 410, wherein it was held that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, had to be dismissed, if on the date of return of the rule, the custody or detention was on the basis of a valid order. He further argued that there were serious allegations against the petitioners. Investigation was being conducted by the respondent No. 2 against the petitioners after registration of ECIRs. The investigation conducted so far in this case and in the FIR previously registered against the co-accused Mr. Lalit Goyal revealed that the petitioners were *prima facie* involved in transfer of crores of rupees from IREO company headed by its owner Lalit Goyal who was a co-accused and the said money as belonging to innocent buyers, had been siphoned off in connivance with the present petitioners, Sh. Roop Bansal who along with the petitioners were managing the affairs of M3M group of companies being Managing Director/Directors/founders. He argued that it had also come in the investigation conducted so far by respondent No. 2 that the petitioners in connivance with Mr. Lalit Goyal and Mr. Roop Bansal who were accused before CBI Court, Panchkula had bribed Mr. Sudhir Parmar, CBI Judge and his nephew by giving undue favours to them and in order to seek favourable orders from the CBI Court in respect of the previous FIR in which the petitioners and above named Mr. Lalit Goyal and Mr. Roop Bansal were cited as accused. Therefore, he strenuously argued that no case for release of the petitioners from custody was made out.

7. We have given due deliberations to the contentions raised by both sides. In our opinion, the petitioners have failed to make out any case to show as to how orders (Annexures P-18, P-20 and P-21) whereby they had been remanded to the custody of respondent No. 2 and then to judicial custody were liable to be set aside. A perusal of these orders rather reveals that the petitioners had been validly remanded to custody by passing detailed orders by the concerned Court. The act of directing remand of an accused is a judicial function. The orders of remand passed by the Special Court/Additional Sessions Judge on duty reveal that the merits of the matter as well as the question that the detention of the petitioners was justified or not, had been dealt with while remanding them to custody. As such, in our considered opinion, it is not open to the petitioners to challenge correctness of these orders at this stage. More so, the question as to legality of initial detention of the petitioners might be examined on the dates on which they were remanded to custody of respondent No. 2 or to judicial custody as on the specific dates on which the orders (Annexures P-18, P-20 and P-21) were passed and their present confinement cannot be held to be invalidated on the ground that the orders detaining them in custody initially were illegal. Reliance in this regard can be placed upon *Col. Dr. B. Ramachandra Rao v. State of Orissa* [1972] 3 SCC 256, wherein similar observations were made and which has also been relied

upon by the made out for setting aside the orders (Annexures P-18, P-20 and P-21) respectively as passed by learned Duty/Additional Sessions Judge, Panchkula whereby the petitioners have been remanded to the custody of respondent No. 2 and then to judicial custody on 15-6-2023, 20-6-2023 and 26-6-2023. Accordingly, prayer made by the petitioners to that extent is rejected.

8. On perusal of the material placed on record, it has been revealed that the allegations as levelled against Judicial Officer namely, Mr. Sudhir Parmar who is alleged to have taken undue favours from the present petitioners and other key persons of M3M group of companies and Managing Director of IREO company are being investigated by respondent No. 2. The same are quite serious in nature. Keeping in view the gravity of the same, the prayer as made by the petitioners for grant of release from custody at this stage does not deserve to be accepted. Hence, the same is rejected. As per the discussion as made above, the writ petitions have become liable to be dismissed. It is ordered accordingly. However, since as per the respondents, further investigation for establishing the exact part played by the petitioners in the subject crime is going on, therefore, a direction is given to the respondents to submit status report *qua* the steps taken during the course of investigation as on 22-8-2023.

JYOTI

†Arising out of *Pankaj Bansal v. Union of India* [2023] 154 taxmann.com 670 (Punj. & Har.).



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO(S). OF 2024
(Arising out of SLP(Crl.) NO(S). OF 2024)
(D.No. 42896/2023)**

PRABIR PURKAYASTHA

....APPELLANT(S)

VERSUS

STATE(NCT OF DELHI)

...RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Leave granted.
2. The instant appeal by special leave is preferred on behalf of the appellant for assailing the order dated 13th October, 2023 passed by learned Single Judge of the High Court of Delhi whereby the learned Single Judge dismissed the Criminal Miscellaneous Case No. 7278 of 2023 filed by the appellant seeking the following directions: -

"A. Declare the arrest of the Petitioner as illegal and in gross violation of the fundamental rights of the Petitioner guaranteed under Article 21 and 22 of the Constitution of India in relation to FIR No. 224/2023 dated 17.08.2023 PS Special Cell, Lodhi Road, Delhi Police;

B. Declare and set aside the Remand Order dated 04.10.2023 passed by the Ld. Special Judge, Patiala House Court as null and void as the same being passed in complete violation of all constitutional mandates including failure to consult and to be defended by legal practitioner of his choice during the Remand Proceedings, being violative of Petitioner's right guaranteed under Article 22 of the Constitution of India.

C. Direct immediate release of the Petitioner from custody in FIR No. 224/2023 dated 17.08.2023 PS Special Cell, Lodhi Road, Delhi Police."

Brief Facts: -

3. The officers of the PS Special Cell, Lodhi Colony, New Delhi carried out extensive raids at the residential and official premises of the appellant and the company, namely, M/s. PPK Newsclick Studio Pvt. Ltd. ("said company") of which the appellant is the Director in connection with FIR No. 224 of 2023 dated 17th August, 2023 registered at PS Special Cell, Lodhi Colony, New Delhi for the offences punishable under Sections 13, 16, 17, 18, 22C of the Unlawful Activities(Prevention) Act, 1967(for short "UAPA") read with Section 153A, 120B of the Indian Penal Code, 1860(hereinafter being referred to as the 'IPC'). During the course of the search and seizure proceedings, numerous documents and digital devices belonging to the appellant, the company and other

employees of the company were seized. The appellant was arrested in connection with the said FIR on 3rd October, 2023 vide arrest memo(Annexure P-7) prepared at PS Special Cell, Lodhi Colony, New Delhi.

4. It is relevant to mention here that the said arrest memo is in a computerised format and does not contain any column regarding the 'grounds of arrest' of the appellant. This very issue is primarily the bone of contention between the parties to the appeal.

5. The appellant was presented in the Court of Learned Additional Sessions Judge-02, Patiala House Courts, New Delhi(hereinafter being referred to as the 'Remand Judge') on 4th October, 2023, sometime before 6:00 a.m. which fact is manifested from the remand order(Annexure P-1) placed on record of appeal with I.A. No. 217857 of 2023. The appellant was remanded to seven days police custody vide order dated 4th October, 2023.

6. The proceedings of remand have been seriously criticized as being manipulated by Shri Kapil Sibal, learned senior counsel for the appellant and aspersions of subsequent insertions in the remand order have been made. Hence, it would be apposite to reproduce the remand order dated 4th October, 2023 in pictorial form so as to form a part of this judgment.

7 ANNEXURE P-1

डॉ. हरदीप कौर
Dr HARDEEP KAUR
अतिरिक्त सत्र न्यायाधीश-02
Additional Sessions Judge-02
कमरा नं. 15, प्रथम तल मृत्यु भवन
Room No. 15, First Floor, Men Building
पटियाला हाउस कोर्ट,
Patiala House Courts
नई दिल्ली
New Delhi

Present :- Sh. Atul K. Srivastava Ld APP for the State
IO in person
Accused persons present with Remand
counsel Sh. Umakant Kataria
Sh. Arshdeep Singh Khurana counsel for accused
persons. (Mob. No. 9971140092) through telephone
call

An application has been moved by the IO.
seeking police custody remand of accused Prabir
Purkayastha and Amit Chakrobarty for a period of
15 days. copy of remand application sent through whatsapp
to counsel for accused persons.
Heard. Record Perused.

considering the intricate nature of investigation
required in the instant matter, accused Prabir Purkaya-
stha and Amit Chakrobarty are remanded to police
custody for a period of 7 days i.e till 10th Oct.

Application is disposed of accordingly.

Accused persons must be medically examine
every 48 hours during their police custody remand.



डॉ. हरदीप कौर
Dr Hardeep Kaur
अतिरिक्त सत्र न्यायाधीश-02, PHC
Additional Sessions Judge-02
4th Oct. 2023, Time 6:00 AM
अतिरिक्त सत्र न्यायाधीश-02
Additional Sessions Judge-02
नई दिल्ली
New Delhi

7. The appellant promptly questioned his arrest and the police custody remand granted by the learned Remand Judge vide order dated 4th October, 2023 by preferring Criminal Miscellaneous Case No. 7278 of 2023 in the High Court of Delhi which stands rejected by the learned Single Judge of the High Court of Delhi vide judgment dated 13th October, 2023. The said order is subjected to challenge in this appeal by special leave.

Submissions on behalf of the appellant: -

8. Shri Kapil Sibal, learned senior counsel representing the appellant canvassed the following submissions in order to question the proceedings of arrest and remand of the appellant: -

- (i) That the FIR No. 224 of 2023(FIR in connection of which appellant was arrested) is virtually nothing but a second FIR on same facts because prior thereto, another FIR No. 116 of 2020 dated 26th August, 2020 had been registered by PS EOW, Delhi Police(“EOW FIR”) alleging violation of Foreign Direct Investment(FDI) regulations and other laws of the country by the appellant and the company, thereby

causing loss to the exchequer. A copy of the said FIR was, however, not provided to the appellant. By treating the EOW FIR as disclosing predicate offences, the Directorate of Enforcement(for short “ED”) registered an Enforcement Case Information Report(for short ‘ECIR’) for the offences punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002(for short ‘PMLA’). The ED carried out extensive search and seizure operations at various places including the office of the company-M/s. PPK Newsclick Studio Pvt. Ltd., of which the appellant is the Director.

- (ii) The company assailed the ECIR by filing Writ Petition(Crl.) Nos. 1129 of 2021 and 1130 of 2021 wherein interim protection against coercive steps was granted by High Court of Delhi on 21st June, 2021. The appellant was also provided interim protection in an application seeking anticipatory bail vide order dated 7th July, 2021.
- (iii) The FIR No. 224 of 2023 has been registered purely on conjectures and surmises without there being any substance in the allegations set out in the report. The contents of the FIR which were provided to the appellant

at a much later stage discloses a purely fictional story without any fundamental facts or material warranting registration of the FIR.

- (iv) Admittedly, the copy of FIR No. 224 of 2023 was neither made available in the public domain nor a copy thereof supplied to the appellant until his arrest and remand which is in complete violation of the fundamental Right to Life and Personal Liberty enshrined in Articles 20, 21 and 22 of the Constitution of India.
- (v) Shri Sibal pointed out that the learned Remand Judge, vide order dated 5th October, 2023, allowed the application filed by the appellant seeking certified copy of the said FIR which was provided to the learned counsel for the appellant in the late evening on 5th October, 2023, i.e., well after the appellant had been remanded to police custody.
- (vi) That the grounds of arrest were not informed to the appellant either orally or in writing and that such action is in gross violation of the constitutional mandate under Article 22(1) of the Constitution of India and Section 50 of the Code of Criminal Procedure, 1973(hereinafter being referred to as the 'CrPC').

- (vii) Reliance was placed by the learned senior counsel on the judgment of this Court in ***Pankaj Bansal v. Union of India and Others***¹ and it was contended that the mere passing of successive remand orders would not be sufficient to validate the initial arrest, if such arrest was not in conformity with law. Learned senior counsel urged that this Court in the case of ***Pankaj Bansal***(*supra*) interpreted the provision of Section 19(1) of PMLA which is *pari materia* to the provisions contained in Section 43B(1) of the UAPA. Thus, the said judgment fully applies to the case of the appellant.
- (viii) Shri Sibal referred to the observations made in the judgment of ***Pankaj Bansal***(*supra*) and urged that since the grounds of arrest were not furnished to the appellant at the time of his arrest and before remanding him to police custody, the continued custody of the appellant is rendered grossly illegal and a nullity in the eyes of law because the same is hit by the mandate of Article 22(1) of the Constitution of India.

¹ 2023 SCC OnLine SC 1244

- (ix) Shri Sibal further urged that the view taken by a two-Judge Bench of this Court in ***Ram Kishor Arora v. Directorate of Enforcement***² holding the judgment in ***Pankaj Bansal***(*supra*) to be prospective in operation would also not come in the way of the appellant in seeking the relief. He pointed out that the judgment in the case of ***Pankaj Bansal***(*supra*) was pronounced on 3rd October, 2023 whereas the illegal remand order of the appellant was passed on 4th October, 2023 and hence, the law laid down in the case of ***Pankaj Bansal***(*supra*) is fully applicable to the case of the appellant despite the interpretation given in ***Ram Kishor Arora***(*supra*).
- (x) That the arrest of the appellant is in gross violation of the provisions contained in Article 22 of the Constitution of India, hence, the appellant is entitled to seek a direction for quashment of the remand order and release from custody forthwith.
- (xi) That the action of the Investigating Officer in arresting and in seeking remand of the appellant is not only *mala fide* but also fraught with fraud of the highest order.

² 2023 SCC OnLine SC 1682

(xii) Referring to the remand order dated 4th October, 2023, it was contended that the appellant was kept confined overnight by the Investigating Officer without conveying the grounds of arrest to him. He was presented in the Court of the learned Remand Judge on 4th October, 2023 in the early morning without informing Shri Arshdeep Khurana, the Advocate engaged on behalf of the appellant who was admittedly in contact with the Investigating Officer because he had attended the proceedings at the Police Station Lodhi Colony, post the appellant's arrest. In order to clandestinely procure police custody remand of the appellant, the Investigating Officer, presented the appellant at the residence of learned Remand Judge before 6:00 a.m. by informing a remand Advocate Shri Umakant Kataria who had never been engaged by the appellant to plead his cause.

(xiii) Learned Remand Judge remanded the accused to police custody at 6:00 a.m. sharp as is evident from the remand order(*supra*). Shri Arshdeep Khurana, the appellant's Advocate was informed about the order granting remand by a WhatsApp message at 7:07 a.m. but the same was an

exercise in futility because there was no possibility that the learned Advocate could have reached the residence of the learned Remand Judge in time to oppose the prayer for remand.

(xiv) That, as a matter of fact, the remand application had already been accepted at 6:00 a.m. which fact is manifested from the time appended at the end of the remand order(*supra*). The learned Remand Judge signed the proceedings by recording the time as 6:00 a.m. Hence, there is no escape from the conclusion that the remand order was passed without supplying copy of the grounds of arrest to the appellant or the Advocate engaged by him. The appellant was intentionally deprived from information about the grounds of his arrest and thereby he and his Advocate were prevented from opposing the prayer of police custody remand and from seeking bail.

(xv) He further urged that the stand taken by the respondent that the grounds of arrest were conveyed to the learned counsel for the appellant well before the learned Remand Judge passed the remand order is unacceptable on the face of the record because the time of passing the remand

order is clearly recorded in the order dated 4th October, 2023 as 6:00 a.m. Admittedly, the grounds of arrest were conveyed to Shri Arshdeep Khurana, Advocate for the appellant well after 7:00 a.m. It was contended that the noting made by the learned Remand Judge in the order dated 4th October, 2023 that the learned counsel for the appellant was heard on the application for remand is a subsequent insertion clearly visible from the remand order. The fact of subsequent insertion of these lines is fortified from the fact that the appellant had already been remanded to police custody by the time the Advocate was informed and the copy of the remand application containing the purported grounds of arrest was transmitted to him.

- (xvi) That the foundational facts in the FIR No. 224 of 2023 are almost identical to the allegations set out in the EOW FIR. The appellant had been granted protection against arrest by the High Court of Delhi in the EOW FIR. Owing to this protection, the *mala fide* objective of the authorities in putting the appellant behind bars was not being served and, therefore, a new FIR No. 224 of 2023 with totally

cooked up allegations came to be registered and the appellant was illegally deprived of his liberty without the copy of the FIR been provided and without the grounds of arrest being conveyed to the appellant.

9. On these grounds, Shri Sibal implored the Court to accept the appeal, set aside the impugned orders and direct the release of the appellant from custody in connection with the above FIR.

Submission on behalf of the respondent: -

10. *Per contra*, Shri Suryaprakash V. Raju, learned ASG, appearing for the respondent vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant and made the following pertinent submissions:-

- (i) He urged that the judgment in the case of **Pankaj Bansal**(*supra*) has been held to be prospective in operation by this Court in the case of **Ram Kishor Arora**(*supra*).
- (ii) The appellant was remanded to police custody on 4th October, 2023 whereas the judgment in the case of **Pankaj Bansal**(*supra*) was uploaded on the website of this Court in the late hours of 4th October, 2023 and hence, the arresting officer could not be expected to ensure compliance of the

directions given in the said judgment. He thus urged that the alleged inaction of the Investigating Officer in furnishing the grounds of arrest in writing to the appellant cannot be called into question as the judgment in **Pankaj Bansal**(*supra*) was uploaded and brought in public domain after the remand order had been passed.

(iii) Without prejudice to the above, learned ASG urged that as per the appellant's version set out in the pleadings filed before the High Court of Delhi, he was actually remanded to the police custody after 7:00 a.m. With reference to these pleadings, Shri Raju contended that the appellant cannot be heard to urge that he was remanded to the police custody in an illegal manner and without the grounds of arrest having been conveyed to him in writing.

(iv) Learned ASG referred to the provisions contained in Articles 22(1) and 22(5) of the Constitution of India and urged that there is no such mandate in either of the provisions that the grounds of arrest or detention should be conveyed in writing to the accused or the detinue, as the case may be.

(v) He urged that the right conferred upon the appellant by Article 22(1) of the Constitution of India to consult and to be defended

by a legal practitioner was complied with in letter and spirit because the relative of the appellant, namely, Shri Rishabh Bailey, was informed before producing the appellant before the learned Remand Judge. Admittedly, Shri Rishabh Bailey had intimated the appellant's Advocate, Shri Arshdeep Khurana regarding the proposed proceedings of police custody remand of the appellant.

(vi) He urged that the Advocate transmitted a written objection against the prayer for police custody remand over WhatsApp through the Head Constable Rajendra Singh and the learned Remand Judge has taken note of the said objection opposing remand in the remand order dated 4th October, 2023 and thus it would be futile to argue that the order granting remand is illegal in any manner.

(vii) Learned ASG further contended that now the investigation has been completed and charge sheet has also already been filed and, thus, the illegality/irregularity, if any, in the arrest of the appellant and the grant of initial police custody remand stands cured and hence, the appellant cannot claim to be prejudiced by the same.

(viii) He vehemently urged that there are significant differences in the language employed in Section 19 of the PMLA and Section 43A and 43B of the UAPA and, thus, the law as laid down by this Court in ***Pankaj Bansal***(*supra*) does not come to the aid of the appellant in laying challenge to the remand order.

(ix) Learned ASG further urged that there is a presumption regarding the correctness of acts performed in discharge of judicial functions and hence, the noting recorded in the remand order dated 4th October, 2023 that the Advocate for the appellant had been heard on the remand application and that the grounds of arrest had been conveyed to the appellant cannot be questioned or doubted. He thus implored the Court to dismiss the appeal and affirm the order passed by the High Court of Delhi.

Rejoinder on behalf of learned counsel for the appellant: -

11. Shri Sibal, learned senior counsel for the appellant submitted that the argument advanced by learned ASG that the provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA operate in different spheres, is misconceived. He urged

that language of both the provisions is *pari materia* and hence, the law laid down in **Pankaj Bansal**(*supra*) fully covers the controversy at hand.

12. Shri Sibal emphasised that on a plain viewing of the order dated 4th October, 2023, it is clear that the lines indicating the sending of the copy of the remand application to the learned counsel for the appellant and the opportunity of hearing provided to the Advocate through telephone call have been subsequently inserted in the order. He thus urged that the plea advanced by Shri Raju, learned ASG that there is a presumption regarding the correctness of judicial proceedings cannot be accepted as a gospel truth in the peculiar facts of the case at hand. He contended that applying the same principle to the remand order dated 4th October, 2023 is counter productive to the stand taken by learned ASG inasmuch as, the order records the time of passing as 6:00 a.m. whereas the Advocate was admittedly informed after 7:00 a.m. Thus, there was no possibility of the remand application being sent to the Advocate or he being heard before passing of the remand order. He, thus, reiterated his submissions and sought acceptance of the appeal.

Discussion and conclusion: -

13. We have given our thoughtful considerations to the submissions advanced at bar and have gone through the material placed on record.

14. Since, learned ASG has advanced a fervent contention regarding application of ratio of ***Pankaj Bansal***(*supra*) urging that there is an inherent difference between the provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA, it would first be apposite for us to address the said submission.

15. In the case of ***Pankaj Bansal***(*supra*), this Court after an elaborate consideration of the provisions contained in PMLA, CrPC and the constitutional mandate as provided under Article 22 held as below: -

“32. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not

guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. **Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.**

36. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji* (supra). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable *ipse dixit* of the authorized officer.

37. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in *V. Senthil Balaji* (supra) are placed on record and we find that the same run into as many as six pages.

The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. **The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002.**

38. We may also note that the grounds of arrest recorded by the authorized officer, in terms of Section 19(1) of the Act of 2002, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.

39. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in *Moin Akhtar Qureshi* (supra) and the Bombay High Court in *Chhagan Chandrakant Bhujbal* (supra), which hold to the contrary, do not lay down the correct law. **In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of**

Section 19(1) of the Act of 2002. Further, as already noted *supra*, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.”

(emphasis supplied)

16. Section 19 of the PMLA and Sections 43A, 43B and 43C of the UAPA are reproduced hereunder for the sake of ready reference: -

Section 19 of the PMLA

“**19. Power to arrest.**—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the 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 order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate’s Court.”

Sections 43A, 43B and 43C of the UAPA

“43A. Power to arrest, search, etc.—Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.

43B. Procedure of arrest, seizure, etc.—(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.

43C. Application of provisions of Code. —The provisions of the Code shall apply, insofar as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act.”

17. Upon a careful perusal of the statutory provisions(reproduced *supra*), we find that there is no significant difference in the language employed in Section 19(1) of the PMLA and Section

43B(1) of the UAPA which can persuade us to take a view that the interpretation of the phrase ‘inform him of the grounds for such arrest’ made by this Court in the case of **Pankaj Bansal**(*supra*) should not be applied to an accused arrested under the provisions of the UAPA.

18. We find that the provision regarding the communication of the grounds of arrest to a person arrested contained in Section 43B(1) of the UAPA is verbatim the same as that in Section 19(1) of the PMLA. The contention advanced by learned ASG that there are some variations in the overall provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA would not have any impact on the statutory mandate requiring the arresting officer to inform the grounds of arrest to the person arrested under Section 43B(1) of the UAPA at the earliest because as stated above, the requirement to communicate the grounds of arrest is the same in both the statutes. As a matter of fact, both the provisions find their source in the constitutional safeguard provided under Article 22(1) of the Constitution of India. Hence, applying the golden rules of interpretation, the provisions which lay down a very important constitutional safeguard to a person arrested on charges of

committing an offence either under the PMLA or under the UAPA, have to be uniformly construed and applied.

19. We may note that the modified application of Section 167 CrPC is also common to both the statutes. Thus, we have no hesitation in holding that the interpretation of statutory mandate laid down by this Court in the case of **Pankaj Bansal**(*supra*) on the aspect of informing the arrested person the grounds of arrest in writing has to be applied *pari passu* to a person arrested in a case registered under the provisions of the UAPA.

20. Resultantly, there is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the

fundamental right guaranteed under Article 22(1) of the Constitution of India.

21. The Right to Life and Personal Liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to following observations made by this Court in the case of **Roy V.D. v. State of Kerala**³:-

“7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens.”

Thus, any attempt to violate such fundamental right, guaranteed by Articles, 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly.

22. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality

³ (2000) 8 SCC 590

committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

23. Learned ASG referred to the language of Article 22(5) of the Constitution of India and urged that even in a case of preventive detention, the Constitutional scheme does not require that the grounds on which the order of detention has been passed should be communicated to the detainee in writing. *Ex facie*, we are not impressed with the said submission.

24. The contention advanced by learned ASG based on the language of Article 22(5) of the Constitution of India persuaded us to delve deeper on the issue as to whether it is mandatory to communicate the grounds of arrest or detention in writing to the accused or the detainee, as the case may be, even though the constitutional mandate under Articles 22(1) and 22(5) of the Constitution of India does not explicitly require that the grounds should be communicated in writing.

25. A Constitution Bench of this Court examined in detail the scheme of Article 22(5) of the Constitution of India in the case of ***Harikisan v. State of Maharashtra and Others***⁴ and held that the communication of the grounds of detention to the detainee in

⁴ 1962 SCC OnLine SC 117

writing and in a language which he understands is imperative and essential to provide an opportunity to detainee of making an effective representation against the detention and in case, such communication is not made, the order of detention would stand vitiated as the guarantee under Article 22(5) of the Constitution was violated. The relevant para is extracted hereinbelow:

“ 7. clause (5) of Article 22 requires that the grounds of his detention should be made available to the detainee as soon as may be, and that the earliest opportunity of making a representation against the Order should also be afforded to him. **In order that the detainee should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detainee should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detainee sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detainee would not amount to communication, in this context, must mean bringing home to the detainee effective knowledge of the facts and circumstances on which the Order of Detention is based.**

(emphasis supplied)

26. Further, this Court in the case of **Lallubhai Jogibhai Patel v. Union of India and Ors.**⁵, laid down that the grounds of

⁵ (1981) 2 SCC 427

detention must be communicated to the detenu in writing in a language which he understands and if the grounds are only verbally explained, the constitutional mandate of Article 22(5) is infringed. The relevant para is extracted hereunder: -

“20. “Communicate” is a strong word. It means that sufficient knowledge of the basic facts constituting the “grounds” should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the “ground” to the detenu is to enable him to make a purposeful and effective representation. If the “grounds” are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed.....”

(emphasis supplied)

27. From a holistic reading of various judgments pertaining to the law of preventive detention including the Constitution Bench decision of this Court in ***Harikisan(supra)***, wherein, the provisions of Article 22(5) of the Constitution of India have been interpreted, we find that it has been the consistent view of this Court that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial measures against the deprivation of liberty.

28. Thus, there is no hesitation in the mind of this Court that the submission of learned ASG that in a case of preventive detention,

the grounds of detention need not be provided to a detainee in writing is *ex facie* untenable in eyes of law.

29. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the ‘grounds’ of “arrest” or “detention”, as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would *ipso facto* apply to Article 22(1) of the Constitution of India insofar the requirement to communicate the grounds of arrest is concerned.

30. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

31. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in ***Pankaj Bansal***(*supra*) laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the accused appellant is noted to be rejected.

32. Now, coming to the facts of the case at hand. Indisputably, FIR No. 224 of 2023 came to be registered on 17th August, 2023. Copy of the FIR was never brought in public domain as the same was not uploaded on the website by the Investigating Agency. Admittedly, the copy of the FIR was not provided to the appellant despite an application having been made in this regard on his behalf till after the order of police custody remand was passed by the learned Remand Judge.

33. The copy of the FIR was provided to Shri Arshdeep Khurana, learned Advocate representing the accused for the first time on 5th October, 2023 and hence, till the time of being deprived of liberty, no communication had been made to the appellant regarding the grounds on which he had been arrested.

34. The accused was arrested on 3rd October, 2023 at 5:45 p.m. as per the arrest memo(Annexure P-7). As per Section 43C of the UAPA, the provisions of CrPC shall apply to all arrests, search and seizures made under the UAPA insofar as they are not inconsistent with the provisions of this Act. As per Section 57 CrPC read with Section 167(1) CrPC, the appellant was required to be produced before the concerned Magistrate within twenty-four hours of his arrest. The Investigating Officer, therefore, had a clear window till 5:44 p.m. on 4th October, 2023 for producing the appellant before the Magistrate concerned and to seek his police custody remand, if so required. There is no dispute that Shri Arshdeep Khurana, learned Advocate, engaged on behalf of the appellant had presented himself at the police station on 3rd October, 2023 after the appellant was arrested and the mobile number of the Advocate was available with the Investigating Officer. In spite thereof, the appellant was presented before the learned Remand Judge at his residence sometime before 6:00 a.m. on 4th October, 2023. A remand Advocate, namely, Shri Umakant Kataria was kept present in the Court purportedly to provide legal assistance to the appellant as required under Article 22(1) of the Constitution of India. Apparently, this entire exercise was done in a clandestine

manner and was nothing but a blatant attempt to circumvent the due process of law; to confine the accused to police custody without informing him the grounds on which he has been arrested; deprive the accused of the opportunity to avail the services of the legal practitioner of his choice so as to oppose the prayer for police custody remand, seek bail and also to mislead the Court. The accused having engaged an Advocate to defend himself, there was no rhyme or reason as to why, information about the proposed remand application was not sent in advance to the Advocate engaged by the appellant.

35. It is apparent that the appellant had objected to the appearance of the remand counsel before the learned Remand Judge and this is the reason, the Investigating Officer undertook a charade of informing of the Advocate engaged by the appellant on mobile. The learned Remand Judge recorded the presence of Shri Arshdeep Khurana, Advocate, mentioning that he had been informed and heard on the remand application through telephone call. The initial information about the accused appellant being presented before the learned Remand Judge was sent by the arresting officer to the appellant's relative Shri Rishab Bailey at around 6:46 a.m. and he, in turn, informed the Advocate Shri

Arshdeep Khurana around 7:00 a.m. These facts are manifested from perusal of the call logs presented for the perusal of the Court. Thus, by the time, the Advocate engaged by the accused appellant had been informed, the order of remand had already been passed. Unquestionably, till that time, the grounds of arrest had not been conveyed to the appellant in writing.

36. The learned ASG had argued that the grounds of arrest were set out in the remand application which was transmitted through WhatsApp to Advocate Shri Arshdeep Khurana. However, the fact remains that the remand application was transmitted to the Advocate Shri Arshdeep Khurana after the remand had been granted by the learned Remand Judge which was at 6:00 a.m. as per the recording made in the remand order(reproduced *supra*). The contention of the learned ASG that there is variance in time of passing of the remand order as per the pleadings made on behalf of the accused appellant before the High Court of Delhi does not impress us in view of the time recorded in the remand order.

37. Learned Single Judge of the High Court of Delhi held at para No. 31 of the impugned order that the respondent had taken a categorical stand that the grounds of arrest were informed to the appellant orally and the same were also conveyed in writing as per

the details set out in the memo of arrest. However, learned ASG fairly did not advance any such argument based on the arrest memo.

38. The interpretation given by the learned Single Judge that the grounds of arrest were conveyed to the accused in writing vide the arrest memo is unacceptable on the face of the record because the arrest memo does not indicate the grounds of arrest being incorporated in the said document. Column No. 9 of the arrest memo(Annexure P-7) which is being reproduced hereinbelow simply sets out the 'reasons for arrest' which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the 'grounds of arrest' would be personal in nature and specific to the person arrested.

"9. Reason for arrest

- a. Prevent accused person from committing any further offence.
- b. For proper investigation of the offence.
- c. To prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner.
- d. To prevent such person from making any inducement threat or promise to any person acquainted the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police officer.
- e. As unless such person is arrested, his presence in the Court whenever required cannot be ensured."

39. The remand order dated 4th October, 2023(reproduced *supra*) records that the copy of the remand application had been sent to the learned Advocate engaged by the accused appellant through shriApp. A bare perusal of the remand order is enough to satisfy us that these two lines were subsequently inserted in the order because the script in which these two lines were written is much finer as compared to the remaining part of the order and moreover, these two lines give a clear indication of subsequent insertion. It is quite possible that the learned Remand Judge may have heard the learned counsel for the appellant after signing the remand order and thus, these lines were inserted later without intending any harm or malintention but the fact remains that the order of remand had already been passed at 6:00 a.m. and hence, the subsequent opportunity of hearing, if any, provided to the counsel was nothing but an exercise in futility.

40. Learned ASG had argued that the copy of the remand application forwarded over WhatsApp to the learned counsel for the accused appellant gives a complete picture about the grounds of arrest. We feel that any comment on the contents of the remand application and whether the same actually conveyed intelligible grounds of arrest to the accused or whether the same are so vague

that it would be impossible to understand, may prejudice the trial of the case.

41. We may, however, briefly mention that the grounds of arrest as conveyed to the Advocate are more or less a narration of facts picked up from the FIR which in itself does not indicate any particular incident or event which gave rise to the alleged offences. However, the law is well settled that the FIR is not an encyclopaedia and is registered just to set the process of criminal justice in motion. The Investigating Officer has the power to investigate the matter and collect all relevant material which would form the basis of filing of charge sheet in the Court concerned.

42. Extensive arguments were advanced by Shri Sibal, with reference to the stipulations made in Sections 13, 16, 17, 18, 22C of the UAPA in order to contend that even if the FIR and the grounds set out in the remand application are taken to be true on the face of the record, apparently, the same convey just a fictional web spun around conjectures and surmises. It was contended that though a reference is made in the FIR that the appellant and one Neville Roy Singham, a foreign national were found to be discussing how to create a map of India without Kashmir and to show Arunachal Pradesh as a disputed area but the fact remains

that no such map was prepared or published or was found in possession of the appellant or on his devices till the date of his arrest.

43. Shri Sibal had also argued that the appellant was arrested without any indication as to how he was connected with the alleged incorrect map of India. He also urged that the FIR refers to farmers' agitation without justifying as to how the appellant was connected with those incidents. He contended that not a single incident is mentioned in the FIR or the remand application which can give rise to the offences alleged and that the FIR was registered without any plausible reason or basis just to victimise the appellant.

44. We do not feel persuaded to examine these aspects at this stage because the same would require entering into the merits of the case. This would be within the domain of the Court examining the matter after the filing of the charge sheet. The core issue in this appeal is regarding the illegality of the process whereby the appellant was arrested and remanded to police custody which does not require examining the merits of the case.

45. It was the fervent contention of learned ASG that in the case of **Ram Kishor Arora**(*supra*), a two-Judge Bench of this Court

interpreted the judgment in the case of **Pankaj Bansal**(*supra*) to be having a prospective effect and thus the ratio of **Pankaj Bansal**(*supra*) cannot come to the appellant's aid. Indisputably, the appellant herein was remanded to police custody on 4th October, 2023 whereas the judgment in the case of **Pankaj Bansal**(*supra*) was delivered on 3rd October, 2023. Merely on a conjectural submission regarding the late uploading of the judgment, learned ASG cannot be permitted to argue that the ratio of **Pankaj Bansal**(*supra*) would not apply to the present case. Hence, the plea of Shri Raju, learned ASG that the judgment in **Pankaj Bansal**(*supra*) would not apply to the proceedings of remand made on 4th October, 2023 is misconceived.

46. We are of the firm opinion that once this Court has interpreted the provisions of the statute in context to the constitutional scheme and has laid down that the grounds of arrest have to be conveyed to the accused in writing expeditiously, the said ratio becomes the law of the land binding on all the Courts in the country by virtue of Article 141 of the Constitution of India.

47. Now, coming to the aspect as to whether the grounds of arrest were actually conveyed to the appellant in writing before he was remanded to the custody of the Investigating Officer.

48. We have carefully perused the arrest memo(Annexure P-7) and find that the same nowhere conveys the grounds on which the accused was being arrested. The arrest memo is simply a proforma indicating the formal 'reasons' for which the accused was being arrested.

49. It may be reiterated at the cost of repetition that there is a significant difference in the phrase 'reasons for arrest' and 'grounds of arrest'. The 'reasons for arrest' as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person from making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested

accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature.

50. From the detailed analysis made above, there is no hesitation in the mind of the Court to reach to a conclusion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the accused appellant or his counsel before passing of the order of remand dated 4th October, 2023 which vitiates the arrest and subsequent remand of the appellant.

51. As a result, the appellant is entitled to a direction for release from custody by applying the ratio of the judgment rendered by this Court in the case of **Pankaj Bansal**(*supra*).

52. Accordingly, the arrest of the appellant followed by remand order dated 4th October, 2023 and so also the impugned order passed by the High Court of Delhi dated 13th October, 2023 are hereby declared to be invalid in the eyes of law and are quashed and set aside.

53. Though we would have been persuaded to direct the release of the appellant without requiring him to furnish bonds or security but since the charge sheet has been filed, we feel it appropriate to direct that the appellant shall be released from custody on furnishing bail and bonds to the satisfaction of the trial Court.

54. We make it abundantly clear that none of the observations made above shall be treated as a comment on the merits of the case.

55. The appeal is allowed in these terms.

56. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

**New Delhi;
May 15, 2024**

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2J

(BEFORE B.R. GAVAI AND K.V. VISWANATHAN, JJ.)

MANISH SISODIA

.. Appellant;

Versus

DIRECTORATE OF ENFORCEMENT

.. Respondent.

Criminal Appeals No. 3295 of 2024[†] with
No. 3296 of 2024[‡], decided on August 9, 2024

A. Constitution of India — Art. 136 r/w Arts. 20, 21 and 22 — Second SLP against same order of High Court denying bail — Maintainability

— Issue whether appellant can be permitted to file second set of SLPs to challenge the order of the High Court dt. 21-5-2024 when the earlier SLPs arising out of the same order were disposed of

— Undisputedly, appellant earlier challenged the same order dt. 21-5-2024 vide certain SLPs, which decided vide second order dt. 4-6-2024 — In its first common order dt. 30-4-2024, Supreme Court considered the prolonged period of incarceration suffered by appellant and emphasised the right to speedy trial as a fundamental right within the broad scope of Art. 21 — Supreme Court further observed S. 436-A CrPC should not be construed as a mandate that an accused should not be granted bail under the PMLA till he suffered incarceration for the specified period

— In its second order, Supreme Court recorded that they did not propose to go into the arguments or dwell upon it in view of the liberty granted in the first common order dt. 30-10-2023 — Thereafter, Supreme Court noticed the assurance of SG that the investigation would be concluded and final complaint/charge-sheet would be filed at any rate on or before 3-7-2024 — Considering period of 6-8 months fixed by Supreme Court in its first common order dt. 30-10-2023 having not ended, Supreme Court vide its second order dt. 4-6-2024 disposed of the petition by permitting appellant to revive his prayer

— Held, it will be a travesty of justice to construe that the carefully couched order preserving the right of appellant to revive his prayer for grant of special leave against High Court order, to mean that he should be relegated all the way down to the trial court — The adage, that procedure is a handmaiden and not a mistress of justice applied

[†] Arising out of SLP (Cri) No. 8781 of 2024. Arising from the impugned Final Judgment and Order in *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine Del 3731 (Delhi High Court, Bail Application No. 1557 of 2024, dt. 21-5-2024) [Reversed]

[‡] Arising out of SLP (Cri) No. 8772 of 2024

— Resultantly, the liberty reserved by Supreme Court vide its second order dt. 4-6-2024, to revive the request of appellant, held, will have to be construed as a liberty given by Supreme Court to revive his prayer afresh after filing of the final complaint/charge-sheet — Resultantly, Supreme Court declined to entertain the preliminary objection and the same rejected — Public Accountability, Vigilance and Prevention of Corruption — Prevention of Corruption Act, 1988 — Ss. 7, 7-A, 8 and 12 — Penal Code, 1860 — Ss. 420, 201 and 120-B — Economic Offences — Prevention of Money Laundering Act, 2002 — Ss. 3, 19 and 45 — Criminal Procedure Code, 1973, Ss. 436-A and 439 (Paras 24 to 32)

Held :

When the appellant approached the Supreme Court in the second round and when the second order was passed by the Supreme Court on 4-6-2024, a period of 7 months and 4 days had elapsed from the date of the first order of the Supreme Court. However, the Supreme Court took into consideration the statement of the Solicitor General that the investigation would be concluded and final complaint/charge-sheet would be filed expeditiously and at any rate on or before 3-7-2024 and thereafter, the trial court would be free to proceed with the trial. It, after observing that “having regard to the fact that the period of 6-8 months fixed by the Supreme Court in its first order having not come to an end”, disposed of the petitions with liberty to the appellant to revive his prayer afresh after filing of the final complaint/charge-sheet. (Para 28)

Thus Supreme Court had granted liberty to the appellant to revive his prayer after filing of the charge-sheet. Now, relegating the appellant to again approach the trial court and thereafter the High Court and only thereafter the Supreme Court, would be making him play a game of “Snakes and Ladders”. The trial court and the High Court have already taken a view and in our view relegating the appellant again to the trial court and the High Court would be an empty formality. In a matter pertaining to the life and liberty of a citizen which is one of the most sacrosanct rights guaranteed by the Constitution, a citizen cannot be made to run from pillar to post. (Para 30)

Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : (2023) 21 ITR-OL 1; *Prabir Purkayastha v. State (NCT of Delhi)*, (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573; *Roy V.D. v. State of Kerala*, (2000) 8 SCC 590 : 2001 SCC (Cri) 42, *relied on*

P. Chidambaram v. Enforcement Directorate, (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646; *P. Chidambaram v. CBI*, (2020) 13 SCC 337 : (2020) 4 SCC (Cri) 528; *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465; *Sanjay Chandra v. CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397; *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1; *Surinder Singh v. State of Punjab*, (2005) 7 SCC 387 : 2005 SCC (Cri) 1674; *Kashmira Singh v. State of Punjab*, (1977) 4 SCC 291 : 1977 SCC (Cri) 559; *Pankaj Bansal v. Union of India*, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450; *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 SCC 427 : (2021) 1 SCC (Cri) 834; *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359 : (2000) 245 ITR 360 : (2000) 119 STC 505; *P. Ponnusamy v. State of T.N.*, (2023) 12 SCC 666, *cited*

B. Economic Offences — Prevention of Money Laundering Act, 2002 — Ss. 45, 3 and 19 — Grant of bail — Violation of right of speedy trial and long period of incarceration — Effect of, on provisions of S. 45 of the PMLA — Case earlier travelled two rounds before the trial court, High Court and Supreme Court — By filing SLPs, in the third round, appellant sought bail in connection with FIR registered by CBI and complaint filed by ED in regard to irregularities in the framing and implementation of Delhi's Excise Policy for the year 2021-2022

a

— In the first round of litigation, in its first common order dt. 30-10-2023, the Supreme specifically observed that in case of delay coupled with incarceration for a long period and depending on the nature of the allegations, the right to bail will have to be read into S. 439 CrPC and S. 45 of the PMLA — Right to speedy trial invoked — Hence, when the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, would be guided to exercise the power to grant bail

b

c

— Resultantly, provisions of S. 45 of the PMLA, held, would not come in the way of consideration of prayer for grant of bail — Vide said first order, appellant permitted to move a fresh application for bail in case of change in circumstances, or in case the trial is protracted and proceeded at a snail's pace in next three months affecting to right to speedy trial

d

— Courts below rejected the claim of appellant applying the triple test as contemplated under S. 45 of the PMLA — This held in ignorance of the observations made in the first order, wherein Supreme Court specifically observed that right to bail in cases of delay coupled with incarceration for a long period should be read into S. 439 CrPC and S. 45 of the PMLA — Further, finding by the Courts below while holding appellant responsible for delaying the trial, also not supported by the record

e

— Held, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, appellant was deprived of his right to speedy trial — Further, considering number of witnesses being 493, thousands of pages of documents and over a lakh pages of digitised documents, there held no possibility of the trial being concluded in the near future — Held, keeping appellant behind bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Art. 21 — Resultantly, appellants directed to be released on bail subject to certain conditions — Public Accountability, Vigilance and Prevention of Corruption — Prevention of Corruption Act, 1988 — Ss. 7, 7-A, 8 and 12 — Penal Code, 1860 — Ss. 420, 201 and 120-B — Criminal Procedure Code, 1973 — Ss. 436-A and 439 — Constitution of India, Arts. 20, 21, 22 and 136 (Paras 34, 37, 38, 41 to 50 and 53 to 57)

f

g

Held :

If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any

h

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other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime. (Para 50)

a

In the present case, in ED matter as well as CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitised documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. Prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial. (Para 53)

b

Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) 9 SCC 813 : (2025) 1 SCC (Cri) 222; *R. v. Rose*, (1898) 18 Cox CC 717, *relied on*

Gudikanti Narasimhulu v. High Court of A.P., (1978) 1 SCC 240 : 1978 SCC (Cri) 115, *affirmed*

c

Manish Sisodia v. CBI, (2024) 12 SCC 691; *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine SC 1498, *considered*

Manish Sisodia v. Enforcement Directorate, 2024 SCC OnLine Del 3731, *reversed*

Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465; *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1; *Ramkripal Meena v. Enforcement Directorate*, (2024) 12 SCC 682; *Ram Kripal v. State of Rajasthan*, (2024) 12

d

SCC 686; *Hussainara Khatoon (1) v. State of Bihar*, (1980) 1 SCC 81 : 1980 SCC (Cri) 23; *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713; *R. v. Rose*, (1898) 18 Cox CC 717; *Manish Sisodia v. CBI*, (2023) 2 HCC (Del) 763; *Manish Sisodia v. Enforcement Directorate*, (2023) 4 HCC (Del) 66; *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine SC 2274, *referred to*

C. Economic Offences — Prevention of Money Laundering Act, 2002 — S. 45 — Denial of bail — Necessity of suffering incarceration for the specified period, if required under S. 436-A CrPC — Held, S. 436-A CrPC should not be construed as a mandate that an accused should not be granted bail under the PMLA till he has suffered incarceration for the specified period — Criminal Procedure Code, 1973, S. 436-A (Para 26)

e

Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : (2023) 21 ITR-OL 1, *relied on*

f

D. Criminal Procedure Code, 1973 — Ss. 173, 207 and 208 — Right to inspect documents including the “un-relied upon documents” — Entitlement to reasonable time — There found around 69,000 pages of documents involved in both CBI and ED matters — Considering huge magnitude of the documents involved, accused, held, entitled to take a reasonable time for inspection of the said documents

g

— Held, in order to avail the right to fair trial, the accused cannot be denied the right to inspection of the documents including the “un-relied upon documents” — Public Accountability, Vigilance and Prevention of Corruption — Prevention of Corruption Act, 1988 — Ss. 7, 7-A, 8 and 12 — Penal Code, 1860 — Ss. 420, 201 and 120-B — Criminal Procedure Code, 1973 — Ss. 436-A and 439 — Constitution of India — Art. 21 — Right to fair trail (Para 45)

h

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E. Criminal Procedure Code, 1973 — S. 439 — Grant of bail — Plea of probability of tampering with evidence — Held, not available, when the case found largely depending on documentary evidence and same found already seized by the prosecution (Para 56)

Appeals allowed

SK-D/71806/SR

Advocates who appeared in this case :

Dr Abhishek Manu Singhvi and Vikram Chaudhary, Senior Advocates [Vivek Jain (Advocate-on-Record), Mohd. Irshad, Rajat Bhardwaj, Amit Bhandari, Ms Suchitra Kumbhat, Karan Sharma, Rajat Jain, Sadiq Noor, Ms Arveen, Mohit Siwach, Kaustubh Khanna and Rishikesh, Advocates], for the Appellant;

Suryaprakash V. Raju, Additional Solicitor General [Mukesh Kr. Maroria (Advocate-on-Record), Zoheb Hussain, Annam Venkatesh, Vivek Gurnani, Ms Aakriti Mishra, Arvind Kr. Sharma (Advocate-on-Record), Ms Abhipriya, Samrat Goswami, Hitarth Raja, Harsh Paul Singh, Gaurav Sarkar, Animesh Upadhyay, Sathvik Reddy, Vivek Gaurav, Suradhis Vats, Kshitiz Agarwal, Ms Shweta Desai and Ms Nidhi Saini, Advocates], for the Respondent.

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27. (1898) 18 Cox CC 717, *R. v. Rose* 680a

c The Judgment of the Court was delivered by

B.R. GAVAI, J.— Leave granted. Appeals heard on merits. The present appeals challenge the judgment and order dated 21-5-2024¹ passed by the learned Single Judge of the High Court of Delhi at New Delhi in Bail Applications Nos. 1557 and 1559 of 2024, thereby rejecting the said applications filed by the present appellant for grant of bail. The aforesaid two applications were filed seeking bail in connection with ED Case No. HIU-II/14/2022 registered against the appellant by the Directorate of Enforcement (for short “ED”) and First Information Report (FIR) No. RC0032022A0053 of 2022 registered against the appellant by the Central Bureau of Investigation (for short “CBI”).

e 2. FIR No. RC0032022A0053 of 2022 came to be registered by CBI on 17-8-2022, and ED Case No. HIU-II/14/2022 came to be registered by ED on 22-8-2022. Since both the cases arise out of similar facts, the latter being the predicate offence and the former being a case registered on the basis of the predicate offence, both these appeals are heard and decided together.

f *Facts in brief*

3. The present case travelled two rounds before the trial court, the High Court and this Court. This is now the third round before this Court wherein the appellant is seeking bail in connection with the aforesaid two cases.

g 4. On the basis of a Letter dated 20-7-2022 addressed by Shri Vinai Kumar Saxena, the Lieutenant Governor of Delhi, alleging irregularities in the framing and implementation of Delhi’s Excise Policy for the year 2021-2022, the Director, Ministry of Home Affairs had directed an enquiry into the said matter vide Office Memorandum dated 22-7-2022. On 26-2-2023, the appellant came to be arrested by CBI. Subsequently, the appellant was arrested by ED on 9-3-2023.

h

1 *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine Del 3731

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5. After investigation, CBI filed charge-sheet on 25-4-2023 for the offences punishable under Sections 7, 7-A, 8 and 12 of the Prevention of Corruption Act, 1988 (for short “the PC Act”) read with Sections 420, 201 and 120-B of the Penal Code, 1860 (for short “IPC”). Upon completion of investigation, ED filed a complaint under Section 3 of the Prevention of Money Laundering Act, 2002 (for short “PMLA”) on 4-5-2023.

6. The first application for regular bail of the appellant in CBI matter came to be rejected by the High Court on 30-5-2023². Subsequently, the first application for regular bail of the appellant in ED matter came to be rejected by the High Court on 3-7-2023³. This Court, vide common order dated 30-10-2023⁴ (hereinafter referred to as “the first order of this Court”) rejected the regular bail applications of the appellant in CBI matter and ED matter, with certain observations which we will refer to in the subsequent paragraphs.

7. Subsequently, in view of the liberty granted by this Court, the appellant filed second bail application before the trial court on 27-1-2024. In the said proceedings, the appellant was granted interim protection. However, by an order dated 30-4-2024, the trial court rejected the said bail application on the ground that there was no change in the circumstances.

8. The appellant thereafter filed second bail application before the High Court on 2-5-2024. Vide impugned judgment and order dated 21-5-2024¹, the learned Single Judge of the High Court rejected the said bail application also. Being aggrieved thereby, the appellant had approached this Court by filing Special Leave Petitions (Criminal) Nos. 7795 and 7799 of 2024.

9. The matter was heard on 4-6-2024⁵. This Court, in the said order (hereinafter referred to as “the second order of this Court”) recorded the submissions of the learned Solicitor General that the investigation would be concluded and final complaint/charge-sheet would be filed expeditiously and at any rate on or before 3-7-2024 and immediately thereafter, the trial court would be free to proceed with the trial. This Court recorded the submissions made by the learned Solicitor General and observed that having regard to the fact that the period of “6-8 months” fixed by this Court by order dated 30-10-2023⁴ had not yet come to an end, disposed of the said petition with liberty to revive his prayer afresh after filing of the final complaint/charge-sheet.

10. Accordingly, after filing of the final complaint/charge-sheet, the appellant has approached this Court by way of the present appeals. This Court, vide order dated 16-7-2024⁶ had issued notice. In response thereto, counter-affidavit has been filed on behalf of ED as well as CBI opposing the present appeals.

2 *Manish Sisodia v. CBI*, (2023) 2 HCC (Del) 763 : 2023 SCC OnLine Del 3231

3 *Manish Sisodia v. Enforcement Directorate*, (2023) 4 HCC (Del) 66 : 2023 SCC OnLine Del 3770

4 *Manish Sisodia v. CBI*, (2024) 12 SCC 691

1 *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine Del 3731

5 *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine SC 1498

6 *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine SC 2274

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11. We have extensively heard Dr Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the appellant and Shri Suryaprakash V. Raju, learned Additional Solicitor General (ASG) appearing on behalf of the respondents.

12. A preliminary objection has been raised on behalf of the learned ASG that the appellant cannot be permitted to file second set of SLPs to challenge the order of the High Court dated 21-5-2024¹ when the earlier SLPs arising out of the same order were disposed of. He submitted that the liberty granted by this Court vide order dated 4-6-2024⁵ has to be construed as a liberty to apply to the trial court afresh. It is submitted that, only after the appellant approaches the trial court and in the event he does not succeed before the trial court, thereafter he approaches the High Court and in the event he also does not succeed before the High Court, then only he would be entitled to approach this Court. He therefore submitted that the present appeals deserve to be rejected thereby relegating the appellant to approach the trial court afresh. To buttress his submission, Shri Raju relied on the judgment of this Court in *Kunhayammed v. State of Kerala*⁷.

13. The said preliminary objection has been opposed by Dr Singhvi, learned Senior Counsel appearing on behalf of the appellant contending that this Court had specifically, vide its first order dated 30-10-2023⁴, granted liberty to the appellant to move a fresh application for bail in case the trial does not conclude within next 6-8 months and also in case the trial is protracted and proceeds at a snail's pace in next three months. He submitted that, admittedly, the trial has not been concluded within a period of 6-8 months from the date of the first order⁴ of this Court. He further submitted that the record would show that the trial was protracted and proceeded at a snail's pace in the period of three months after the first order⁴ of this Court was passed. He submitted that the second order⁵ of this Court clearly reserves the right of the appellant to revive the request afresh after filing of the final complaint/charge-sheet as assured by the learned Solicitor General. Dr Singhvi therefore prays for rejection of the preliminary objection.

14. On merits, Dr Singhvi submitted that this Court, vide its first order dated 30-10-2023⁴, has given various findings in favour of the appellant. It is submitted that a perusal of the same would clearly reveal that at number of places, this Court has given findings which would show that the respondents have not been in a position to make out a prima facie case. Dr Singhvi further submitted that a perusal of the record would reveal that even the investigation in the case is not complete. He therefore submitted that unless the investigation is complete, the trial cannot proceed. He submitted that three more supplementary complaints have been filed on 10-5-2024, 17-5-2024 and 20-6-2024 in ED

¹ *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine Del 3731

⁵ *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine SC 1498

⁷ (2000) 6 SCC 359 : (2000) 245 ITR 360 : (2000) 119 STC 505 : 2000 INSC 339

⁴ *Manish Sisodia v. CBI*, (2024) 12 SCC 691

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matter and as on 27-7-2024, there were 40 persons who have been arrayed as accused in the proceedings with more than 8 complaints. He further submitted that, in ED matter, ED has cited 224 witnesses and produced 32,000 pages of documents. He further submitted that, in CBI matter, CBI has cited 269 witnesses and produced around 37,000 pages of documents. It is therefore submitted that in all there are 493 witnesses, excluding the ones in the 4th supplementary charge-sheet filed by CBI, who will have to be examined and that in total the documents are running into around 69,000 pages.

15. Dr Singhvi submitted that ED has deliberately concealed the documents it acquired during investigation by putting documents exculpating the accused persons in the category of “un-relied upon documents”. It is submitted that, as such, it was necessary for the appellant to inspect such “un-relied upon documents”. He further submitted that there was an inordinate delay on the part of ED and CBI in producing the list of “un-relied upon documents”.

16. Dr Singhvi submitted that taking into consideration the voluminous number of witnesses and documents, there is no possibility of the trial seeing the light of the day and therefore the appeals filed by the appellant deserve to be allowed.

17. Shri Raju vehemently opposed the present appeals. He submitted that this Court, in its first order⁴, after enumerating various factors on merits of the matter in para 28 of *Manish Sisodia case*⁴ has held that the Court was not inclined to accept the prayer for grant of bail. It is therefore submitted that the appeals of the present appellant on merits were specifically rejected.

18. Shri Raju further submitted that though the Court granted liberty to file a fresh application in the circumstances enumerated in para 36 of *Manish Sisodia case*⁴, it was held that the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail applications including the said first order⁴. It is therefore submitted that the trial court as well as the High Court were required to take into consideration the merits of the matter. However, the present appellant opposed the consideration of the application on merits and insisted on consideration of the application only on the ground of delay in trial. It is therefore submitted that both the courts have rightly considered the merits of the matter and after considering the merits, found that the appellant was not entitled to grant of bail. He submitted that no interference would be warranted.

19. Shri Raju submitted that the trial court and the High Court have specifically come to a finding that the appellant has delayed the pre-charge proceedings by taking recourse to the provisions of Section 207 of the Criminal Procedure Code, 1973 (for short “CrPC”). He submitted that more than hundred applications have been filed out of which many are under Section 207 CrPC. These applications have been filed only for the purpose of delaying the trial. It is submitted that though in view of the law laid down by this Court in *P. Ponnusamy v. State of T.N.*⁸, such applications could have been filed only after

⁴ *Manish Sisodia v. CBI*, (2024) 12 SCC 691

⁸ (2023) 12 SCC 666 : 2022 INSC 1177

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a framing of the charges, the same have been intentionally filed at a pre-charge stage of the trial, so as to delay the framing of the charges. He submitted that though the appellant is entitled to file an application for discharge, the same has not been filed only in order to protract the trial. He submitted that the totality of the circumstances would reveal that it is the appellant who has been protracting the trial. It is submitted that as the appellant himself is responsible for protracting the trial, he cannot be permitted to take the benefit of the same.

b **20.** The learned ASG submitted that unless the triple conditions as stipulated under Section 45 of the PMLA are satisfied, no person accused of an offence shall be released on bail. It is submitted that, in the present case, this Court itself by the first order⁴ has found that the appellant was not entitled for bail on merits and as such, the second condition stipulated under Section 45 of the PMLA that there are reasonable grounds for believing that he is not guilty of such offence, would not be satisfied in the present case.

c **21.** The learned ASG further submitted that the appellant is a very influential person having occupied the office of Deputy Chief Minister of Delhi when the crime was committed. He submitted that if the appellant is released on bail, there is every possibility of him influencing the witnesses or tampering with the evidence.

d **22.** Dr Singhvi, in rejoinder, has submitted that the contention that the trial is being delayed due to the applications being filed by the appellant under Section 207 CrPC is totally incorrect. He submitted that the said applications were required to be filed since the prosecution had not placed on record the documents exculpating the accused persons by placing the same in the category of “un-relied upon documents”. He submitted that in order to avail the right of a fair trial and in adherence to the principles of natural justice as encapsulated in Section 207 CrPC, the appellant was forced to file such applications. However, each of these applications were vehemently opposed by the prosecution. It is submitted that the said material ought to have been placed on record by the prosecution themselves, however, for the reasons best known to the prosecution, they have not done so. He submitted that the appellant has filed only 14 applications in ED case and 13 applications in CBI case and that all these applications have been allowed by the learned trial Judge. He *e* *f* lastly submitted that even as per the prosecution, if the entire “un-relied upon documents” are to be supplied in digital form, it will take a long time. To support his submission, Dr Singhvi places reliance on the compliance report dated 7-5-2024 filed by the Assistant Director of ED which would fortify this position.

Consideration of preliminary objection

g **23.** We will first deal with the preliminary objection of the learned ASG with regard to the filing of the second set of appeals before this Court challenging the order of the High Court dated 21-5-2024¹ i.e. on the point of maintainability.

h

⁴ *Manish Sisodia v. CBI*, (2024) 12 SCC 691

¹ *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine Del 3731

24. Undisputedly, the appellant had earlier challenged the same order dated 21-5-2024¹ vide SLPs (Criminal) Nos. 7795 and 7799 of 2024. On doing so, a Division Bench of this Court passed the order dated 4-6-2024⁵. It will be apposite to refer to the observations made by this Court in the said order, which read thus: (*Manish Sisodia case*⁵, SCC OnLine SC paras 5-7)

“5. Though, elaborate arguments have been made, we do not propose to go into the said arguments or dwell upon it and then record our reasons for the simple reason that the coordinate Bench while dismissing the appeals vide order dated 30-10-2023⁴, as noticed hereinabove has granted liberty to the appellant i.e. the petitioner herein to move a fresh application for bail by placing reliance on the assurance given on behalf of the prosecution that they would conclude the trial by taking appropriate steps within next 6-8 months and as such the liberty was extended to the petitioner herein to move a fresh application in case of change in circumstances, or in case the trial is protracted and proceeds at a snail’s pace in next three months. It was also observed that if such an application is filed in the aforesaid circumstances, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail application including the judgment of this Court.

6. Shri Tushar Mehta, learned Solicitor General on instructions would submit that the investigation would be concluded and final complaint/charge-sheet would be filed expeditiously and at any rate on or before 3-7-2024 and immediately thereafter, the trial court will be free to proceed with trial. In the light of the said submissions made and having regard to the fact that the period of “6-8 months” fixed by this Court by order dated 30-10-2023⁴ having not come to an end, it would suffice to dispose of these petitions with liberty to the petitioner to revive his prayer afresh after filing of the final complaint/charge-sheet as assured by the learned Solicitor General. Needless to state that in the event of such an application being filed, the same would be considered on its own merits as already observed by this Court vide para 36 (supra). Contentions of both parties kept open.

7. Accordingly, these petitions stand disposed of. All pending applications consigned to record.”

25. Before considering the submissions of the learned ASG with regard to maintainability of the present appeals on account of the second order⁵ of this Court, it will be apposite to refer to certain observations made by this Court in its first order⁴, which read thus: (*Manish Sisodia case*⁴, SCC paras 29-36)

“29. However, we are also concerned about the prolonged period of incarceration suffered by the appellant — Manish Sisodia. In *P. Chidambaram v. Enforcement Directorate*⁹, the appellant therein was

1 *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine Del 3731

5 *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine SC 1498

4 *Manish Sisodia v. CBI*, (2024) 12 SCC 691

9 (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646

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a granted bail after being kept in custody for around 49 days¹⁰, relying on the Constitution Bench in *Gurbaksh Singh Sibbia v. State of Punjab*¹¹, and *Sanjay Chandra v. CBI*¹², that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court.

b 30. Again, in *Satender Kumar Antil v. CBI*¹³, this Court referred to *Surinder Singh v. State of Punjab*¹⁴ and *Kashmira Singh v. State of Punjab*¹⁵, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution.

c 31. In *Vijay Madanlal Choudhary*¹⁶, this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability.¹⁷

d 32. *Vijay Madanlal Choudhary*¹⁶, also held that Section 436-A of the Code¹⁸ can apply to offences under the PML Act, as it effectuates

10 In *P. Chidambaram v. CBI*, (2020) 13 SCC 337 : (2020) 4 SCC (Cri) 528, the appellant therein was granted bail after being kept in custody for around 62 days.

11 (1980) 2 SCC 565 : 1980 SCC (Cri) 465

e 12 (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397

13 (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1

14 (2005) 7 SCC 387 : 2005 SCC (Cri) 1674

15 (1977) 4 SCC 291 : 1977 SCC (Cri) 559

16 *Vijay Madanlal Choudhary v. Union of India*, (2023) 12 SCC 1 : (2023) 21 ITR-OL 1

17 See Also *Pankaj Bansal v. Union of India*, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450

18 436-A of the Code reads:

f “**436-A. Maximum period for which an undertrial prisoner can be detained.**—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

g Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

h *Explanation.*—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436-A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court in *Arnab Manoranjan Goswami v. State of Maharashtra*¹⁹, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.

33. The appellant Manish Sisodia has argued that given the number of witnesses, 294 in the prosecution filed by CBI and 162 in the prosecution filed by the DoE, and the documents 31,000 pages and 25,000 pages respectively, the fact that CBI has filed multiple charge-sheets, the arguments of charge have not commenced. The trial court has allowed application of the accused for furnishing of additional documents, which order has been challenged by the prosecution under Section 482 of the Code before the High Court. It was stated at the Bar, on behalf of the prosecution that the said petition under Section 482 will be withdrawn. It was also stated at the Bar, by the prosecution that the trial would be concluded within next six to eight months.

34. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnapping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven.

35. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.

36. In view of the assurance given at the Bar on behalf of the prosecution that they shall conclude the trial by taking appropriate steps within next six to eight months, we give liberty to the appellant Manish Sisodia to move a fresh application for bail in case of change in circumstances, or in case the trial is protracted and proceeds at a snail's pace in next three months. If any application for bail is filed in the above

19 (2021) 2 SCC 427 : (2021) 1 SCC (Cri) 834

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a circumstances, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail application, including the present judgment. Observations made above, *re.* : right to speedy trial, will, however, be taken into consideration. The appellant Manish Sisodia may also file an application for interim bail in case of ill health and medical emergency due to illness of his wife. Such application would be also examined on its own merits.”

b 26. A perusal of the aforesaid would reveal that this Court was concerned about the prolonged period of incarceration suffered by the appellant. After considering various earlier pronouncements, this Court emphasised that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. Relying on *Vijay Madanlal Choudhary v. Union of India*¹⁶, this Court observed that Section 436-A CrPC should not be construed as a mandate that an accused should not be granted bail under the PMLA till he
c has suffered incarceration for the specified period. This Court recorded the assurance given by the prosecution that they shall conclude the trial by taking appropriate steps within next 6-8 months. This Court, after recording the said submissions, granted liberty to the appellant to move a fresh application for bail in case of change in circumstances or in case the trial was protracted and proceeded at a snail’s pace in next three months. This Court observed that if
d any application was filed, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail applications including its own judgment. It further observed that the observations made regarding the right to speedy trial will be taken into consideration.

e 27. Since the trial proceeded at a snail’s pace in the period after three months of the first order⁴ of this Court, the appellant filed the second application for bail before the trial court. The same came to be rejected by the trial court on 30-4-2024. It can thus be seen that it took a period of almost three months for the trial court to decide the said application. By the time the appellant approached the High Court, a period of more than six months had elapsed from the date on which the first order⁴ of this Court was passed. The
f same also came to be rejected on 21-5-2024¹.

g 28. When the appellant approached this Court in the second round and when the second order was passed by this Court on 4-6-2024⁵, a period of 7 months and 4 days had elapsed from the date of the first order⁴ of this Court. However, this Court took into consideration the statement of the learned Solicitor General that the investigation would be concluded and final
h complaint/charge-sheet would be filed expeditiously and at any rate on or before 3-7-2024 and thereafter, the trial court would be free to proceed with the trial. It, after observing that “having regard to the fact that the period of 6-8 months fixed by this Court in its first order⁴ having not come to an end”,

16 (2023) 12 SCC 1 : (2023) 21 ITR-OL 1

4 *Manish Sisodia v. CBI*, (2024) 12 SCC 691

1 *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine Del 3731

5 *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine SC 1498

disposed of the petitions with liberty to the appellant to revive his prayer afresh after filing of the final complaint/charge-sheet.

29. It could thus be seen that this Court had granted liberty to the appellant to revive his prayer after filing of the charge-sheet. Now, relegating the appellant to again approach the trial court and thereafter the High Court and only thereafter this Court, in our view, would be making him play a game of “Snakes and Ladders”. The trial court and the High Court have already taken a view and in our view relegating the appellant again to the trial court and the High Court would be an empty formality. In a matter pertaining to the life and liberty of a citizen which is one of the most sacrosanct rights guaranteed by the Constitution, a citizen cannot be made to run from pillar to post.

30. A careful reading of the second order of this Court dated 4-6-2024⁵ would show that this Court recorded that *they did not propose to go into the arguments or dwell upon it* in view of the liberty granted in the first order⁴ of this Court. Thereafter, this Court noticed the assurance of the learned Solicitor General that the investigation would be concluded and final complaint/charge-sheet would be filed at any rate on or before 3-7-2024. This Court further observed in its second order⁵ that since the period of 6-8 months fixed by it in its first order⁴ had not come to an end, it was inclined to dispose of this petition *with liberty to the appellant to revive his prayer*. It will be a travesty of justice to construe that the carefully couched order preserving the right of the appellant to revive his prayer for grant of special leave against the High Court order, to mean that he should be relegated all the way down to the trial court. The memorable adage, that procedure is a handmaiden and not a mistress of justice rings loudly in our ears.

31. In this respect, we may also gainfully refer to one of the recent pronouncements by a Bench of this Court to which one of us (B.R. Gavai, J.) was a member in *Prabir Purkayastha v. State (NCT of Delhi)*²⁰, which reads thus: (SCC p. 276, para 20)

“20. The right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to following observations made by this Court in *Roy V.D. v. State of Kerala*²¹: (SCC p. 593, para 7)

‘7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection

⁵ *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine SC 1498

⁴ *Manish Sisodia v. CBI*, (2024) 12 SCC 691

²⁰ (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573

²¹ (2000) 8 SCC 590 : 2001 SCC (Cri) 42

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of life and personal liberty not only to citizens of India but also to aliens.’ ”

- a* **32.** In our view, the liberty reserved by this Court vide its second order⁵, to revive the request of the appellant will have to be construed as a liberty given by this Court to revive his prayer afresh after filing of the final complaint/charge-sheet. Undisputedly, the present appeals have been filed after the final complaint/charge-sheet has been filed by the respondents. In that view of the matter, we are not inclined to entertain the preliminary objection and the same is rejected.
- b*

Consideration as to whether the appellant is entitled for bail

33. Having rejected the preliminary objection, we will proceed to consider as to whether in the facts and circumstances of the present case, the appellant is entitled to grant of bail or not.

- c* **34.** Insofar as the contention of the learned ASG that since the conditions as provided under Section 45 of the PMLA are not satisfied, the appellant is not entitled to grant of bail is concerned, it will be apposite to refer to the first order⁴ of this Court. No doubt that this Court in its first order⁴ in para 28, after recapitulating in para 27 as to what was stated in the charge-sheet filed by CBI against the appellant, observed that, in view of the aforesaid discussion, the Court was not inclined to accept the prayer for grant of bail at that stage.
- d* However, certain paragraphs of the said order cannot be read in isolation from the other paragraphs. The order will have to be read in its entirety. In para 36 of the said order, this Court observed that the right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 CrPC and Section 45 of the PMLA.
- e* The Court held that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted that he be ensured and given a speedy trial. It further observed that when the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, would be guided to exercise the power to grant bail. The Court specifically observed that this would be true where the trial would take years. It could thus clearly be seen that this Court, in the first round of litigation
- f* between the parties, has specifically observed that in case of delay coupled with incarceration for a long period and depending on the nature of the allegations, the right to bail will have to be read into Section 45 of PMLA.

- g* **35.** A Division Bench of this Court in *Ramkripal Meena v. Enforcement Directorate*²² was considering an application of the petitioner therein who was to receive a bribe of rupees five crore and from whom, an amount of Rs 46,00,000 was already recovered. In the said case, the petitioner was arrested on 26-1-2022 in connection with FIR No. 402 of 2021 registered against him for the offences punishable under Sections 406, 420, 120-B IPC and Sections 4/6 of the Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992.

h ⁵ *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine SC 1498

⁴ *Manish Sisodia v. CBI*, (2024) 12 SCC 691

²² (2024) 12 SCC 682

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He was released on bail by this Court vide order dated 18-1-2023²³. Thereafter, the petitioner was arrested by ED on 21-6-2023.

36. The Court observed thus: (*Ram Kripal case*²³, SCC para 7)

“7. Adverting to the prayer for grant of bail in the instant case, it is pointed out by learned counsel for ED that the complaint case is at the stage of framing of charges and 24 witnesses are proposed to be examined. The conclusion of proceedings, thus, will take some reasonable time. The petitioner has already been in custody for more than a year. Taking into consideration the period spent in custody and there being no likelihood of conclusion of trial within a short span, coupled with the fact that the petitioner is already on bail in the predicate offence, and keeping in view the peculiar facts and circumstances of this case, it seems to us that the rigours of Section 45 of the Act can be suitably relaxed to afford conditional liberty to the petitioner. Ordered accordingly.”

37. In the light of the specific observations of this Court in para 34 of the first order⁴, we are not inclined to accept the submission of the learned ASG that the provisions of Section 45 of the PMLA would come in the way of consideration of the application of the appellant for grant of bail.

38. From the first order⁴ of this Court, it would be clear that an assurance was given at the Bar on behalf of the prosecution that they shall conclude the trial by taking appropriate steps within next 6-8 months. In view of the said statement, this Court did not consider the application of the appellant for bail at that stage, however, granted liberty to the appellant to move a fresh application for bail in case of change in circumstances, or in case the trial is protracted and proceeded at a snail's pace in next three months. Though, this Court observed that if any application for bail was filed on the grounds mentioned in para 36 of *Manish Sisodia case*⁴, the same would be considered by the trial court without being influenced by the dismissal of the earlier bail applications including the present judgment, however, it clarified that the observations made by the Court with regard to right to speedy trial would be taken into consideration. The liberty was also granted to the appellant to file an application for interim bail in case of ill health and medical emergency due to illness of his wife.

39. A perusal of the impugned judgment and order¹ would reveal that though the learned Single Judge of the High Court has dismissed the applications for bail on merits, on medical grounds, it has permitted the appellant to visit his residence to meet his wife in custody once every week.

40. It could thus clearly be seen that this Court expected the trial to be concluded within a period of 6-8 months. The liberty was reserved to approach afresh if the trial did not conclude within the period of 6-8 months. The liberty was also granted in case the trial proceeded at a snail's pace in next three months.

23 *Ram Kripal v. State of Rajasthan*, (2024) 12 SCC 686

4 *Manish Sisodia v. CBI*, (2024) 12 SCC 691

1 *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine Del 3731

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41. A perusal of the material placed on record would clearly reveal that far from the trial being concluded within a period of 6-8 months, it is even yet to commence. Though in the first order⁴ of this Court, liberty was reserved to move afresh for bail if the trial proceeded at a snail's pace within a period of three months from the date of the said order, the commencement of the trial is yet to see the light of the day. In these circumstances, in view of the first order⁴ of this Court, the appellant was entitled to renew his request. When the appellant renewed his request, the learned Special Judge (trial court) as well as the High Court was required to consider the said applications in the light of the observations made by this Court in paras 34 and 36 of the first order⁴. In para 36 of the first order⁴, this Court specifically observed that though the observations on the aspect of merit were not binding, the observations of right to speedy trial were required to be taken into consideration.

42. The learned Special Judge and the learned Single Judge of the High Court have considered the applications on merits as well as on the grounds of delay and denial of right to speedy trial. We see no error in the judgments and orders of the learned Special Judge as well as the High Court in considering the merits of the matter. In view of the observations made by this Court in the first order⁴, they were entitled to consider the same. However, the question that arises is as to whether the trial court and the High Court have correctly considered the observations made by this Court with regard to right to speedy trial and prolonged period of incarceration. The courts below have rejected the claim of the appellant applying the triple test as contemplated under Section 45 of the PMLA. In our view, this is in ignorance of the observations made by this Court in para 34 of the first order⁴ wherein this Court specifically observed that right to bail in cases of delay coupled with incarceration for a long period should be read into Section 439 CrPC and Section 45 of the PMLA.

43. The trial court, in its order, has held that the appellant individually and along with different accused persons have been filing one or the other applications/making oral submissions frequently. It further observed that some of them were frivolous. It was observed that this was apparently done as a concerted effort for accomplishing the shared purpose of causing delay in the matter. The trial court therefore rejected the contention of the appellant that he had not contributed to delay in proceedings or that the case has been proceeding at a snail's pace. However, in the very subsequent paragraph i.e. para 80, the court observed that, in order to avoid any delay and considering the time being taken by the counsel for the accused in inspecting the "un-relied upon documents", it had vide order dated 18-4-2024 put a query to the prosecution if the entire "un-relied upon documents" can be provided to the accused persons in a digitised form. It further recorded that ED accepted the suggestion that it would expedite the proceedings. However, some time was sought to consider the same. A perusal of the compliance report filed by the Assistant Director of ED dated 7-5-2024 which could be found at p. 757 of the paper book would

reveal that the Cyber Lab has informed that it would take 70-80 days to prepare one copy (cloning) of the data contained in the said un-relied digital devices.

44. It could further be seen that, though it has been submitted on behalf of ED that hundreds of applications have been filed for supply of “un-relied upon documents”, the record would not substantiate the said position. Though various applications have been filed by different accused persons, insofar as the present appellant is concerned, he has filed only 13 applications in CBI matter and 14 in ED matter. It would reveal that some of the applications are for seeking permission to meet his wife or permission to file vakalatnama, to put signature on the documents, seeking permission to sign a cheque, etc. Most of the applications are for supply of missing documents and legible copies under Sections 207/208 CrPC. Some of the applications are for inspection of the “un-relied upon documents”. It is pertinent to note that all these applications have been allowed by the learned trial court. It is further pertinent to note that some of these orders were also challenged before the High Court wherein stay was granted. However, a statement was made on behalf of the prosecution before this Court when the first order⁴ was passed that the said petitions filed under Section 482 CrPC would be withdrawn. The said statement is recorded in para 33 of the first order⁴ of this Court. We may state that, when we specifically asked the learned ASG to point out any order wherein the learned trial Judge found any of the applications of the appellant to be frivolous, not a single order could be pointed out.

45. In that view of the matter, we find that the finding of the learned trial Judge that it is the appellant who is responsible for delaying the trial is not supported by the record. The learned Single Judge of the High Court endorses the finding of the trial court on the ground that the accused persons have taken three months’ time from 19-10-2023 to 19-1-2024 for inspection of “un-relied upon documents” despite repeated directions from the learned trial court to conclude the same expeditiously. It is to be noted that there are around 69,000 pages of documents involved in both CBI and ED matters. Taking into consideration the huge magnitude of the documents involved, it cannot be stated that the accused is not entitled to take a reasonable time for inspection of the said documents. In order to avail the right to fair trial, the accused cannot be denied the right to have inspection of the documents including the “un-relied upon documents”.

46. It is further to be noted that a perusal of the second order⁵ of this Court would itself reveal that this Court recorded the submissions of the learned Solicitor General, which were made on instructions, that the investigation would be concluded and final complaint/charge-sheet would be filed expeditiously and at any rate on or before 3-7-2024. Accordingly, 8th charge-sheet has been filed on 28-6-2024 by ED. It could thus be seen that, even according to the respondents, the investigation was to be concluded on or before 3-7-2024. In that view of the matter, we find that the contention raised by the

⁴ *Manish Sisodia v. CBI*, (2024) 12 SCC 691

⁵ *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine SC 1498

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learned ASG is self-contradictory. If the investigation itself was to conclude on or before 3-7-2024, the question is how could the trial have commenced prior to that? If the investigation itself was to conclude after a period of 8 months from the date of the first order⁴ of this Court, there was no question of the trial being concluded within a period of 6-8 months from the date of the first order⁴ of this Court. We find that both the High Court and the trial court have failed to take this into consideration.

47. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.

48. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

49. Recently, this Court had an occasion to consider an application for bail in *Javed Gulam Nabi Shaikh v. State of Maharashtra*²⁴ wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in *Gudikanti Narasimhulu v. High Court of A.P.*²⁵, *Gurbaksh Singh Sibbia v. State of Punjab*¹¹, *Hussainara Khatoon (1) v. State of Bihar*²⁶, *Union of India v. K.A. Najeeb*²⁷ and *Satender Kumar Antil v. CBI*¹³.

50. The Court observed thus: (*Javed Gulam Nabi Shaikh case*²⁴, SCC p. 820, para 17)

“17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

51. The Court also reproduced the observations made in *Gudikanti Narasimhulu*²⁵, which read thus: (*Javed Gulam Nabi Shaikh case*²⁴, SCC p. 816, para 8)

“8. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in *Gudikanti Narasimhulu v. High Court of A.P.*²⁵ We quote (SCC p. 243, para 5):

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⁴ *Manish Sisodia v. CBI*, (2024) 12 SCC 691

²⁴ (2024) 9 SCC 813 : (2025) 1 SCC (Cri) 222

²⁵ (1978) 1 SCC 240 : 1978 SCC (Cri) 115

¹¹ (1980) 2 SCC 565 : 1980 SCC (Cri) 465

²⁶ (1980) 1 SCC 81 : 1980 SCC (Cri) 23

²⁷ (2021) 3 SCC 713 : 2021 INSC 50

¹³ (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1

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‘5. ... What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [*R. v. Rose*²⁸]:

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“I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.” ’ ’

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52. The Court in *Javed Gulam Nabi Shaikh case*²⁴ further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straightforward open-and-shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognise the principle that “bail is rule and jail is exception”.

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53. In the present case, in ED matter as well as CBI matter, 493 witnesses have been named. The case involves thousands of pages of documents and over a lakh pages of digitised documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.

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54. As observed by this Court in *Gudikanti Narasimhulu*²⁵, the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

55. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

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56. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.

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28 (1898) 18 Cox CC 717

24 *Javed Gulam Nabi Shaikh v. State of Maharashtra*, (2024) 9 SCC 813 : (2025) 1 SCC (Cri) 222

25 *Gudikanti Narasimhulu v. High Court of A.P.*, (1978) 1 SCC 240 : 1978 SCC (Cri) 115

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Conclusion

57. In the result, we pass the following order:

a **57.1.** The appeals are allowed;

57.2. The impugned judgment and order dated 21-5-2024¹ passed by the High Court of Delhi in Bail Applications Nos. 1557 and 1559 of 2024 is quashed and set aside;

b **57.3.** The appellant is directed to be released on bail in connection with ED Case No. HIU-II/14/2022 registered against the appellant by ED and FIR No. RC0032022A0053 of 2022 registered against the appellant by CBI on furnishing bail bonds for a sum of Rs 10,00,000 with two sureties of the like amount;

57.4. The appellant shall surrender his passport with the Special Court;

c **57.5.** The appellant shall report to the investigating officer on every Monday and Thursday between 10-11 a.m.; and

57.6. The appellant shall not make any attempt either to influence the witnesses or to tamper with the evidence.

58. Pending application(s), if any, shall stand disposed of in the above terms.

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¹ *Manish Sisodia v. Enforcement Directorate*, 2024 SCC OnLine Del 3731



2024 INSC 739

Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.4011 OF 2024

(Arising out of Special Leave Petition (Crl.) No. 3986 of 2024)

V. Senthil Balaji

... Appellant

versus

**The Deputy Director, Directorate of
Enforcement**

... Respondent

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. Leave granted.
2. This appeal takes exception to the judgment and order dated 28th February 2024 passed by a learned Single Judge of the High Court of Judicature at Madras by which a bail application preferred by the appellant under Section 439 of the Code of Criminal Procedure, 1973 has been rejected. The bail application was filed in connection with an alleged offence under Section 3 of the Prevention of Money Laundering Act,

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Anita Malhotra
Date: 2024.09.26
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2002 (for short, 'the PMLA'), which is punishable under Section 4 of the PMLA.

3. Between 2011 and 2016, the appellant was holding the post of Transport Minister in the Government of Tamil Nadu. Broadly, the allegation against the appellant is that while discharging his duties as a Minister, in connivance with his personal assistant and his brother, he collected large amounts by promising job opportunities to several persons in various positions in the Transport Department. This led to the registering of three First Information Reports against the appellant and others. The said First Information Reports are FIR no.441 of 2015 dated 29th October 2015 (CC Nos. 22 and 24 of 2021), FIR No.298 of 2017 registered on 9th September 2017 (CC No.19 of 2020) and FIR no. 344 dated 13th August 2018 (CC No. 25 of 2020). In the first FIR, six charge sheets have been filed. More than 2000 accused have been named in the charge sheets. 550 witnesses have been named. In the case of the second FIR, there are 14 accused named in the chargesheet. In connection with this FIR, 24 witnesses have been cited. In the third FIR, 24 accused have been named in the charge sheet and 50 prosecution witnesses have been cited. The offences alleged in the aforementioned crimes are mainly under Sections 120B, 419, 420, 467 and 471 of the Indian Penal Code and Sections 7, 12, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Section 34 of the Indian Penal Code has been invoked. These offences are scheduled offences within the meaning of Section 2(y) of

the PMLA. Therefore, relying on the final reports filed in aforementioned scheduled offences, for an offence of money laundering under Section 3 of the PMLA punishable under Section 4, the Enforcement Directorate (ED) registered an Enforcement Case Information Report (for short "ECIR") bearing ECIR No. MDSZO/21/2021 on 29th July 2021.

4. The appellant was arrested on 14th June 2023 in connection with the said ECIR and was remanded to judicial custody. A complaint was filed for the offence under Section 3 of the PMLA Act, which is punishable under Section 4, on 12th August 2023. The appellant is the only accused named in the complaint. Cognizance has been taken based on the complaint by the Special Court under the PMLA. The scheduled offences cases have been transferred to the learned Assistant Sessions Judge, Additional Special Court for Trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu (Special MPMLA Court), Chennai.

SUBMISSIONS

5. Learned senior counsel appearing in support of the appeal pointed out that in this case, ED is relying upon material collected by the investigating agencies investigating the scheduled offences. He submitted that five articles were allegedly seized during the search on 6th February 2020 in the appellant's premises. He invited our attention to the averments made in the complaint and, in particular,

paragraph no.14.5, which deals with incriminating documents relating to money collected for providing jobs in the posts of Drivers, Conductors, Junior Tradesmen, Junior Engineers, Assistant Engineers, etc. He pointed out that the prosecution mainly relies upon a file named CS AC, allegedly found in the seized pen drive. The file allegedly gives details regarding the amounts received against each post. He submitted that the Tamil Nadu Forensic Science Laboratory (TNFSL)'s analysis of the seized pen drive shows that the said file CS AC was not found on the pen drive, and a file named csac.xlsx was found. As regards the allegation of the prosecution of the deposit of cash amount of Rs.1.34 crores in the appellant's bank account, the learned senior counsel urged that said amount represents the income received by way of remuneration as MLA and agriculture income. Learned senior counsel submitted that in any event, all the documents and all relevant electronic evidence have been seized in the predicate offences and statements of the witnesses under Section 50 of the PMLA have been recorded. He submitted that the appellant has undergone incarceration under the PMLA Act for more than 14 months. He pointed out that as far as three predicate offences are concerned, charges have not even been framed. There are more than 2000 accused and 600 prosecution witnesses in the predicate offences and therefore, there is no possibility of trial of scheduled offences getting over in the near future. He submitted that unless the trials pertaining to scheduled offences are concluded, the

complaint under the PMLA cannot be finally decided. He would, therefore, submit that there is no possibility of the trial for the PMLA offence concluding within five to six years and hence, the appellant deserves to be enlarged on bail. The learned senior counsel extensively relied upon a recent decision of this Court in the case of **Manish Sisodia**¹ and especially what is observed in paragraph 54. He submitted that on facts, this case is similar to the case of **Manish Sisodia**¹. He also relied upon a decision of this Court in the case of **Union of India v. K.A. Najeer**².

6. The learned Solicitor General of India and learned counsel appearing for the E.D. have made separate detailed submissions. The first submission is that there is no discrepancy in the description of file name CS AC in the pen drive and the file name of the same file in the TNFSL report dated 31st March 2023, which shows collection of the sum of Rs. 67.74 crores by the appellant for providing employment in the various posts in the Transport Department. He submitted that if the TNFSL report is perused, the document at Sr.No.24 has the same name, CS AC. He submitted that the portion “.xlsx” is only a file extension, which signifies that it is a Microsoft Excel sheet. He submitted that a printout of the Microsoft Excel spreadsheet file with the name CS AC found in the seized pen drive was certified by the Special MPMLA Court, which is relied upon in the complaint. He submitted

1 (2024) SCC OnLine SC 1920

2 (2021) 3 SCC 713.

that at this stage, there is no reason to doubt the correctness of the printout of the file CS AC provided by the Special MPMLA Court. The learned counsel appearing for ED also pointed out that there is no discrepancy in the seizure of the H.P. hard disk. The learned counsel submitted that the salary/remuneration payable to MLAs is directly credited to the bank account of the concerned MLAs. Therefore, there is no question of any cash amount being received on the said count. He pointed out that the appellant claims that there is a cash deposit of salary to the tune of 68 lakhs in his account. He also pointed out that the appellant's agricultural income between 2014 and 2020 is to the tune of Rs. 20.24 lakhs, and therefore, the justification that a substantial part of the deposit of Rs.1.34 crores is his agricultural income must be rejected. Learned counsel pointed out that there is an unexplained cash deposit of Rs. 20.24 lakhs even in the appellant's wife's account.

7. Learned counsel also pointed out other documentary evidence indicating the appellant's involvement in the job racket scam, including the file AC1.xlsx. He pointed out that there is sufficient material on record to show that the posts of Drivers, Conductors, Junior Assistants and Technicians were priced and sold at Rs.1.5 lakhs, Rs.2.0 lakhs, Rs.1.25 lakhs and Rs.4 lakhs, respectively. He submitted that there is material on record to show that an amount of at least Rs.38 crores was collected from candidates by giving them the promise of providing jobs. He submitted that there are a large

number of email communications indicating more than *prima facie* material about the involvement of the appellant. His submission is that, in fact, the twin conditions under clause (ii) of sub-section (1) of Section 45 of the PMLA have not been satisfied in this case.

8. The Learned Solicitor General of India pointed out that three rounds of litigations have travelled to this Court arising out of scheduled offences. He pointed out that the decisions of this Court indicate how the complainants were won over and how a so-called compromise between the complainants and the accused was brought about. He submitted that the appellant had been a minister for a long time in the Tamil Nadu government. He pointed out that he continued to be a Minister without portfolio, even during the first few months of his detention, and that he continues to be a Member of Legislative Assembly (MLA).

9. He submitted that observations made by this Court indicate that the appellant will be able to influence the witnesses if he is enlarged on bail. Learned Solicitor General relied upon a decision of this Court in the case of **P. Dharamraj v. Shanmugam and others**³. He submitted that the High Court's decision to quash one of the scheduled offences based on an alleged compromise between bribe givers and bribe recipients was under scrutiny in the case. He pointed out that this Court heavily came down on such

³ (2022) 15 SCC 136

compromises in the said decision. He relied upon various paragraphs of the said decision. He submitted that the argument of learned senior counsel for the appellant in the said case that one Shri Shanmugam, who is allegedly involved, was not his personal assistant, has been expressly rejected. This Court found that he was working as a personal assistant of the appellant.

10. Learned SG relied upon a decision of this Court in the case of **Y. Balaji v. Karthik Desari and Another**⁴. He pointed out observations made from paragraph 17 onwards of the said decision. He pointed out that this Court objected strongly to not registering offences under the Prevention of Corruption Act, 1988. He pointed out the observations of this Court regarding the compromise entered in the scheduled offence. It was observed that two teams were created just for the record, and an investigation was carried out as if it were a friendly match between the complainants and the accused. This Court further observed that it was only because of the position of the appellant as a Minister that the complainants purported to enter into a compromise. He submitted that there is very strong material on record to show the appellant's involvement in the offence punishable under Section 4 of the PMLA and the predicate offences. He submitted that the appellant brought about such an illegal settlement between bribe givers and bribe receivers. Therefore, there is no manner of doubt that once he comes out, he will influence the

⁴ (2023) SCC OnLine SC 645

witnesses proposed to be examined by the prosecution, as he wields considerable influence in the State due to his political clout.

11. He submitted that though there are a large number of accused and witnesses in the scheduled offences, if a competent special public prosecutor is appointed, perhaps the prosecution may be in a position to drop a large number of witnesses. He submitted that in Misc. Application no.1381 of 2024 arising out of the decision of this Court in Criminal Appeal no.1677 of 2023, there is already a prayer made for the appointment of a special public prosecutor.

12. We have also heard learned senior counsel for the intervenors who supported the ED.

CONSIDERATION OF SUBMISSIONS

13. We have carefully considered the submissions. The main document relied upon by the ED showing incriminatory material against the appellant is a part of the pen drive seized by the State police from the appellant's premises in connection with scheduled offences. The concerned Court dealing with the scheduled offences has provided the printed version of the soft files in the seized pen drive. There is no reason, at this stage, to doubt the authenticity of the soft files. There is also prima facie material to show a deposit of cash amount of Rs.1.34 crores in the appellant's bank account. At this stage, the contention of the appellant

regarding the deposit of remuneration received as MLA and agriculture income cannot be accepted in the absence of any *prima facie* evidence to show the existence of the appellant's cash income as MLA and the appellant's agriculture income. Therefore, at this stage, it will be very difficult to hold that there is no *prima facie* case against the appellant in the complaint under Section 44 (1)(b) of the PMLA and material relied upon therein.

EFFECT OF THE DELAY IN DISPOSAL OF THE CASES

14. As of now, the appellant has been incarcerated for more than 15 months in connection with the offence punishable under Section 4 of the PMLA. The minimum punishment for an offence punishable under Section 4 is imprisonment for three years, which may extend to seven years. If the scheduled offences are under paragraph 2 of Part A of the Schedule in the PMLA, the sentence may extend to 10 years. In the appellant's case, the maximum sentence can be of 7 years as there is no scheduled offence under paragraph 2 of Part A of Schedule II alleged against the appellant.

15. We have already narrated that there are three scheduled offences. In the main case (CC Nos. 22 and 24 of 2021), there are about 2000 accused and 550 prosecution witnesses cited. Thus, it can be said that there are more than 2000 accused in the three scheduled offences, and the number of witnesses proposed to be examined exceeds 600.

16. This Bench is also dealing with MA no.1381 of 2024 seeking various reliefs such as a transfer of investigation of scheduled offences, appointment of special public prosecutor etc. The orders passed in the said application would reveal that the sanction to prosecute all public servants, including the appellant, has now been granted. Charges have not been framed in the scheduled offences.

17. Thus, on the issue of framing of charge or discharge, a large number of accused will have to be heard. The trial of the scheduled offences will be a warrant case. Therefore, even if the trials of the scheduled offences are expedited, the process of framing charges may take a few months as many advocates representing more than 2000 accused persons will have to be heard. There are bound to be further proceedings arising out of orders on charge. After that, more than 600 witnesses will have to be examined. Documentary and electronic evidence is relied upon in the scheduled offences. Even if few witnesses are dropped, a few hundred witnesses will have to be examined. Presence of all the accused will have to be procured and their statements under Section 313 of the Code of Criminal Procedure, 1973 will have to be recorded. Therefore, even in ideal conditions, the possibility of the trial of scheduled offences concluding even within a reasonable time of three to four years appears to be completely ruled out.

18. In the offence under the PMLA, the charge has not been framed. In view of Clause (d) of sub-section (1) of Section 44

of PMLA, the procedure for sessions trial will have to be followed for the prosecution of an offence punishable under Section 4 of the PMLA. In view of clause (c) of sub-section (1) of Section 44, it is possible to transfer the trial of the scheduled offences to the Special Court under the PMLA.

19. The offence of money laundering has been defined under Section 3 of the PMLA which reads thus:

“3. Offence of money-laundering.—

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

[Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property;
or

(f) claiming as untainted property, in
any manner whatsoever;

(ii) the process or activity connected with
proceeds of crime is a continuing activity
and continues till such time a person is
directly or indirectly enjoying the proceeds
of crime by its concealment or possession
or acquisition or use or projecting it as
untainted property or claiming it as
untainted property in any manner
whatsoever.]

20. Existence of proceeds of crime is a condition precedent
for the offence under Section 3. Proceeds of crime have been
defined in Section 2(u) of the PMLA which reads thus:

“2

(u) “proceeds of crime” means any
property derived or obtained, directly or
indirectly, by any person as a result of
criminal activity relating to a scheduled
offence or the value of any such property
or where such property is taken or held
outside the country, then the property
equivalent in value held within the
country [or abroad];

Explanation.—For the removal of doubts,
it is hereby clarified that "proceeds of
crime" include property not only derived
or obtained from the scheduled offence
but also any property which may directly
or indirectly be derived or obtained as a
result of any criminal activity relatable to
the scheduled offence;”

21. Hence, the existence of a scheduled offence is *sine qua non* for alleging the existence of proceeds of crime. A property derived or obtained, directly or indirectly, by a person as a result of the criminal activity relating to a scheduled offence constitutes proceeds of crime. The existence of proceeds of crime at the time of the trial of the offence under Section 3 of PMLA can be proved only if the scheduled offence is established in the prosecution of the scheduled offence. Therefore, even if the trial of the case under the PMLA proceeds, it cannot be finally decided unless the trial of scheduled offences concludes. In the facts of the case, there is no possibility of the trial of the scheduled offences commencing in the near future. Therefore, we see no possibility of both trials concluding within a few years.

22. In the case of **K.A. Najeeb²**, in paragraph 17 this Court held thus:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. **Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down**

where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

(emphasis added)

23. In the case of *Manish Sisodia v. Directorate of Enforcement*¹ in paragraphs 49 to 57, this Court held thus:

“49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.

50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.

51. Recently, this Court had an occasion to consider an application for bail in the case of *Javed Gulam Nabi Shaikh v. State of Maharashtra*⁶ wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act,

1967. This Court surveyed the entire law right from the judgment of this Court in the cases of *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh*⁷, *Shri Gurbaksh Singh Sibbia v. State of Punjab*⁸, *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*⁹, *Union of India v. K.A. Najeeb*¹⁰ and *Satender Kumar Antil v. Central Bureau of Investigation*¹¹. The Court observed thus:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

52. The Court also reproduced the observations made in *Gudikanti Narasimhulu* (supra), which read thus:

“10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in *Gudikanti Narasimhulu v. Public Prosecutor, High Court* reported in (1978) 1 SCC 240. We quote:

“What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:

“I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.””

53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that “bail is rule and jail is exception”.

54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses

have been named. The case involves thousands of pages of documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.

55. As observed by this Court in the case of *Gudikanti Narasimhulu* (supra), the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

56. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is

no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.

.....”

(emphasis added)

24. There are a few penal statutes that make a departure from the provisions of Sections 437, 438, and 439 of the Code of Criminal Procedure, 1973. A higher threshold is provided in these statutes for the grant of bail. By way of illustration, we may refer to Section 45(1)(ii) of PMLA, proviso to Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 and Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’). The provisions regarding bail in some of such statutes start with a non-obstante clause for overriding the provisions of Sections 437 to 439 of the CrPC. The legislature has done so to secure the object of making the penal provisions in such enactments. For example, the PMLA provides for Section 45(1)(ii) as money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty.

25. Considering the gravity of the offences in such statutes, expeditious disposal of trials for the crimes under these statutes is contemplated. Moreover, such statutes contain provisions laying down higher threshold for the grant of bail. The expeditious disposal of the trial is also warranted

considering the higher threshold set for the grant of bail. Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well-settled principle of our criminal jurisprudence that “bail is the rule, and jail is the exception.” These stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.

26. There are a series of decisions of this Court starting from the decision in the case of **K.A. Najeeb²**, which hold that such stringent provisions for the grant of bail do not take away the power of Constitutional Courts to grant bail on the grounds of violation of Part III of the Constitution of India. We have already referred to paragraph 17 of the said decision, which lays down that the rigours of such provisions will melt down where there is no likelihood of trial being completed in a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. One of the reasons is that if, because of such provisions, incarceration of an undertrial accused is continued for an unreasonably long time, the provisions may be exposed to the vice of being violative of Article 21 of the Constitution of India.

27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of **K.A. Najeeb²**, can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. The Constitutional Courts can always exercise its jurisdiction under Article 32 or

Article 226, as the case may be. The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that, except in a few exceptional cases, the maximum sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(ii) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials under Article 21 of the Constitution of India will be defeated. In a given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary.

28. Some day, the courts, especially the Constitutional Courts, will have to take a call on a peculiar situation that arises in our justice delivery system. There are cases where clean acquittal is granted by the criminal courts to the accused after very long incarceration as an undertrial. When we say clean acquittal, we are excluding the cases where the witnesses have turned hostile or there is a bona fide defective

investigation. In such cases of clean acquittal, crucial years in the life of the accused are lost. In a given case, it may amount to violation of rights of the accused under Article 21 of the Constitution which may give rise to a claim for compensation.

29. As stated earlier, the appellant has been incarcerated for 15 months or more for the offence punishable under the PMLA. In the facts of the case, the trial of the scheduled offences and, consequently, the PMLA offence is not likely to be completed in three to four years or even more. If the appellant's detention is continued, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial.

30. The decisions the learned SG relied upon indicate that the appellant's influential position in the State may have resulted in a so-called compromise between the bribe givers and the bribe takers. Considering the apprehension of the appellant tampering with the evidence, stringent conditions must be imposed.

31. Therefore, the appeal is allowed, and the appellant shall be enlarged on bail till the final disposal of CC No. 9 of 2023 pending before the Principal Session Judge, Chennai, on the following conditions:

- a.** The appellant shall furnish bail bonds in the sum of Rs.25,00,000/- (Rupees twenty-five lakhs only) with two sureties in the like amount;
- b.** The appellant shall not directly or indirectly attempt to contact or communicate with the prosecution witnesses and victims of the three scheduled offences in any manner. If it is found that the appellant directly or indirectly made even an attempt to contact any prosecution witness or victim in the scheduled as well as offences under the PMLA, it will be a ground to cancel the bail granted to the appellant;
- c.** The appellant shall mark his attendance every Monday and Friday between 11 am and 12 noon in the office of the Deputy Director, the Directorate of Enforcement at Chennai. He shall also appear on the first Saturday of every calendar month before the investigating officers of the three scheduled offences;
- d.** Before the appellant is enlarged on bail, he shall surrender his passport to the Special Court under the PMLA at Chennai;
- e.** The appellant shall regularly and punctually remain present before the Courts dealing with scheduled offences as well as the Special Court and shall cooperate with the Courts for early disposal of cases; and

f. If the appellant seeks adjournments on non-existing or frivolous grounds or creates hurdles in the early disposal of the cases mentioned above, the bail granted to him shall be liable to be cancelled.

32. The appeal is allowed on the above terms.

.....J.
(Abhay S Oka)

.....J.
(Augustine George Masih)

**New Delhi;
September 26, 2024.**



2023 INSC 1029

Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.2779 OF 2023

Pavana Dibbur

... Appellant

versus

The Directorate of Enforcement

... Respondent

J U D G M E N T

ABHAY S. OKA, J.

OVERVIEW

1. The respondent—the Directorate of Enforcement (for short, ‘ED’), filed a complaint under the second proviso to Section 45(1) of the Prevention of Money Laundering Act, 2002 (for short, ‘the PMLA’) before the Special Court for PMLA Cases at Bengaluru. The appellant–Pavana Dibbur was shown as accused no.6 in the said complaint. By the order dated 17th March 2022, the Special Court took cognisance of the said complaint. The appellant filed a petition before the High Court of Karnataka at Bengaluru under Section 482 of the Code of Criminal Procedure, 1973 (for short, ‘Cr.PC’) seeking the relief of quashing of the said complaint. By the

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Anita Mahapatra
Date: 2023.11.29
17:22:54 IST
Reason:

impugned judgment and order dated 27th September 2022, the petition for quashing the complaint has been dismissed.

2. In the year 2011, Alliance Business School (for short, 'ABS') purchased a property bearing Khata no.37/22 at Gollahalli Village, Jigani Hobli, Anekal Taluk, Bengaluru for the consideration of Rs.13.05 crores. The area of the said property is approximately five acres. For the sake of convenience, we are describing the said property as 'the First Property'. On 1st July 2013, the appellant purchased the first property from ABS by a registered sale deed for a consideration of Rs.13.5 crores. The accused no.1–Madhukar Angur, purchased a property measuring 4 acres and 0.4 Guntas bearing survey nos.61, 62 and 63 at Karpur Village, Kasaba Hobli, Anekal Taluk, Bengaluru. For the sake of convenience, we are describing this property as 'the Second Property'. The appellant purchased the second property by a registered sale deed on 29th June 2019 for a consideration of Rs.2.47 crores from accused no.1–Madhukar Angur.

3. For a period of five years, i.e. from 2010 to 2015, the appellant's husband–Dr Ayyappa Dore, was the Vice-Chancellor of the Alliance University. The appellant also acted as the Vice-Chancellor of the Alliance University for a brief period. On 11th November 2017, a First Information Report (FIR) was registered on the complaint of the Registrar of the Alliance University against accused no.1–Madhukar Angur, alleging that he collected a sum of Rs.107 crores from

the students by claiming himself as the Chancellor of the Alliance University. The allegation was that he collected the said amount between January 2017 and November 2017, which was deposited in the account of Srivari Education Services. Subsequently, crores of rupees were transferred to the account of the accused no.1.

4. An Enforcement Case Information Report (ECIR) was registered on 16th October 2020 by the ED against accused nos.1, 2 and 3, namely Madhukar Angur, his wife Priyanka Angur and Mr Ravikumar, Partner, Srivari Education Services and other unknown accused alleging the commission of the offence of money laundering under Section 3 of the PMLA. The ECIR was based on four FIRs, the details of which are as under:

Sl. No.	FIR No.	Sections in FIR	Chargesheet	Sections under which the Chargesheet was filed
1.	119 of 2016 (PS Jayaprakash Nagar)	376, 420 and 506 of IPC	B-Report filed/ Closure Report filed on 2 nd February 2017	Closure Report accepted
2.	730 of 2016 (PS Madiwala)	143, 144, 147, 148, 149, 506 and 120-B of IPC	Chargesheet filed on 4 th July 2017 in which the appellant is not named as the accused	Chargesheet is filed under Sections 143, 144, 147, 148, 149, 506, 120-B of IPC

3.	52 of 2017 (PS Shankarpura)	506, 504, 143, 149 and 420 of IPC	Chargesheet filed on 25 th March 2018 in which the appellant is not named as the accused	Chargesheet filed under Sections 504, 506, 120-B read with 34 of IPC
4.	188 of 2017 (PS Anekal)	143, 406, 407, 408, 409 and 149 of IPC	Chargesheet filed on 18 th June 2019 in which the appellant is not named as the accused	Chargesheet filed under Section 406, 408, 408, 447, 204, 120-B read with 34 of IPC

5. On 27th September 2021, the ED passed an order under Section 5 of the PMLA attaching first and second properties. A complaint was filed before the adjudicating authority on 13th October 2021, in which the appellant is shown as the fifth defendant.

6. The allegation against the appellant in the complaint filed under the second proviso of Section 45(1) of the PMLA is that she has entered into a conspiracy with accused no.1– Madhukar Angur by getting executed nominal sale deeds in respect of the first and second properties in her name for the benefit of accused no.1. The allegation of the ED is that the appellant facilitated the accused no.1 to use her bank accounts to siphon the university funds, thereby, assisting the accused no.1 in the activity connected with the proceeds of crime. By the impugned judgment, the learned Single Judge of the High Court dismissed the petition filed by the

appellant. The learned Single Judge relied upon the decision of a Bench of three Hon'ble Judges of this Court in the case of ***Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.***¹.

SUBMISSIONS OF THE APPELLANT

7. Ms Meenakshi Arora, the learned senior counsel appearing for the appellant, firstly submitted that the first and second properties are not tainted properties and, therefore, the same are not covered by the definition of "proceeds of crime" under clause (u) of sub-section (1) of Section 2 of the PMLA. The learned senior counsel pointed out that the first property was acquired on 1st July 2013, much prior to the commission of the first scheduled offence. The allegation in the FIR dated 11th November 2017 against accused no.1 is that he collected a sum of about Rs.107 crores from the students between January and November 2017 and transferred the said amount to his account. Therefore, the appellant's acquisition of the first property can never be linked with the proceeds of the crime regarding the scheduled offence. She submitted that regarding the acquisition of the second property, the appellant had her own resources available to acquire the same. The learned senior counsel relied upon an Income Tax Return filed by the appellant under the Income Declaration Scheme, 2016, by which she declared a total undisclosed income of

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Rs.26,42,54,193/-. The appellant paid Rs.11,89,08,385/- towards income tax and penalty on 8th September 2016. The return was filed on 12th September 2016. Therefore, the appellant had a source of money for acquiring the second property for the consideration of Rs.2.47 crores. Both the properties acquired by the appellant had no nexus at all with the proceeds of crime of the scheduled offences. The learned senior counsel pointed out that consideration of Rs.2.47 crores was agreed upon, as it is mentioned in the sale deed that it was a distress sale made by the accused no.1- Madhukar Angur.

8. The second limb of the submissions of the learned senior counsel appearing for the appellant is that as the appellant has not been arraigned as an accused in the chargesheets filed pertaining to the alleged scheduled offences, she cannot be roped in as an accused for the offences punishable under Section 3 of the PMLA. She relied upon what is held in paragraphs 251 to 253 of the decision of this Court in the case of **Vijay Madanlal Choudhary**¹. She submitted that in the decision, this Court held that if an accused in the scheduled/predicate offence is acquitted/discharged, he cannot be prosecuted for the offence punishable under the PMLA. She submitted that the appellant's case stands on a better footing as she was not even shown as an accused in any scheduled/predicate offences. She would, therefore, submit that the cognizance of

the crime under the PMLA could not have been taken against the appellant.

9. The third submission of the learned senior counsel appearing for the appellant is that out of the four scheduled/predicate offences, chargesheets have been filed in the case of three offences, and in these chargesheets, only one offence covered by the Schedule to the PMLA has been mentioned, which is Section 120-B of IPC. She pointed out that in FIR no.119 of 2016 and FIR no.52 of 2017, Section 420 of IPC was included. However, in FIR no.119 of 2016, the closure report was filed, and in FIR no.52 of 2017, while filing the chargesheet, Section 420 of IPC was excluded. She contended that Section 120-B of IPC alone, in the absence of any other scheduled offence, cannot sustain a charge under the PMLA. Unless there is an allegation regarding a conspiracy to commit any scheduled offence, the prosecution under the PMLA cannot lie. Relying upon the proviso to Section 120-A of IPC, the learned senior counsel submitted that an illegal act or a legal act by illegal means, in furtherance of an agreement, committed by any person is a *sine qua non* for attracting the offence of conspiracy under Section 120-B of IPC. If Section 120-B of IPC can be treated as a standalone offence to attract prosecution under the PMLA, by that logic, a complaint under the PMLA can be filed where the allegation is of criminal conspiracy to commit an offence which is not a scheduled offence. Therefore, she

submits that the complaint against the appellant deserves to be quashed.

SUBMISSIONS OF THE RESPONDENT

10. Shri S.V. Raju, the learned Additional Solicitor General appearing for the ED, submitted that even assuming that the appellant had monetary capacity to acquire the second property, one cannot conclude that the funds siphoned by the accused no.1, which constitute proceeds of crime, were not used by the appellant for acquiring the second property. He submits that this issue can be gone into only at the time of trial. Regarding the second submission, the learned Additional Solicitor General submitted that a person can be held guilty of the commission of a money laundering offence under Section 3 of the PMLA, even if he is not shown as an accused in the predicate offence. He submitted that it is apparent from the provision of Section 3 of the PMLA that in a given case, a person who is not an accused in the predicate offence can commit the offence of money laundering. Regarding the third submission, the learned Additional Solicitor General submitted that wherever the legislature intended, it has made a particular offence read with another offence as a scheduled offence. He invited our attention to Paragraphs 4 and 6 of Part A of the Schedule to the PMLA. Referring to Paragraph 11 of the Schedule to the PMLA, he urged that the first four offences in Paragraph 4 and all the offences in Paragraph 6 clearly show the legislature's

intention. He submitted that the schedule must be read as it is, and nothing can be added or subtracted from the Schedule considering the objects of the PMLA. He submitted that the validity of the Schedule has been upheld in the case of **Vijay Madanlal Choudhary**¹. He would, therefore, submit that no interference is called for with the impugned order.

CONSIDERATION OF SUBMISSIONS

THE EFFECT OF THE APPELLANT NOT BEING SHOWN AS AN ACCUSED IN PREDICATE OFFENCE

11. Section 3 of the PMLA reads thus:

“3. Offence of money-laundering.—

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or
(b) possession; or
(c) acquisition; or
(d) use; or
(e) projecting as untainted property;
or
(f) claiming as untainted property,
in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.”

On a plain reading of Section 3, unless proceeds of crime exist, there cannot be any money laundering offence. Clause (u) of sub-section (1) of Section 2 of the PMLA defines “proceeds of crime”, which reads thus:

“2.Definition – (1) In this Act, unless the context otherwise requires,-

.. . . .

(u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence."

12. Clause (v) of sub-section (1) of Section 2 of the PMLA defines "property" to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The explanation clarifies that the proceeds of crime include property, not only derived or obtained from scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime. Thus, the existence of "proceeds of crime" is *sine qua non* for the offence under Section 3 of the PMLA.

13. Clause (x) of sub-section (1) of Section 2 of the PMLA defines "schedule". Clause (y) thereof defines "scheduled offence", which reads thus:

"2. Definition – (1) In this Act, unless the context otherwise requires,-

.....
.

(y) “scheduled offence” means—

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule.”

14. The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. On this aspect, it is necessary to refer to the decision of this Court in the case of **Vijay Madanlal Choudhary**¹. In paragraph 253 of the said decision, this Court held thus:

“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 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 definition clause “proceeds of crime”, as it obtains as of now.”

(underline supplied)

In paragraphs 269 and 270, this Court held thus:

“269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or

claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the

proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.”

(underline supplied)

15. Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to

“extortion” are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of **Vijay Madanlal Choudhary**¹ supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of Section 3 of the PMLA.

16. In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable under Section 3 of the PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused

against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence. Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned senior counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the chargesheets filed in the scheduled offences deserves to be rejected.

ACQUISITION OF THE FIRST AND SECOND PROPERTY

17. The allegation against the appellant in the complaint is that she purchased the property worth crores, though she did not have the source of income which would generate enough money to buy the subject properties. The allegation against the appellant is that she allowed and facilitated accused no.1– Madhukar Angur, to conceal the siphoned/misappropriated amounts by using her bank account. Another allegation is that she is shown to have purchased the second property from accused no.1, though she did not have the resources to pay the consideration. The allegation is that she allowed the accused no.1 to use her bank accounts to facilitate siphoning

the proceeds of the crime. Another allegation is that both the first and second properties have been acquired out of the proceeds of crime. The first property, ex-facie, cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its acquisition. The case of the appellant is that she possessed a substantial amount, as can be seen from the declaration made by her under the Income Declaration Scheme, 2016 in September 2016 and therefore, at the time of the acquisition of the second property, more than sufficient money was available with her to acquire the second property. The issue of whether the appellant used tainted money to acquire the second property can be decided only after the evidence is adduced. This is not a case where any material is placed on record to show that the sale consideration was paid from a particular Bank Account of the appellant. Therefore, it is not possible to record a finding at this stage that the Second property was not acquired by using the proceeds of crime. We also make it clear that we have considered the issue only in the context of the applicability of the PMLA. We have not dealt with the issues of valuation and legality of the sale deeds.

**INTERPRETATION OF THE FIRST ENTRY
IN PARAGRAPH 1 OF THE SCHEDULE**

18. Now, we come to the third argument made by the learned senior counsel appearing for the appellant based on the interpretation of the Schedule. It must be noted here that

in the case of **Vijay Madanlal Choudhary**¹, even the validity of the Schedule was under challenge. A perusal of the said decision shows that this Court was not called upon to interpret any entry in the Schedule and, in particular, entry of Section 120-B in the Schedule. The challenge to the Schedule is dealt with in paragraphs 453, 454 and 455 of the said decision. The contention before this Court was that even minor offences have been included in the Schedule, and even compoundable offences form part of the Schedule. It was submitted that the offences which do not have cross-border implications have been included in the Schedule. In paragraphs 454 and 455 of the said decision, this Court held thus:

“454. This Schedule has been amended by Act 21 of 2009, Act 2 of 2013, Act 22 of 2015, Act 13 of 2018 and Act 16 of 2018, thereby inserting new offences to be regarded as scheduled offence. The challenge is not on the basis of legislative competence in respect of enactment of Schedule and the amendments thereto from time to time. However, it had been urged before us that there is no consistency in the approach as it includes even minor offences as scheduled offence for the purposes of offence of money-laundering, more so even offences which have no trans-border implications and are compoundable between the parties. The classification or grouping of offences for treating the same as relevant for constituting offence of money-laundering is a matter

of legislative policy. The Parliament in its wisdom has regarded the property derived or obtained as a result of specified criminal activity, being an offence under the concerned legislation mentioned in the Schedule. The fact that some of the offences may be non-cognizable offences under the concerned legislation or regarded as minor and compoundable offences, yet, the Parliament in its wisdom having perceived the cumulative effect of the process or activity concerning the proceeds of crime generated from such criminal activities as being likely to pose threat to the economic stability, sovereignty and integrity of the country and thus, grouped them together for reckoning it as an offence of money-laundering, is a matter of legislative policy. It is not open to the Court to have a second guess at such a policy.

455. Needless to underscore that the 2002 Act is intended to initiate action in respect of money-laundering activity which necessarily is associated with the property derived or obtained by any person, directly or indirectly, as a result of specified criminal activity. The prosecution under this Act is not in relation to the criminal activity *per se* but limited to property derived or obtained from specified criminal activity. Resultantly, the inclusion of criminal activity which has been regarded as non-cognizable, compoundable or minor offence under the concerned legislation, should have

no bearing to answer the matter in issue. In that, the offence of money-laundering is an independent offence and the persons involved in the commission of such offence are grouped together as offenders under this Act. There is no reason to make distinction between them insofar as the offence of money-laundering is concerned. In our opinion, therefore, there is no merit in the argument under consideration.”

In this case, we are not called upon to decide the validity of the Schedule or any part thereof. The question is whether the offence under Section 120-B of IPC, included in Paragraph 1 of the Schedule, can be treated as a scheduled offence even if the criminal conspiracy alleged is to commit an offence which is not a part of the Schedule. This issue did not arise for consideration in the case of ***Vijay Madanlal Choudhary***¹.

19. Section 120-A of IPC defines “criminal conspiracy”, which reads thus:

“120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall

amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

Section 120-B of IPC provides for punishment for a criminal conspiracy which reads thus:

“120B. Punishment of criminal conspiracy.— (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

20. Now, we turn to the Schedule to the PMLA. We find that many offences, which may generate proceeds of crime, have not been included in the Schedule. We are referring to only a few of such offences only by way of illustration:-

- a.** Section 263A of IPC, which deals with the offence of making or possessing fictitious stamps is not a part of the Schedule;
- b.** Though offences punishable under Sections 392 to 402 regarding robbery and dacoity have been included in part A of the Schedule, the offence punishable under Section 379 of committing theft and the offence punishable under Section 380 of theft in a dwelling house are not made a part of parts A and B of the Schedule. The theft of both categories can be of a very large amount running into crores. The said two offences become scheduled offences by virtue of clause (3) of part C of the Schedule only if the offences have cross-border implications;
- c.** The offence punishable under Section 403 of dishonest misappropriation of property does not form part of the Schedule. The said offence becomes a scheduled offence by virtue of clause (3) of part C of the Schedule only if the offence has cross-border implications;
- d.** The offence under Section 405 of criminal breach of trust, which is punishable under Section 406, is not a part of the Schedule. The said offence becomes a scheduled offence by virtue of clause (3)

of part C of the Schedule only if the offence has cross-border implications;

- e. Though the offence under Section 417 of cheating has been made a scheduled offence, the more stringent crime of forgery for the purposes of cheating under Section 468 is not a part of the Schedule, and
- f. Though the offences under Sections 489A to 489C regarding forging or counterfeiting currency notes are part of the Schedule, the offence under Section 489D of making or possessing instruments or materials for forging or counterfeiting currency notes is not a part of the Schedule.

21. Now, coming to Part B of the Schedule, it includes only one offence under Section 132 of the Customs Act, 1962. The offence under Section 132 of the Customs Act of making a false declaration, etc., becomes a scheduled offence in view of sub-clause (ii) of Clause (y) of sub-section (1) of Section 2 of the PMLA only if the total value involved in the offence is Rs.1 crore or more. Part C of the Schedule provides that any offence specified in Part A having cross-border implications becomes a part of Part C. More importantly, all the offences against the property under Chapter XVII of IPC having cross-border implications become scheduled offences. As pointed out earlier, the offences punishable under Sections 379

(theft), 380 (theft in dwelling house), 403 (dishonest misappropriation of property) and 405 (criminal breach of trust) are part of Chapter XVII. Though the said offences are not included in Part A, they become scheduled offences by virtue of Part C only if they have cross-border implications. Thus, it can be said that many offences capable of generating proceeds of crime do not form a part of the schedule.

22. The learned Additional Solicitor General argued that as Section 120-B of IPC is included in Part A to the Schedule, even if the allegation is of making a criminal conspiracy to commit an offence which is not a part of the Schedule, the offence becomes a scheduled offence. As stated earlier, many offences under Chapter XVII of IPC are not included in Parts A and B. They become scheduled offences only if the same have cross-border implications. Thus, the offences of dishonest misappropriation of property or criminal breach of trust or theft can become a scheduled offence, provided they have cross-border implications. If the argument of the learned Additional Solicitor General is accepted, if there is a conspiracy to commit offences under Section 403 or Section 405, though the same have no cross-border implications, the offence under Section 120-B of conspiracy to commit offences under Sections 403 and 405 will become a scheduled offence. Thus, if any offence is not included in Parts A, B and C of the Schedule but if the conspiracy to commit the offence is alleged, the same will become a scheduled offence. A crime punishable under Section 132 of the Customs Act is made a

scheduled offence under Part B, provided the value involved in the offence is Rupees One Crore or more. But if Section 120-B of IPC is applied, one who commits such an offence having a value of even Rs.1 lac can be brought within the purview of the PMLA. By that logic, a conspiracy to commit any offence under any penal law which is capable of generating proceeds, can be converted into a scheduled offence by applying Section 120-B of the IPC, though the offence is not a part of the Schedule. This cannot be the intention of the legislature.

23. The penal statutes are required to be strictly construed. It is true that the penal laws must be construed according to the legislative intent as expressed in the enactment. In Chapter 1 of GP Singh's Principles of Statutory Interpretation (15th Edition), it is observed that:

"The intention of the Legislature, thus, assimilates two aspects: In one aspect it carries the concept of "meaning", i.e. what the words mean and in another aspect, it conveys the concept of "purpose and object" or the "reason and spirit" pervading through the statute. The process of construction, therefore, combines both literal and purposive approaches. In other words the legislative intention, i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the

enactment is directed." In the words of A Driedger, *Construction of Statute*, 2nd Edn, 1983: **The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the Scheme of the Act, the object of the Act, and the intent of the Parliament.** This formulation later received the approval of the Supreme Court and was called the "cardinal principle of construction." In both Constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law and help the law achieve its purpose."

(Emphasis added)

24. While giving effect to the legislature's intention, if two reasonable interpretations can be given to a particular provision of a penal statute, the Court should generally adopt the interpretation that avoids the imposition of penal consequences. In other words, a more lenient interpretation of the two needs to be adopted.

25. The legislative intent which can be gathered from the definition of the scheduled offence under clause (y) of sub-Section (1) of Section 2 of the PMLA is that every crime which may generate proceeds of crime need not be a scheduled offence. Therefore, only certain specific offences have been included in the Schedule. Thus, if the submissions of the learned Additional Solicitor General are accepted, the Schedule will become meaningless or redundant. The reason

is that even if an offence registered is not a scheduled offence, the provisions of the PMLA and, in particular, Section 3 will be invoked by simply applying Section 120-B. If we look at Section 120-B, only because there is a conspiracy to commit an offence, the same does not become an aggravated offence. The object is to punish those involved in conspiracy to commit a crime, though they may not have committed any overt act that constitutes the offence. Conspiracy is an agreement between the accused to commit an offence. If we look at the punishments provided under Section 120-B, it becomes evident that it is not an aggravated offence. It only incorporates the principle of vicarious liability. If no specific punishment is provided in the Statute for conspiracy to commit a particular offence, Section 120-B treats a conspirator of the main accused as an abettor for the purposes of imposing the punishment. The interpretation suggested by the ED will defeat the legislative object of making only a few selected offences as scheduled offences. If we accept such an interpretation, the statute may attract the vice of unconstitutionality for being manifestly arbitrary. It cannot be the legislature's intention to make every offence not included in the Schedule a scheduled offence by applying Section 120-B. Therefore, in our view, the offence under Section 120-B of IPC included in Part A of the Schedule will become a scheduled offence only if the criminal conspiracy is to commit any offence already included in Parts A, B or C of the Schedule. In other words, an offence punishable under

Section 120-B of IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is otherwise a scheduled offence.

26. Coming back to the facts of the case, in the chargesheets filed in the alleged scheduled offences, there is no allegation of the commission of criminal conspiracy to commit any of the offences included in the Schedule. As pointed out earlier, except for Section 120B of the IPC, no other offence in the schedule has been applied. Therefore, in this case, the scheduled offence does not exist at all. Hence, the appellant cannot be prosecuted for the offences punishable under Section 3 of the PMLA.

CONCLUSIONS

27. While we reject the first and second submissions canvassed by the learned senior counsel appearing for the appellant, the third submission must be upheld. Our conclusions are:

- a.** It is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged, must have been shown as the accused in the scheduled offence;
- b.** Even if an accused shown in the complaint under the PMLA is not an accused in the scheduled offence, he will benefit from the acquittal of all the accused in the scheduled offence or discharge of

all the accused in the scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence;

- c.** The first property cannot be said to have any connection with the proceeds of the crime as the acts constituting scheduled offence were committed after the property was acquired;
- d.** The issue of whether the appellant has used tainted money forming part of the proceeds of crime for acquiring the second property can be decided only at the time of trial; and
- e.** The offence punishable under Section 120-B of the IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule.

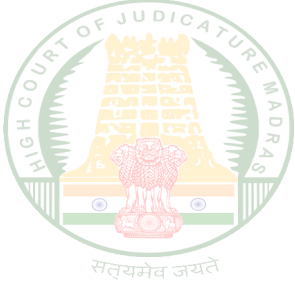
28. Accordingly, the impugned order dated 27th September 2022 is, hereby, quashed and set aside, and the complaint being Special C.C no.781 of 2022 pending before the Special Court for PMLA cases, Bengaluru is, hereby, quashed only insofar as the present appellant is concerned.

29. The appeal is, accordingly, allowed.

.....J.
(Abhay S. Oka)

.....J.
(Pankaj Mithal)

New Delhi;
November 29, 2023.



W.P.Nos.14782, 14786 & 14787 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

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CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**AND****THE HONOURABLE MR. JUSTICE V.SIVAGNANAM****W.P.Nos.14782, 14786 & 14787 of 2024****and****W.M.P.Nos.16016 to 16024 of 2024**

Vijayraj Surana

... Petitioner in all W.Ps.

Vs.

Assistant Director,
Enforcement Directorate,
Chennai I Zonal Office,
Nos.3 & 4, Murugesu Naicker Office Complex
84, Greaves Road, Thousands Light,
Chennai 600 006

... Respondent in all W.Ps

Prayer in W.P.No.14782 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari to call for the records of the respondent in ECIR/CEZO-1/37/2020 dated 25.09.2020 and quash all the proceedings arising therefrom as far as the petitioner is concerned

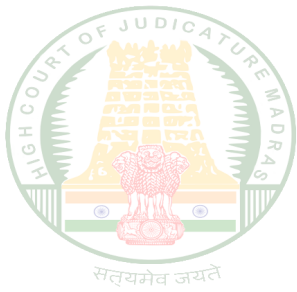


W.P.Nos.14782, 14786 & 14787 of 2024

since the predicate offence in FIR No.RC0782020E0005 dated 08.09.2020 registered by CBI, Bangalore was already quashed by the Hon'ble Karnataka High Court in Crl.P.No.5333 of 2023 vide order dated 15.04.2024.

Prayer in W.P.No.14786 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari to call for the records of the respondent in ECIR/CEZO-1/05/2019 dated 27.12.2019 and quash all the proceedings arising therefrom as far as the petitioner is concerned since the predicate offence in FIR No.11/2019 dated 01.11.2019 registered by CBI, Bangalore was already quashed by the Hon'ble Karnataka High Court in Crl.P.No.5333 of 2023 vide order dated 15.04.2024.

Prayer in W.P.No.14787 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari to call for the records of the respondent in ECIR/CEZO-1/42/2020 dated 24.12.2020 and quash all the proceedings arising therefrom as far as the petitioner is concerned since the predicate offence in FIR No.RC 078 2020 E0006 dated 08.10.2020 registered by CBI, Bangalore was already quashed by the Hon'ble Karnataka High Court in Crl.P.No.4006 of 2024 vide order dated 25.04.2024.



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W.P.Nos.14782, 14786 & 14787 of 2024

For Petitioner
in all WPs

: Mr.T.R.Ragavacharyulu
and Mr.M.R.Venkatesh,
for Mr.G.Guruprasath

For Respondent
in all WPs

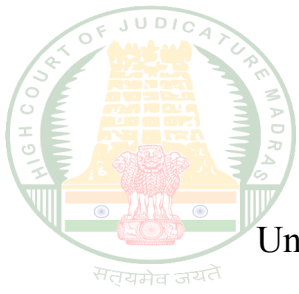
: Mr.A.R.L.Sundarasan. ASGOI
Assisted by Mr.N.Ramesh,
Special Public Prosecutor for ED

COMMON ORDER

(Order of the Court is made by *S.M.SUBRAMANIAM, J.*)

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Under assail are the proceedings of the Enforcement Directorate in ECIR

Nos. CEZO-I/05/2019 dated 27.12.2019, CEZO-I/37/2020-dated 25.09.2020 and CEZO-I/42/2020 dated 24.12.2020.

I. FACTUAL MATRIX:

2. The crux of the allegations against the petitioner under Prevention of Money Laundering Act, 2002, [hereinafter referred as 'PMLA'] complaint are that they have obtained loans from IDBI Bank to the tune of Rs.1301.76 Crores and Rs.1495.76 Crores from the same IDBI Bank and from the SBI Bank, Rs.1188.56 Crores. The loan borrowed by the said companies have facilitated mis-appropriation, manipulation of books of accounts through fictitious accounts and conversion of property of SIL by way of No.(1) Capital advances to potentially related party, (2) Sales and purchase with potentially related properties (3) bilateral transactions with properties related amongst themselves.

3. Thereafter, the petitioner and the company for the purpose of routing of funds borrowed money from one Mr.Gowtham Raj Surana to the tune of Rs.33,09,80,860/- for Global Industries, Rs.14,53,95,350/- for Prince



Enterprises and Rs.20,47,69,749/- for Supreme Corporation. Totally, Rs.68,11,45,959. Similarly, from Mr.Shantilal Surana, a total sum of Rs.62,65,19,112/- was borrowed from the above 3 companies, namely, for Global Industries, Prince Enterprises, and for Supreme Corporation. The similar transaction was done in the name of Mr.Vijayraj Surana to the tune of Rs.74,65,14,732 /- and in the name of Mr.Dinesh Chand Surana to the tune of Rs.80,99,23,739/-.

4. Thereafter, during the course of investigation, the properties acquired by M/s Karwalal and Company has been attached vide Provisional Attachment Order No.09/2022, dated 01.08.2022, as it been derived from proceeds of crime and confirmed by Adjudicating Authority vide order dated 27.01.2023 (O.C.No.1800/2022). The petitioner was also made as a defendant in the impugned proceedings in O.C.No.1887 of 2023 because the properties in possession of Mrs.Alka Surana, w/o. Mr.Vijayraj Surana (defendant No.7 in the OC No.1887 of 2023) and Mr.Mitesh Surana S/o. Mr.Vijayraj Surana (defendant 20 in the OC No.1887 of 2023) have been attached vide provisional Attachment order No.17/22 date 26.12.2022 on the reasonable belief that the same had been acquired out of the proceeds of crime generated out of the commission of offences by the company, wherein Mr.Vijayraj Surana was



promoters, Managing Director of M/s.Surana Corporation Limited and Director

in other firms. Against the said order of Adjudicating Authority, the petitioner has filed an appeal before the Tribunal bearing No.6363/2023. With reference to the above allegations, the Enforcement Directorate formed an opinion that the offence of money laundering under Section 3 of PMLA is present.

II. CONTENTIONS OF THE PETITIONER:

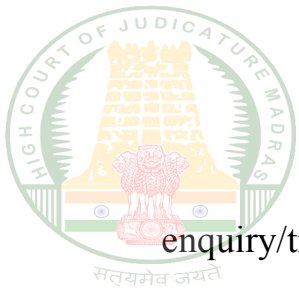
5. The factual matrix as narrated by the petitioner would reveal that 3 companies, namely, M/s.Surana Industries Limited, M/s.Surana Power Limited, M/s.Surana Corporation Limited were incorporated and petitioner is a shareholder. Central Bureau of Investigation (CBI) seized gold stock of 400.47 Kgs, (approximately INR 150 Crores, during the relevant point of time) at showroom of Surana Corporation Limited one of the group companies on 20.06.2012. CBI filed charge sheet on 03.08.2013 and registered FIR on 16.09.2013 to investigate the mode of import of the gold stock and retained the seized gold. Serious Fraud Investigation agency registered complaint under Section 212(6) of Companies Act against M/s.Surana Industries Limited and 14 Group Companies on 28.03.2019. In February 2020, CBI handed over 296 Kgs gold to SBI as per the order of NCLT, Chennai. However, missing of 104 kgs



of Gold was not reported to NCLT, Chennai by liquidator or SBI or CBI till August 2020. The petitioner claims to be the whistle blower for missing of 104 kgs of gold. He provided information regarding missing of gold and at that point of time the Enforcement Directorate registered the impunged ECIR on 27.12.2019, 25.09.2020 and 24.12.2020.

6. The learned counsel for the petitioner Mr.T.R.Ragavacharyulu, would mainly contend that the High Court of Karnataka quashed the FIR registered by CBI against the petitioner with reference to the scheduled offence on 15.04.2024. The CBI preferred an appeal before the Hon'ble Supreme Court of India, which is pending. Since the FIR has been quashed, the scheduled offence is not in existence and consequently, the petitioner is entitled to be exonerated from PMLA proceedings. The legal position has been well enumerated and reiterated in paragraph 467(iv)(d) by the Hon'ble Supreme Court in the case of *Vijay Madanlal Choudhary vs. Union of India and others*¹, It is contended that the Apex Court in *Vijay Mathanlal's* case held that the authorities under PMLA 2002 cannot prosecute any person on notional basis or on the assumption that the scheduled offence has been committed unless it is so registered with the jurisdictional police and/or pending

1. 2022 SCC online SC 929



enquiry/trial including by way of criminal complaint before the competent

forum. In the present case, the scheduled offence has been quashed against the petitioner. Mere pendency of an appeal before Hon'ble Supreme Court would not extend any protection to the ECIR, which is impugned in the present writ proceedings. The position has been further clarified by the Apex Court that in the event of restoration of FIR by the Apex Court, the ECIR would also stand restored and that being the legal position, the present writ petitions are to be considered.

7. Secondly it is stated that the supplementary complaint filed under 44(1)(b)(ii) and 45 of the PMLA 2002 for the offence under Section 3 of PMLA is unsustainable, since it was not filed by following due procedures. Though Section 447 of the Companies Act has been inserted in the schedule to PMLA, the same cannot be invoked in isolation in view of the fact that the original FIR has been quashed and further the Enforcement Directorate has not conducted any investigation for the purpose of prosecuting the petitioner under Section 447 of the Companies Act. In order to sustain the above grounds, the learned counsel for the petitioner relied on paragraph 253 and 467(iv)(d) of *Vijay Madanlal's* case cited supra.

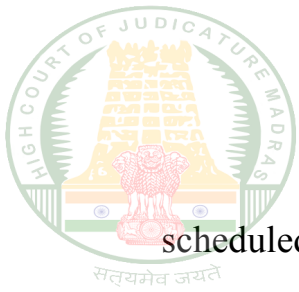
**III. REPLY BY RESPONDENT:**

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8. The learned Additional Solicitor General of India, Mr.A.R.L.Sundaresan, would strenuously oppose by stating that ECIR is not a statutory document and an official document maintained by the Enforcement Directorate for continuing their investigation and the ECIR has been filed based on the FIR registered under the scheduled offence. Therefore, ECIR per se would not provide cause for institution of writ proceedings under Article 226 of the Constitution of India.

9. The directions issued by the Apex Court in *Vijay Madanlal's* case cited supra, more specifically, 467(v)(d) must be read in conjunction with the principles laid down in the said case in Paragraph Nos. 281 to 284 and 349. The conclusion arrived at paragraph 467 by the Apex Court cannot be read in isolation so as to quash the ECIR. The findings, principles and the scope elaborately considered by the Hon'ble Supreme Court are to be taken into consideration with reference to the grounds raised by the petitioner.

10. The learned Additional Solicitor General would further contend that the process under PMLA was construed as standalone process. Once the



scheduled offence is traced out and ECIR is filed, investigation commences

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and a complaint has been filed under Section 44 and 45 of PMLA. Therefore, the writ petition would be pre-mature since quashment of FIR has been challenged by the CBI before the Hon'ble Supreme Court of India, which is pending. The Enforcement Directorate in the present case has filed a supplementary prosecution complaint, wherein the proceeds of crime has been elaborately enumerated by the Enforcement Directorate in paragraph 3.2 of the Additional complaint. Thus, the writ petition is to be rejected.

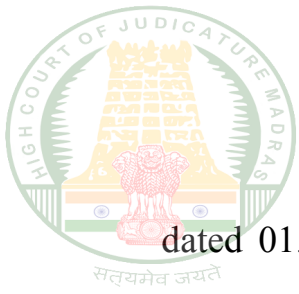
11. The learned Additional Solicitor General relied on an order in the case of *N.Dhanraj Kochar and others vs. The Director, Directorate of Enforcement, New Delhi*², wherein it is ruled that ECIR cannot be the subject matter of judicial review under Section 482 of Cr.P.C.

IV. DISCUSSIONS:

A) LEGAL GROUNDS ON WHICH FIR PERTAINING TO THE SCHEDULED OFFENCE WAS QUASHED:

12. The petitioner mainly contended that the respondent cannot proceed under PMLA in view of the quashment of predicate offence in FIR No.11/2019

². CrI.O.P.No.SR.46376 of 2021 dated 27.01.2022



dated 01.11.2019 by the Karnataka High Court vide order dated 15.04.2024.

WEB COPY The relevant order portion is reiterated as under;

“(iii) The impugned proceedings in FIR No.11/2019 dated 01.11.2019 registered by the CBI, BSFB, Bangalore insofar as it relates to the petitioner in Crl.P.No.5354/2023 is hereby quashed. Further Para-31 of the said order dated 15.04.2024 is reiterated below-

31. The Central Government in relation to the same allegation against the petitioner and other accused by order dated 9.4.2019 entrusted investigation to the SFIO, and the SFIO after investigation submitted a report, and thereafter, filed a complaint before the Special Court established under Section 435 of the Act, 2013. Therefore, the SFIO alone has jurisdiction to try the offences alleged against the petitioners.

13. The undisputed facts between the parties are that the FIR has been registered on 09.09.2022 by the Central Bureau of Investigation (CBI) under Section 120(B) read with Sections 420, 467, 468, 471 read with Sections 13(2), 13(1) (d) of Prevention of Corruption Act, 1988. Based on the scheduled offence, Enforcement Case Information Report (ECIR) was registered and the



investigation was commenced. It is not in dispute that complaint under Sections 44 and 45 of PMLA has been filed. Thereafter, supplementary complaint was also filed invoking Section 447 of the Companies Act, 2013 on 12.06.2024. The FIR was challenged before the High Court of Karnataka. The High Court quashed the FIR on the ground that the investigation pertaining to the same allegation against the petitioner and other accused was entrusted to the Serious Fraud Investigation Office (SFIO), and the SFIO after investigation submitted a report and thereafter filed a chargesheet / complaint before the Special Court and the same is pending before XV Additional City Civil Court, Chennai. Therefore, the Court quashed the FIR No.11/2019 dated 01.11.2019 on the ground that SFIO alone has jurisdiction to try the said offences.

B) SCHEDULED OFFENCE OF SECTION 447 OF THE COMPANIES ACT, 2013 IS STILL PENDING AGAINST THE PETITIONER:

14. It is pertinent to note that in respect of other accused persons, the FIR in predicate offence is still in force. And it is also to be noted that the SFIO complaint still stands good. This SFIO complaint was registered on 28.03.2019 much before registration of FIR by the CBI on 01.11.2019 and ECIR on 27.12.2019. Meanwhile, the CBI has preferred an Appeal against the FIR quash



order passed in favour of the petitioner. In the time limit before the FIR was quashed, the Enforcement Directorate investigation process was conducted and a supplementary complaint was filed in the year 2024.

15. From the above facts, it is clear that the High Court of Karnataka quashed the FIR and not the SFIO complaint. Therefore, the scheduled offence under Section 447 of the Companies Act, 2013 still stands good against the companies namely M/s.Surana Industries Limited, M/s.Surana Power Limited, M/s.Surana Corporation Limited. Section 447 of the Companies Act, 2013 is also one of the scheduled offence under Part A of the schedule to PMLA. To elaborate further Section 2(y) of the PMLA, 2002 reads as under;

“2(y) “Scheduled Offence” means- (i) the offences specified under Part A of the Schedule; or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or (iii) the offences specified under Part C of the Schedule.”

16. During the pendency of a Serious Fraud Investigation Office (SFIO) proceeding, which is scheduled offence, it gives jurisdiction to the Enforcement Directorate to investigate the matter and the ECIR cannot be stated to be



without a predicate offence.

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17. Therefore, the proceedings under section 447 of the Companies Act, 2013 is a scheduled offence under PMLA, 2002. It is not disputed that already chargesheet / complaint has been filed under Section 447 of the Companies Act, 2013 on 09.09.2022 and the same is pending before the XV Additional City Civil Court, Chennai. Further, it is submitted that the Petitioner was arrested by SFIO and is under judicial custody from 02.08.2022.

18. Therefore, the action of Respondent Department does not stand vitiated as the predicate offence under Section 447 of the Companies Act, 2013 is still pending and not quashed. Therefore the prayer of quashing of the ECIR and all subsequent proceedings appears to be misplaced one.

C) PMLA IS A SUI-GENERIS LEGISLATION:

19. Prevention of Money Laundering Act, 2002 is a special enactment, enacted with a specific purpose and object i.e., to track and investigate the cases of money laundering. This Act is a complete code in itself with all in-built mechanisms to deal with proceeds of crime. **The primary focus of the legislation is “Proceeds of Crime” with respect of scheduled offences**

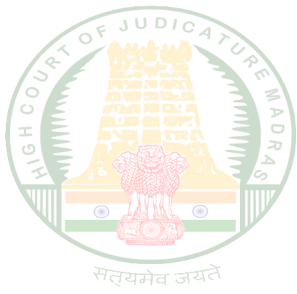


mentioned in the Act.

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20. After investigation of the crime, the Respondent Department has to investigate into whether the offence, as enunciated under Section 3 of PMLA has been committed or not, and the adjudication, prosecution and trial under PMLA is independent of the scheduled offence. The Respondent is the notified Investigative Authority for PMLA only and not for the scheduled offence. Both the proceedings are independent in nature according to the scope of the Act and also the dictum of Hon'ble Apex Court in ***Vijay Madanlal Choudhary*** case cited supra. The said paragraph is reiterated below;

*“269... From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an **independent offence regarding the process or activity connected with the proceeds of crime** which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-*



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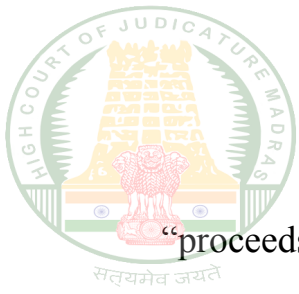
laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence derived or obtained as a result of that crime - except the proceeds of crime derived or obtained as a result of that crime.”

21. In a case where based on the scheduled offence Enforcement Directorate initiated PMLA proceedings, conducted investigation, identified “proceeds of crime” and filed statutory complaint under Sections 44 and 45, then it is to be construed as **Standalone Process** within the parameters laid down by the Hon'ble Apex Court in the case of *Vijay Madanlal*.

D) SECTION 3 OF PMLA IS A STANDALONE PROVISION:

22. When the facts stand as it is, let us now consider the spirit of the discussions made by the Hon'ble Supreme Court regarding the scope of Section 3 of PMLA. The discussion about Section 3 of PMLA commences from paragraph 263 of *Vijay Madanlal's* judgment.

23. Importantly, in paragraph 281 of *Vijay Madanlal's* case cited supra, the question discussed is, whether the offence under Section 3 is a standalone offence. The observations reveal that the property must qualify the definition



“proceeds of crime” under Section 2(1)(u) of PMLA. 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 concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property as ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) of PMLA. The deeper sense expressed by the Hon'ble Supreme Court would amplify that in the event of acquittal of a person concerned or being absolved from the allegations of criminal activities, such properties are excluded from the definition of proceeds of crime, if such properties has been rightfully owned and possessed.

24. In paragraph 282 of *Vijay Madanlal's* judgment, it is clarified that the authority of the Authorized Officer under PMLA to prosecute any person for offence of money laundering gets triggered only if there exists “proceeds of crime” within the meaning of Section 2(1)(u) of PMLA and further it is involved in any process of criminal activity. All the undisclosed properties



cannot be construed as proceeds of crime. Though it may attract tax provisions,

it would not fall under the definition of proceeds of crime under Section 2(1)(u) of PMLA. Importantly, if the offence so reported is a scheduled offence only in that eventuality, the property recovered by the authorised officer partake the colour of proceeds of crime under Section 2(1)(u) of the Act enabling him to take further action under the PMLA.

25. Significantly, in paragraph 284 of *Vijay Madanlal's* judgment, it is reiterated that the authority under PMLA, is to prosecute a person for offence of money laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of “ Proceeds of Crime”. Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process. Therefore, the live link between the scheduled offence and PMLA proceedings would be relevant for initiation of proceedings under PMLA. The Hon'ble Supreme Court elaborately considered initiation of PMLA proceedings, for which it is a pre-condition that a scheduled offence is to be



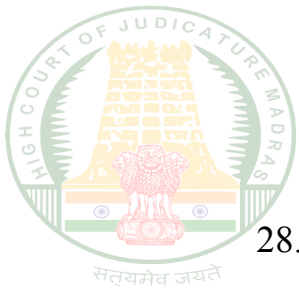
registered.

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E) ECIR CANNOT BE EQUATED WITH FIR:

26. The ground of quashment of FIR to quash the ECIR cannot be taken as a matter of principles or as an automatic ground for quashing the ECIR due to the unique distinction between the FIR and ECIR. Further, FIR cannot be equated with an ECIR. The scheduled offence is quintessential for initiation of proceedings and recording of ECIR but both the offences cannot be placed on the same footing. PMLA proceedings are distinct and the said Act is a complete code in itself, whereas scheduled offences are tried under other laws. When two documents are different and distinct in their own nature, a combined reading and implication cannot be adduced to them.

27. ECIR is born from FIR, but once the ECIR is born, the umbilical cord that connects the ECIR with FIR loses its relevance and the ECIR becomes an independent document in itself. Consequently, a new life in the form of ECIR emerges, which can breathe on its own without the support of FIR. So, the FIR and ECIR become two different documents and both tend to take shape on its own, independent of each other.



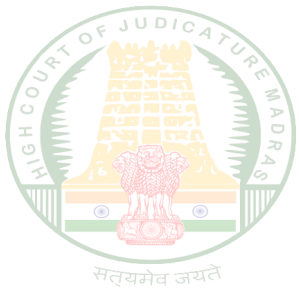
28. “Proceeds of Crime” is the focal point for an ECIR, whereas

scheduled offence is dealt with under the FIR. Further reliance is also placed with the aid of judgments delivered by the Hon'ble Supreme Court of India in the case of *Vijay Madanlal Choudhary vs. Union of India and Others* cited supra and *Rajinder Singh Chada vs. Union of India*³. Both these judgments have noted the distinction between FIR and ECIR. More so, ECIR is treated as an internal document.

29. In **Vijay Madanlal's** case (supra), the relevant portion to support this contention is as extracted below;

“457. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money-laundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of

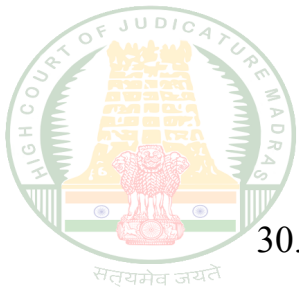
3. W.P. (CRL) 562/2023 & CRL.M.A. 5126/2023



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proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money-laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the Accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.



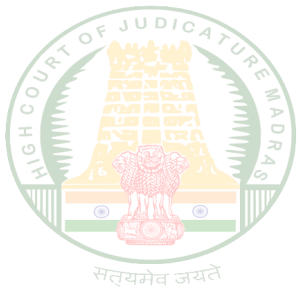
30. Further, in the case of ***Rajinder Singh Chada vs. Union of India***

WEB COPY cited supra, the Delhi High Court held as follows;

“32... Since the ECIR has not been equated with a FIR and has been held to be an internal document, there cannot possibly be a restriction to bringing on record on any subsequent scheduled offence registered by way of an FIR alleged to have been committed in respect of the same transaction which was the subject matter of such ECIR.

34 ...It is clarified that since this Court is of the opinion that the ECIR, as explained in Vijay Madanlal Choudhary (supra) cannot be equated with an FIR and as per the stand of the department, the same is only for administrative purposes, there is no impediment in taking the third FIR on record which related to the same project forming the basis for registration of the first two FIRs, resulting in initiation of the impugned ECIR.”

31. When there are findings arrived at independently in both the FIR and ECIR, can the Court completely disregard those findings and bring the proceedings to an unjustified end just because one of the proceedings was quashed on procedural / technical grounds without due impetus to the substantive grounds? This question requires an in-depth consideration.



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F) DELIBERATIONS ON THE PRINCIPLE OF AUTOMATIC QUASHING OF ECIR ONCE FIR STANDS QUASHED:

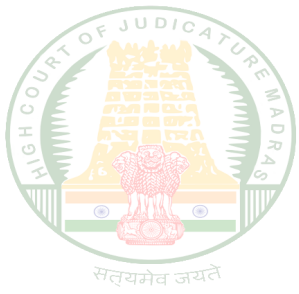
32. It shocks the conscience of the Court that in recent cases involving money laundering, a certain pattern has emerged, whereby, the FIR quashed through minor technical glitches or procedural irregularities and with that as a ground they seek for quashing of ECIR also. The wordings in the final summary portion of the *Vijay Madanlal's* judgment in paragraph 467 (5)(d) is used in isolation without due consideration to the judgment as a whole to wriggle away from the clutches of PMLA. The wordings in *Vijay Madanlal's* case cannot be accorded a narrow meaning by relying only on the summarisation towards the end of the judgment, but the observations in various paragraphs and the findings made therein must be read in tandem to extract its true essence. At the outset, this Court would clarify that we are neither attempting nor intending to rewrite the *Vijay Madanlal's* judgment. This Court is merely restraining from a pick and choose application of the principle established in *Vijay Madanlal* case and rather, is for the complete harmonious application of the judgment as a whole in letter and spirit. Any application of principle, even if in its literal form paves way for injustice, then the Court is



allowed to take a detour to expound the law in such a way which serves the cause of justice. If the principles of automatic quashment of ECIR is adopted arithmetically, the very purpose and objective of PMLA is defeated.

33. This point of contention in the present Petition falls within the contours of the judgement rendered by the Hon'ble Supreme Court in **Vijay Madanlal** case. The **Vijay Madanlal** case extensively dealt with the validity of different provisions in the PMLA, 2002. The observations made in the Paragraph No.281 relevant to the case on hand is extracted below:

“281. The next question is: whether the offence under Section 3 is a standalone 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,

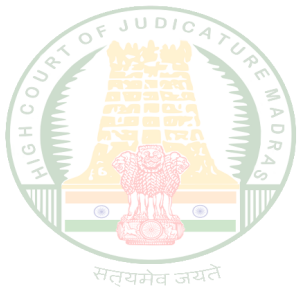


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in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned 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 concerned Court trying the scheduled offence to pronounce on that matter.”

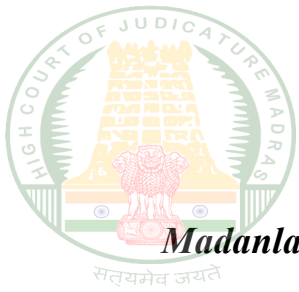
34. A blanket application of the observations made in the aforementioned judgement will not advance the object set out under the PMLA, 2002 and in turn will defeat its primary object. The **Vijay Madanlal** case is a binding precedent for all Courts below. And on careful application of the judgement, analysing on a case to case basis, the output shall defer for each case and not render the same result.



WEB COPY 35. Every case is marinated with different facts and circumstances and the application of law should not only meet the ends of Justice, but should also further the object behind the statute. The principles in **Vijay Madanlal** is set out clear with respect to proceeds of crime under PMLA, 2002, as under;

“281. 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 concerned case 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..”

36. The Court's observations above hold that where a person is acquitted or absolved of a criminal activity relating to a scheduled offence and on establishing in a Court of law that the crime property is in legitimate ownership, such property cannot be termed as crime property and in consequence the PMLA offences loses its significance. Hence, to warrant a quashing of the ECIR, mere quashing of the FIR on technical grounds by itself does not make the ECIR liable to be quashed. That is not the observations set out in the **Vijay**

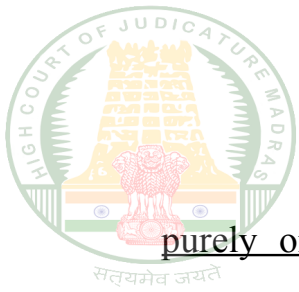


***Madanlal* case. Rather in proceedings pertaining to the quashing of the FIR**

in a scheduled offence, the Court must have dealt with not mere procedural irregularities, but something more in the nature of substantive grounds.

37. The exact wordings of the Court culls out the object. That the accused person should have been acquitted or absolved from the allegations of criminal activity relating to the scheduled offence and that the crime property should be rightfully owned and possessed by him. So the essence of the observations made herein is that the accused person should be exonerated from the charges levelled against him.

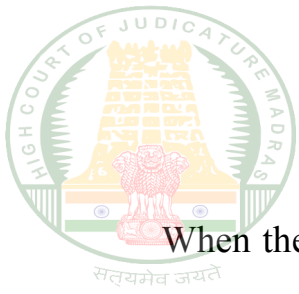
38. Though there are multiple grounds for quashing an FIR, and in one of the many grounds an FIR can be quashed, when it comes to proceedings pertaining to quashing the ECIR, the Court must examine the grounds based on which FIR concerning the scheduled offence was quashed and after careful examination on a case to case basis, if the FIR was quashed on substantive grounds of absence of *prima facie* offence and not mere procedural irregularities, then the ECIR loses its significance and is liable to be quashed. Since the scheduled offence itself is not made out, then automatically no predicate offence can hold good in the ECIR. However, if the FIR was quashed



purely on technical grounds or procedural irregularities, then it is to be understood that mere quashing of the FIR does not absolve the accused under the PMLA proceedings and inturn cannot collapse the predicate offence in the PMLA proceedings.

39. Further, when the PMLA proceedings is set in motion and *prima facie* findings are already made, including completion of filing of chargesheet, then an FIR quashed after this stage cannot be a viable ground to quash the ECIR also. More so, the PMLA requires the presence of a scheduled offence to initiate proceedings under the Act. So it also becomes a mandate that the grounds on which scheduled offence was quashed is thoroughly examined before rendering the PMLA offence ineffective.

40. This Court is not venturing into the grounds of quashing an FIR as the principles pertaining to the same has already been laid down elaborately by the Hon'ble Supreme Court. But the rationale here is to cull out the level of bearing that a quashed FIR has on an proceedings challenging the ECIR. This Court feels that all cases where FIR is quashed shall not automatically become a ground for quashing an ECIR. Instead a case to case analysis is a pre requisite for deciding on the sustenance of an ECIR. To put it in comprehensive terms,



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When the Court in an FIR quash proceedings has not delved into the merits of the offence, but rather found technical errors on the face of it, then the Court directs the quashing of the said FIR. The accused then goes on to challenge the ECIR by placing reliance on the said FIR Quash order to quash the ECIR also. But a reading of relevant paragraphs in the *Vijay Madanlal's* case clearly showcases that this is not the object behind the said judgement. The final summarisation, when read in tandem with the observations set out in paragraphs of the judgement and also keeping in line with **the explanation to Section 44 of the PMLA, 2002**, this Court comes to the irresistible conclusion that cases where FIR pertaining to the scheduled offence is quashed it does not automate the exoneration of the accused from the predicate offence. Rather FIR quashes on grounds of mere technicalities or procedural irregularities in the FIR, cannot by itself form a basis to grant an automatic quash of ECIR. Also in the aforementioned instance, there needs to be a case to case examination of the offence registered under the PMLA before the offence is rendered ineffectual.

41. Hence, the moot point for consideration whether all cases where FIR has been quashed can pave way for quashing of ECIR? This Court feels that each case must be tested on its own, in consonance with the *Vijay madanlal*



judgement and a blanket application of the principle without due regard to the

facts of each and every case shall render both the judgement and the object of the PMLA ineffective.

G)IMPLICATIONS OF AUTOMATIC QUASHING OF ECIR BASED ON FIR QUASH:

42. In cases as such where on initiation of PMLA proceedings, *prima facie* proceeds of crime has been traced, there arises a pertinent question as to whether this Court can stall such proceedings inspite of preliminary findings of the existence of proceeds of crime. The conscience of this Court is directed towards delivery of justice and though the FIR of scheduled offence stands quashed, it is merely on technicalities without analysing the merit of the scheduled offence. Hence, **when “proceeds of crime” is traced in a parallel investigation by the Enforcement Directorate, this gives rise to another question that, once proceeds of crime is *prima facie* unearthed can ECIR be quashed on the ground that FIR was quashed. This clearly is an unjustified approach.**

43. In the present case, the FIR against the petitioner alone was quashed by the Karnataka High Court, whereas the FIR against the other accuseds are



still pending. The FIR No.11/2019 dated 01.11.2019 registered by the CBI was quashed on the ground of want of jurisdiction. Since for the same offence the investigation was handed over to the SFIO, whereby the SFIO conducted the investigation and filed a complaint / chargesheet before the Special Court, which is still pending.

44. Due to the above development, since the SFIO was already entrusted with the investigation by the Central Government vide order dated 09.04.2019 on the same set of allegations, the present FIR registered by the CBI was quashed by the High Court citing the aforementioned reason. Hence, it is amply clear that the High Court has quashed the FIR only on the ground that another Investigating Agency is seized off the matter. The Court has not dealt with the allegations nor tested the merits of the offences charged in the FIR. The Court restricted itself only to the ground of want of jurisdiction. Hence the FIR was quashed purely on this **technical or procedural issue and not on substantive grounds** and has not made any findings as to the offences or the *prima facie* allegations in the FIR. Therefore, the quashing of the FIR shall not warrant an automatic quashing of ECIR. All the more, the predicate offence under Section 447 of the Companies Act, 2013, which is also a scheduled offence under the PMLA still stands good and requires further investigation. Therefore, in view of



the above ECIR is not liable to be quashed.

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V. CONCLUSION:

45. Hence, we have arrived at an irresistible conclusion that the petitioners have not made out any case for quashing of ECIR filed by Enforcement Directorate. However, the Trial Court shall proceed uninfluenced by the observations if any made on factual aspects and decide the issues based on documents and evidence available on record and by following the due process.

46. Accordingly, the Writ Petitions are dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

[S.M.S., J.]

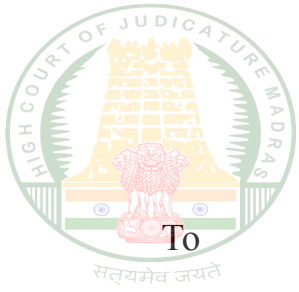
[V.S.G., J.]

28.08.2024

Index: Yes/No

Speaking/Non-speaking order

mrp/Jeni



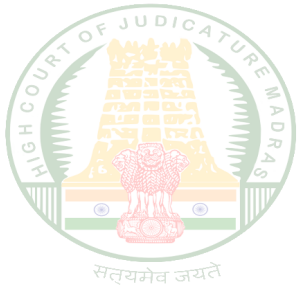
W.P.Nos.14782, 14786 & 14787 of 2024

To

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1. The Assistant Director,
Enforcement Directorate,
Chennai I Zonal Office,
Nos.3 & 4, Murugesha Naicker Office Complex
84, Greaves Road, Thousands Light,
Chennai 600 006

2. The Public Prosecutor.
High Court, Madras.



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VERDICTUM.IN



W.P.Nos.14782, 14786 & 14787 of 2024

S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

mrp/Jeni

W.P.Nos.14782, 14786 & 14787 of 2024

28.08.2024

APPELLATE TRIBUNAL FOR SAFEMA, FEMA, NDPS, PMLA & PBPT ACT
AT NEW DELHI

DATE OF DECISION: 09.08.2019

1. MP-PMLA-5651/JL/2019 (Impleadment)
MP-PMLA-4660/JL/2018 (Stay)
FPA-PMLA-2419/JL/2018
Seema Garg

...

Appellant

2. MP-PMLA-5652/JL/2019 (Impleadment)
MP-PMLA-4661/JL/2018 (Stay)
FPA-PMLA-2420/JL/2018
Saiyrah @ Deepika Garg

...

Appellant

3. MP-PMLA-4662/JL/2018 (Stay)
FPA-PMLA-2421/JL/2018
Sangeeta Garg

...

Appellant

Versus

The Joint Director
Directorate of Enforcement, Jalandhar

...

Respondent
- Advocates/Authorized Representatives who appeared
- For the Appellants

:

Shri Deepak Gupta, Advocate

For the Pegasus Assets
Reconstruction Pvt. Ltd.

:

Shri Dinakar Sage, Advocate

For the respondent

:

Shri Mohd. Faraz, Advocate
- CORAM
SMT. ANANYA RAY : MEMBER
- JUDGMENT
- FPA-PMLA-2419-2421/JL/2018
1. The above appellants have filed an appeal against the order in original in OC 863/2018 dated 28.05.2018. Subsequently M/s. Peagsus Reconstruction Pvt. Ltd. was also impleaded as a party to the appeal.
- FPA-PMLA-2419-2421/JL/2018

Page 1 of 15
- 88

2. Briefly, the case is that a company by the name of M/s. Jaldhara Export, Ludhiana exported readymade garments to Bangladesh in the financial year 2012-13 to the tune of Rs. 33.36 crores and thereafter claimed VAT refund of Rs. 1.56 crore from the Government of Punjab. However, on an investigation with the Customs, Petrapole Land Custom Station, West Bengal, the Customs authorities confirmed that all the shipping bills produced by the firm for the purported export of the readymade garments to Bangladesh were found to be forged and fabricated.

After investigation, the Police filed a case under Section 177, 420, 465 etc. of IPC 1860 against one Shri Raman Kumar Garg, the proprietor of M/s. Jaldhara Exports, Ludhiana. As per this, Shri Raman Kumar Garg had obtained VAT refund of Rs. 1,56,76,190/- on the basis of forged and fabricated document from the Department of Excise and Taxation, Ludhiana, Government of Punjab. After receipt of the said money in the accounts of M/s. Jaldhara Exports maintained with the State Bank of India, Ludhiana, it was then transferred into the accounts of various companies and people all owned by his relatives inter alia including his mother, his aunt and his wife who are the above three appellants in the present appeals.

3. Both the parties were heard at length finally as they did not insist on a stay. The learned counsel for the appellants stated as follows:

- i. That the Assistant Excise & Taxation Commissioner, Ludhiana had lodged a complaint No. 664 dated 18.07.2013 before the Police at Ludhiana alleging that M/s. Jaldhara Exports, Ludhiana had fraudulently claimed a VAT refund of Rs. 1.64 crores from the State Government vide its application dated 11.02.2013 (although they were granted Rs. 1.56 crore as refund). On the basis of above, the Police registered a FIR No. 126 of 26.07.2013. Since the refund was filed on 11.02.2013,

the offences under Section 420, 467 and 471 of IPC did not form part of Part B of the Schedule of the PML Act. Vide amendment made to the PMLA w.e.f. 15.02.2013 offences under Section 420, 467 and 471 were notified under Para 1 of Part A of the Schedule. Hence, from 01.06.2009 to 14.02.2013, the offences under Section 420, 467 and 471 were not covered either in Part A or Part B of the Schedule and since the refund application is dated 11.02.2013, the PMLA does not apply to them as the alleged offence was not a scheduled offence at the time of the commission of the same.

- ii. That Shri Raman Kumar Garg in his statement dated 23.10.2017 has disclosed the details and trail of the refund money which he again reiterated on 25.10.2017. However, this statement nowhere mentioned anything about the appellants.
- iii. That it was undisputed that the two plots measuring 511.22 sq. yd. and 488.88 sq. yd. of Plot No. 800, Moti Nagar, Ludhiana were purchased in 1991 in the name of Smt. Seema Garg who is the mother of Shri Raman Kumar Garg and Smt. Sangeeta Garg, the aunt of Shri Raman Kumar Garg. Since the purchases was of the year 1991 i.e. much prior to the alleged offence, it cannot be treated as proceeds of crime. Moreover, nowhere in the impugned order has it been shown that the plots were purchased by the appellants out of the alleged proceeds of crime.
- iv. That the impugned order has nowhere brought any evidence to show that the appellants knowingly assisted Shri Raman Kumar Garg either to acquire the proceeds of crime or in laundering the same. All the three appellants in their statements all dated 23.11.2017 have stated that they are house wives and they were

not aware of the dealings of either Shri Raman Kumar Garg or his company and this proves their innocence.

- v. With regard to the third property i.e. Flat No. 11-A, Empire Residential Project, SAS Nagar, Punjab which belonged to Saiyrah @ Deepika Garg appellant who is the wife of Shri Raman Kumar Garg, her statement dated 23.11.2017 proves her innocence since she has clearly stated that the property did not belong to her although the sale deed stands in her name and the said sale deed was signed by her father-in-law Shri Vinod Kumar Garg. Moreover, the payment for the said flat was made in the year 2012, (although the sale deed is of 2014) and the VAT refund arose on 05.03.2013 (when the refund amount was transferred in the account)'. It was therefore prior to the alleged scheduled offence and hence the order is not sustainable qua the subject flat.
- vi. That the value of the properties taken for attachment has been based on different parameters. While in one case it is the market value in the other it is the sale deed value which has been taken and there is no uniformity.
- vii. They relied on the following judgments:
 - a. *Madras High Court in the case of M/s. Indian Bank & Ors. Vs. Government of India dated 11.07.2012 in W.P. Nos. 4696 and 12854 of 2012 and MP Nos. 1, 1 and 2 of 2012.*
 - b. *The Appellate Tribunal, PMLA judgment in FPA-PMLA-478/DLI/2013 dated 23.07.2018 in the case of Vinod Kumar Gupta vs. ED.*
 - c. *The Appellate Tribunal, PMLA judgment in FPA-PMLA-971/CHD/2015 dated 26.04.2019.*

d. *The Appellate Tribunal, PMLA judgement in FPA-PMLA-449/BNG/2013 dated 11.05.2018.*

4. Arguing on behalf of M/s. Peagus Reconstruction Pvt. Ltd., the learned counsel for the petitioner stated that loans were taken from the Allahabad Bank with regard to the two properties in Plot No. 800 Street No. 2, Baba Gajja Jain Colony, Moti Nagar, Ludhiana. That they vide deed of assignment dated 27.09.2013 duly executed between them and Allahabad Bank and registered on 30.04.2014 took over assignment of debt of M/s. Jaldhara Exports. That as per SARFAESI Act, 2002 every asset reconstruction company on such acquisition would be deemed to be the lender and all the rights of such bank shall vest on such company in relation to such financial asset. That as per the registered deed of assignment, the appellant in appeal No. 2419 i.e. Smt. Seema Garg and the appellant in appeal No. 2421 i.e. Mrs. Sangeeta Garg, both mortgaged their immovable properties bearing Plot No. 800 at 511.11 sq. yd. and 488.88 sq. yd. as mentioned at para 3(iii)-*supra*, with Allahabad Bank. As the above properties presently stand mortgaged with them, they are entitled to recover amounts in the above loan accounts through sale or otherwise. The asset reconstruction company is therefore the right claimant of the said properties and as per the provision of SARFAESI, and the ED cannot take away this right. He also relied on the judgment of the High Court of Delhi in CRL.A. 143, 210, 623, 764, 1076 of 2018.

5. In reply, the learned counsel for the respondent stated the following:

- i. That Section 2(1)(u) defines proceeds of crime as any property derived or obtain directly or indirectly by any person as a result of criminal activity relating to a scheduled offence **or the value of any such property**..... Further, he stated that Section 2(zb) of

the Act defines 'value' to mean the fair market value of any property on the date of its acquisition by any person or if such date cannot be determined, the date on which such property is possessed by such person. Accordingly, variable values are prescribed under the law which has been correctly followed by the adjudicating authority.

- ii. That the impugned order has very clearly brought out the role of the three appellants as well as the flow chart of how the proceeds of crime has been processed and distributed amongst the three appellants. Not an iota of any evidence has been given by the appellants to counter the same. In fact, they have not challenged the flow chart at all he stated. That a petition was filed by Shri Vinod Kumar Garg, father of Raman Kumar Garg on various grounds including challenging the issuance of summons and the consequential proceedings against them in the present case before the Punjab & Haryana High Court. The Hon'ble Court vide its order dated 22.12.2015 had dismissed their petition and directed to videograph the proceedings of inquiry and interrogation. However, notwithstanding this, the appellants and Shri Raman Kumar Garg and his other relatives failed to comply with the above directions of the Hon'ble High Court which proves the guilt and culpability of all the accused in the case.
- iii. The submission of M/s. Peagsus Reconstruction Pvt. Ltd. that the two properties 511.22 sq. yd. and 488.88 sq. yd. of Plot No. 800, Moti Nagar, Ludhiana was mortgaged by Seema Garg and Sangeeta Garg to the Allahabad Bank

and thereafter to them, shows that the properties belonged to these appellants.

- iv. Since the flow chart as described in the impugned order proves that the proceeds of crime have travelled into accounts of the appellants/companies owned by them and as per law proceeds of crime includes value of such property the adjudicating authority has rightly attached the values of both these properties.
- v. With regard to the judgment cited, he stated that the facts in each of these cases was entirely different and hence cannot be taken as having precedent value.

6. I have carefully examined the documents and records of the appeal and also heard the parties at length. The first contention of the appellant that since the predicate offences were not schedule offences on the day they filed their refund application with the State Government i.e. 11.03.2013, therefore the impugned order is illegal, appears to be a too stretched out argument. In the present case, the Assistant Excise and Taxation Commissioner, Ludhiana, lodged a complaint on 18.07.2013 with regard to the fraudulent refund. Thereafter, the FIR was lodged on 26.07.2013 and the ECIR was filed on 14.08.2013 under the PMLA. By the appellants own admission, the PMLA had undergone an amendment w.e.f. 15.03.2013 when these offences became schedule offences. Hence, there cannot be any dispute that the said offences were scheduled offences when the ECIR was filed.

7. In the grounds of appeal, they have accepted that Shri Raman Kumar Garg the main accused (who is not an appellant in this case) tendered a correct statement, when at page 8 of the appeal (FPA 2419) they have stated that “there is nothing in the whole POA (should be PAO)

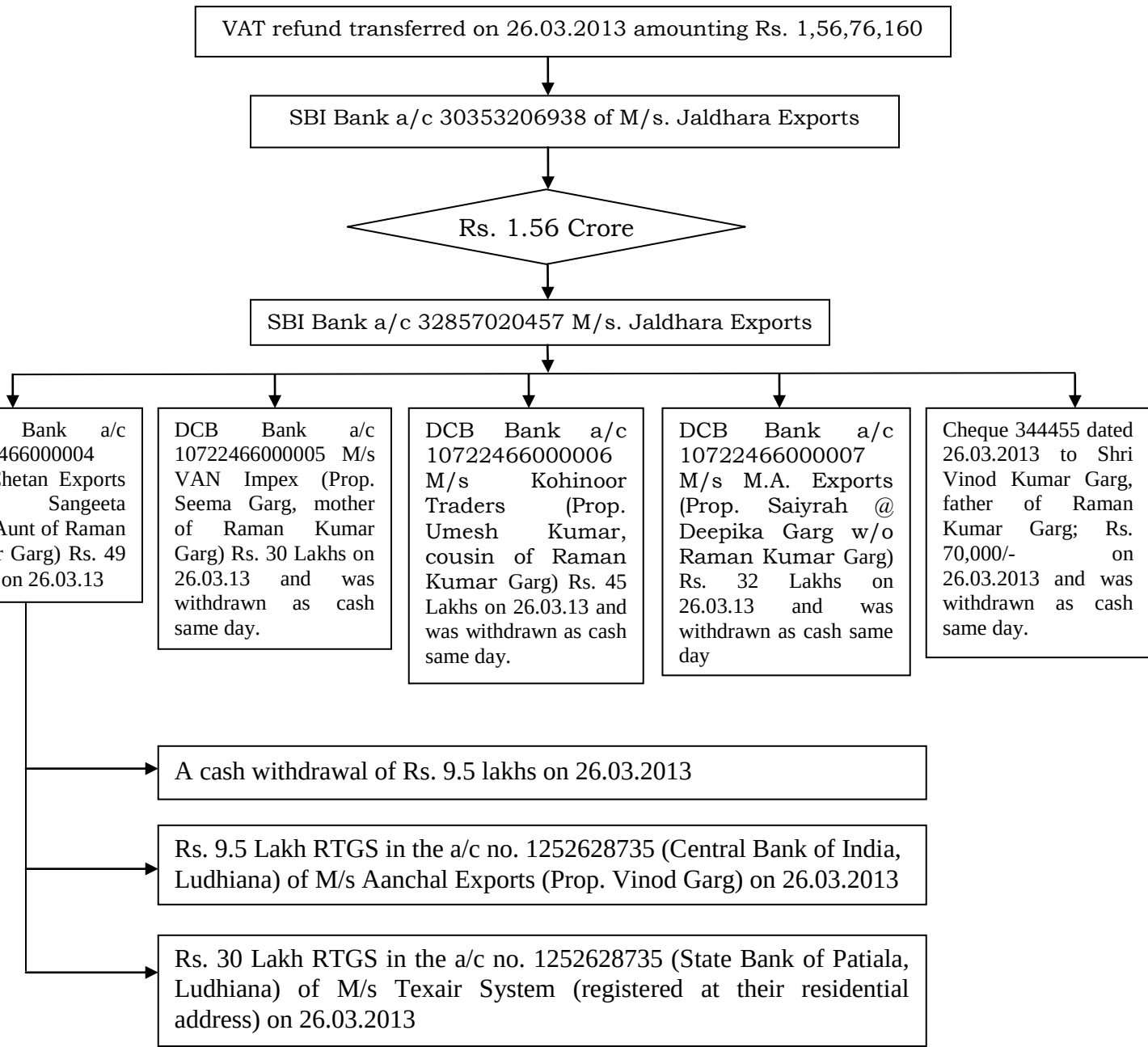
as well as in the whole complaint and impugned order to show/prove that Shri Raman Kumar tendered wrong statement”. If one goes through the statement of Shri Raman Kumar Garg dated 23.10.2017, 25.10.2017 and 26.10.2017, it is seen that he has accepted that he was the proprietor of M/s. Jaldhara Exports, that after receiving the VAT refund of Rs. 1.56 crore, the same was transferred into the account of M/s. Chetan Exports whose proprietor was Sangeeta Garg, his aunt and one of the appellants; to M/s. VAN Impex whose proprietor was Seema Garg, his mother and one of the appellants; M/s. M.A. Exports whose proprietor was Saiyrah @ Deepika Garg, his wife, to M/s. Kohinoor Traders whose proprietor was Umesh @ Arjun Garg, son of Sangeeta Garg, his aunt. He also accepted in his statement that all these companies were actually looked after by his father Shri Vinod Kumar Garg and that the VAT refund proceeds were withdrawn as cash for further distribution. Smt. Seema Garg, the mother of Shri Raman Kumar Garg stated in a statement that the 511.22 sq. yd. and 488.88 sq. yd. of Plot No. 800, Moti Nagar, Ludhiana was purchased in her name jointly with Sangeeta Garg by someone in her family and she was not aware about other details of the property, that she was unaware regarding deposits into the account of M/s. VAN Impex of which she was the proprietor. She categorically mentioned that it was her son (Raman Kumar Garg) who could explain the same. Similar statements were given by Smt. Sangeeta Garg and by the third appellant Saiyrah @ Deepika Garg.

8. The impugned order has recorded the details of investigation and the flow chart of how this refund money, which is the proceeds of crime, was processed and disbursed. The VAT refund amount of Rs. 1.56 crores was transferred to the account of M/s. Jaldhara Exports on 26.03.2013 maintained in SBI, Mundian Kalan Branch, Ludhiana. Thereafter, Rs. 32

lakhs was transferred on 26.03.2013 into the DCB Bank account through RTGS of M/s. M.A. Exports, the proprietor of which was Smt. Saiyrah @ Deepika Garg, wife of Raman Garg. The said money was withdrawn in cash on the same day. Similar details have been provided in the impugned order with regard to the others which is depicted in the flow chart as below:

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9. The appellants have not controverted the above and not disputed any of the details in the flow chart as above. In this background, it can be concluded that the refund money received fraudulently has been disbursed/used by the appellants or their companies and therefore, stands the test of money laundering as defined under the PMLA. The appellants

stating that the properties pertaining to 511.22 sq. yd. and 488.88 sq. yd. of Plot No. 800, Moti Nagar, Ludhiana were purchased in 1991 and cannot be proceeds of crime as it was much prior to the date when the schedule offence was committed does not seem to be a sound argument. The adjudicating authority relying on his earlier order has stated “though ordinarily the Director attaches properties acquired subsequent to generation of proceeds of crime.....it is not out of bonds for him to attach properties that came into existence before generation of proceeds of crime..... The Director cannot be faulted as long as the value of the properties attached does not exceed the quantum of crime. The value of the property cannot be conceived in a vacuum. It has to have reference to a physical entity.” This shows that the adjudicating authority has attached these properties not because they were directly proceeds of crime but to arrive at a value. As per Section 2(1)(u) of PMLA, 2002 referred to at para-5 *supra* proceeds of crime includes value of any such property. There is therefore no illegality in attaching the property with regard to the value thereof. Moreover, I agree with the respondents that the value can be variable as that is how value has been defined under the PMLA under Section 2(zb).

10. Coming to the arguments of the M/s. Peagsus Reconstruction Pvt. Ltd. and their reliance on the High Court judgment as quoted at para 3(vii), it is seen that the Hon’ble High Court of Delhi while summing up the issue has observed as follows:

“To sum up on the issue, the objective of the legislation in PMLA being distinct from the purposes of the three other enactments viz RDBA, SARFAESI Act and Insolvency Code, the later cannot prevail over the former. There is no inconsistency. The purpose, the text and context are different. This court thus reject the

argument of prevalence of the said laws over PMLA.” With regard to the rights of third party, the Hon’ble Court further observed “an order of attachment under PMLA is not rendered illegal only because a secured creditor has a prior secured interest (charge) in the subject property. Conversely, mere issuance of an order of attachment under PMLA cannot by itself render illegal the prior charge or encumbrance of a secured creditor, this subject to such claim of the third party (secured creditor) being bona fide. In these conflicting claims, a balance has to be struck…….” The Hon’ble Court at para 155, 157 and 158 of its order clearly states that “it is well settled that by hypothecation, no interest of property is transferred to the hypothecatee, the latter acquiring nothing more than equitable and notional charge to have his claim realised by sale of good hypothecated.” “The mortgager being the owner who had parted with some rights of ownership has a right to get back the mortgage property and the mortgage deed in exercise of his ownership……. A hypothecatee or a mortgagee, thus, has a limited interest in the property……. There is no ownership, or right to possess.”

11. Hence, the decision of the Hon’ble Delhi High Court which was a remand order, does not unequivocally support the claim of M/s. Peagus Reconstruction Pvt. Ltd., although it does recognize its claim under SARFAESI as long as it does not override the actions under PMLA.

The Hon’ble Supreme Court in the case of **KSL and Industries Ltd. vs. Arihant Threads Ltd. & ors. [(2015) 1 SCC, 166]** decided by three-Member Bench at para 41 stated “Indeed, the question as to which Act shall prevail must be considered with respect to the purpose of the two enactments; which of the two Acts is the general or special; which is later. It

must also be considered whether they can be harmoniously construed”

(emphasis laid)

At para 42, it further quoted from its earlier judgment in Ram Narain vs. Simla Banking & Industrial Co. Ltd. [AIR 1956 SC 614] as follows:

“7. It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein.”

It had concluded at para 51 of the judgment by quoting from its earlier judgment in RBI vs. Peerless General Finance and Investment Co. Ltd. [10 (1987), SCC 424] as at para 33

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

12. Hence, the Supreme Court had talked about harmonious construction. An interpretation of a statute is best when we know why it was enacted. The interpretation given by the financial institution/Assets Reconstruction company would tantamount to making the PMLA redundant. The legislature has come out with the law of PMLA in fulfillment of our international

obligations as laid in the Preamble of the PML Act so that money laundering and proceeds of crime could be effectively dealt with. If the interpretation given by M/s. Peagsus Reconstruction Pvt. Ltd. is accepted, then parties would mortgage such properties with the bank and run away with, on the one hand, the loans taken from the bank, and on the other by securing their property by mortgaging it to the bank and hence converting it to an 'innocent' property. This to my mind would be in blatant violation of the PMLA as well as the Hon'ble Supreme Court's judgment. Moreover if we see the intent of PMLA and DRT Act or SARFAESI Act, the purpose of these are entirely different. SARFAESI Act and the DRT Act deal with debts due to any secured creditor which shall have priority over all other debts and all revenues, taxes, cesses and other rates due to the Central Government, State Government or local authority. On the other hand, in PMLA there are no dues, debts, revenues, taxes, cesses and other rates which is payable to the Central Government, State Government or local authorities. Properties are attached under PMLA, they being proceeds of crime. They therefore do not fall under the above category as mentioned in the SARFAESI Act or the DRT Act and hence are mutually exclusive.

13. An important point of law needs to be brought out at this stage.

Section 8(3) of PML Act, 2002 reads as under:

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

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

[(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the [Special Court];]

So the attachment order passed by the Adjudicating Authority will continue during the pendency before a court and become final after an order of confiscation is passed by the Special Court.

Section 8(5) and 8(6) further states that;

[(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the moneylaundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of moneylaundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

So the powers of confiscation or release of the attached property is only vested with the Special Courts and this Appellate Tribunal does not have any such powers. Hence exercise of the powers of confiscation or release of the attached property by this Appellate Tribunal is beyond the scope of activities of this Tribunal and would be grossly illegal. Moreover as per Section 8(8) even the powers of restoration of such confiscated property or thereof to a claimant with a legitimate interest in the property vests with the Special Court. Section 8(8) was amended by the Finance Act, 2018, introducing a separate proviso to reinforce this point giving the court further powers to allow such restoration even during the course of the trial. Usurping this power by the Appellate Tribunal would be a blatant violation of the law itself.

14. The appellants have relied on a number of judgments as mentioned at para 3(vii) *supra*. However, the facts of those cases are entirely different from

the present case. The Supreme Court in Bharat Petroleum Corporation Ltd. & Anr. Vs. N.R. Vairamani and Anr. AIR 2004 SC 778 had observed:-

“Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid’s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.”

In Ambica Quarry Works v. State of Gujarat and Ors. MANU/SC/0049/1986 the Supreme Court observed:-

“The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.”

15. On the basis of the above discussions and findings and the judgments of the Hon’ble Delhi High Court and Supreme Court, I do not find any merits in the appeals or the claim of the asset reconstruction company. The appeals are therefore dismissed as rejected.

(Ananya Ray)
Member

New Delhi,
9th August, 2019
‘A’

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

1. MP-PMLA-10805/HYD/2023 Exmp.
MP-PMLA-10777/HYD/2023 Stay
FPA-PMLA-5386/HYD/2023

Axis Bank Ltd. ... Appellant

Versus

The Deputy Director
Directorate of Enforcement, Hyderabad ... Respondent

2. MP-PMLA-1894/HYD/2025 (Intervention)
MP-PMLA-10785/HYD/2023 (Exemp.)
MP-PMLA-10784/HYD/2023 (Stay)
FPA-PMLA-5395/HYD/2023

HDFC Bank ltd. ... Appellant

Versus

The Deputy Director
Directorate of Enforcement, Hyderabad ... Respondent

3. MP-PMLA-1895/HYD/2025 (Intervention)
FPA-PMLA-5409/HYD/2023

M/s ICICI Bank ... Appellant

Versus

The Deputy Director
Directorate of Enforcement, Hyderabad ... Respondent

4. MP-PMLA-1893/HYD/2025 (Intervention)
MP-PMLA-1892/HYD/2025(Intervention)
FPA-PMLA-5424/HYD/2023

Bajaj Finance Ltd. ... Appellant

Versus

The Deputy Director
Directorate of Enforcement, Hyderabad ... Respondent

5. MP-PMLA-1891/HYD/2025 (Intervention)
MP-PMLA-11210/HYD/2023 Exmp.
MP-PMLA-11208/HYD/2023 Stay
FPA-PMLA-5638/HYD/2023

Aditya Birla Finance Limited ... Appellant

Versus

The Deputy Director
Directorate of Enforcement, Hyderabad ... Respondent

Advocates/Authorized Representatives who appeared

For the Appellant : Mr. Arjun Garg,
Ms. Sagun Srivastava,
Mr. Sourabh Rath,
Mr. Aman Raj,
Mr. P. SS Bhargava,
Mr. Madhav Kurana,
Ms. Shally Basin,
Mr. Prateek Yadav,
Ms. Rachna Dubey,
Ms. Kashvi,
Mr. Jaiveer Shergil,
Mr. Gaurav Gupta, Advocates

For the Respondent : Mr. Tanvir Ahmed Mir, Adv.
Mr. Sandeep Das, Adv.
Mr. Soham Goswami, Adv.
Mr. Tejasvi Mahajan, Adv.

CORAM

JUSTICE MUNISHWAR NATH BHANDARI : **CHAIRMAN**
SHRI V. ANANDARAJAN : **MEMBER**

FINAL ORDER

22.05.2025

The batch of appeals have been filed by the Financial Institutions to challenge the order dated 01.12.2022 passed by the Adjudicating Authority confirming the provisional attachment order dated 08.3.2022. It is a case where Central Crime Station Hyderabad registered two FIRs against M/s Karvy Stock Broking Limited (KSBL) and its Director on 22.04.2021 and another FIR dated 01-05-2021 against M/s Karvy Comtrade Limited and its Director for the offence under Section 420 IPC based on the complaint filed by the one Srinivas Ayyagari Vice President of HDFC Bank, Hyderabad.

It was alleged that M/s KSBL, its Directors and employees dishonestly and fraudulently availed the bank loan despite being illegible and thereupon diverted the amount to various shell firms and related companies and thereby misused the loan funds. The charge sheet in reference to the FIR has been filed.

The appeal has been filed by the Appellant Financial Institution due to the attachment of the mortgage property. It is submitted that borrower while taking the loan had mortgaged the properties now attached by the respondent.

Due to the attachment of the properties, the Appellant Financial Institution are unable to recover their due amount and accordingly, they filed the appeal.

It is submitted that serious allegations exist against the borrower to cause fraud and cheating with the appellant bank and now with the attachment of the mortgage property, institutions have become victim even in the hands of the respondents as they cannot recover the due amount of loan by auction of the property.

This Tribunal has realized that in those cases where serious allegations exist against the borrower and related parties for commission of fraud and cheating with the financial institution in obtaining the loan and thereupon siphoning off, the ED should try to reach to the proceeds of crime and attach it. It is only when they are unable to reach to the proceeds than to attach the property of the equivalent value. It is invariably seen that the respondents do not try to reach to the proceeds of crime at the first instance and it is only if they remain unsuccessful, to cause attachment of mortgage property otherwise the appellant financial institution becomes victim even in the hands of the respondent.

In the background aforesaid, we asked the Counsel for the Appellant as to why they have not resorted to remedy under Sections 8 (7) and 8 (8) of the Act of 2002. The Counsel submitted that they can take the remedy but for that attachment should not come in their way. The appeals can accordingly be disposed of with an appropriate order so that the Appellant may approach the Special Court to seek release of the property.

The counsel for the respondent has prayed for an appropriate order in reference to the issue raised before the tribunal.

We have accordingly considered the rival submission, and before we proceed to issue appropriate direction, it would be gainful to quote Sections 8(7) and 8(8) of the Act of 2002 which is quoted thus:

“8.

Adjudication.

1 to 6 x x

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.”

The provisions quoted above gives liberty to seek release of the property in given case. In the case of an FIR financial institution, the remedy aforesaid would be most appropriate and otherwise property in the hands of the financial institution should not be attached at the first instance in such cases but only when the proceeds could not be traced out. In the light of the aforesaid, we dispose of these appeals with the following direction: -

(1) In the cases where financial institutions have filed a complaint against the borrower for an offence of cheating and related offences, in those cases, the ED is expected to first reach to the proceeds acquired or obtained by the accused directly or

indirectly out of proceeds of crime and after making all efforts if the proceed is not traced out, then to attach the property of equivalent value. In fact, first endeavor of the ED should be to reach to the proceeds and attach it if it has been acquired directly or indirectly out of the commission of crime and in that case, the financial institutions would not be unnecessarily affected due to the attachment of the mortgaged properties. The direction aforesaid is not for general application but in the cases where fraud/cheating has been committed against the financial institutions and a complaint by them or at their instance.

(2) In case of the complaint by the financial institutions for commission of fraud or cheating, the attachment of mortgaged properties should be after making all efforts indicated in first para above. In case of attachment of mortgaged property, the institutions can approach the Special Court under Section 8(7) and 8(8) of the Act of 2002 without delay or waiting for the order of this Tribunal. The provisions referred above permits release of the property even during the course of trial, if a case is made out and, therefore, in those cases where complaint is filed by the financial institutions, they can be given liberty to approach the Special Court for release of the property under Section 8(7) or 8(8) of the Act of 2002. In case Financial Institutions approach the Special Court, it would be expected to pass an appropriate order after hearing the borrower and the ED. Hearing the borrower may be required in a given case where borrower may have repaid substantial amount of loan thus can raise objection against release of the properties in favour of the Institutions. In a given case, the borrower may be in litigation against the financial institutions with filing of the appeal under Section 17 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. All these aspects can be considered by the Special Court, if an opportunity of

hearing is given to the borrower who may be even the accused. if the complaint is filed by the financial institutions against the borrower.

(3) The exercise aforesaid can be undertaken by the Special Court which does not otherwise come under the purview of this Tribunal because *inter se* claim for the release of the properties can be determined by the Special Court and, therefore, appellants are relegated to the Special Court and for the aforesaid, the impugned order would not come in their way to take the remedy under Section 8(7) and 8(8) of the Act of 2002.

(4) The view taken by this Tribunal is otherwise supported by the judgment of the Delhi High Court in the case of **Directorate of Enforcement Vs. Axis Bank & Ors.** reported in 2019 SCC Online Del 7854 where Delhi High Court has taken note of Section 8(8) of the Act of 2002. In the light of the aforesaid also, it would be appropriate for the financial institutions to take the remedy as indicated above and for that the impugned order would not come in their way.

5. With the aforesaid, all the appeals are disposed of.

(Justice Munishwar Nath Bhandari)
Chairman

(V. Anandarajan)
Member

New Delhi,
22nd May, 2025
'J'



2024 INSC 799

Reportable

**IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION**

Review Petition (Civil) No 359 of 2023
in
Civil Appeal No 5783 of 2022

Union of India & Anr

...Petitioner(s)

Versus

M/s Ganpati Dealcom Pvt Ltd

...Respondent(s)

ORDER

- 1 We have heard Mr Tushar Mehta, Solicitor General appearing on behalf of the Union of India, and Mr Ajay Vohra, senior counsel appearing on behalf of the respondent.
- 2 The review has been sought in these proceedings of the judgment of a three-Judge Bench of this Court in **Union of India and Another v Ganpati Dealcom Private Ltd¹**. The only question which was framed for consideration by this Court was in the following terms:

- “3. The short legal question which arises for this Court's consideration is whether the Prohibition of Benami Property Transactions Act, 1988 (for short “the 1988 Act”), as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 (for short “the 2016 Act”) has a prospective effect. Although a purely legal question arises in this appeal, it is necessary to have a brief factual background in mind before we advert to the analysis.”

Signature Not Verified
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Sanjay Kumar
Date: 2024.10.21
14:45:20 IST
Reason: []

3 The conclusion which was arrived at by the Court, was in the following terms:

“127.1. Section 3(2) (*sic* Section 3) of the unamended 1988 Act is declared as unconstitutional for being manifestly arbitrary. Accordingly, Section 3(2) of the 2016 Act is also unconstitutional as it is violative of Article 20(1) of the Constitution.

127.2. In rem forfeiture provision under Section 5 of the unamended 1988 Act, prior to the 2016 Amendment Act, was unconstitutional for being manifestly arbitrary.

127.3. The 2016 Amendment Act was not merely procedural, rather, prescribed substantive provisions.

127.4. In rem forfeiture provision under Section 5 of the 2016 Act, being punitive in nature, can only be applied prospectively and not retroactively.

127.5. The authorities concerned cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act viz. 25-10-2016. As a consequence of the above declaration, all such prosecutions or confiscation proceedings shall stand quashed.

127.6. As this Court is not concerned with the constitutionality of such independent forfeiture proceedings contemplated under the 2016 Amendment Act on the other grounds, the aforesaid questions are left open to be adjudicated in appropriate proceedings.”

4 The Court has declared Section 3(2) of the unamended provisions of the Prohibition of Benami Property Transactions Act 1988 as unconstitutional for being manifestly arbitrary and as violative of Article 20(1) of the Constitution. The provisions of Section 5 of the unamended Act, prior to the Amendment of 2016, have been declared to be unconstitutional on the ground that they are manifestly arbitrary.

5 It is not disputed that there was no challenge to the constitutional validity of the unamended provisions. This is also clear from the formulation of the question

which arose for consideration before the Bench in paragraph 3 of the judgment, which has been extracted above. In the submissions of parties which have been recorded in the judgment, the issue of constitutional validity was not squarely addressed.

- 6 A challenge to the constitutional validity of a statutory provision cannot be adjudicated upon in the absence of a lis and contest between the parties. We accordingly allow the review petition and recall the judgment dated 23 August 2022. Civil Appeal No 5783 of 2022 shall stand restored to file for fresh adjudication before a Bench to be nominated by the Chief Justice of India on the administrative side.
- 7 Where any other proceedings have been disposed of by relying on the judgment of this Court in **Ganpati Dealcom Private Ltd** (supra), liberty is granted to the aggrieved party to seek a review in view of the present judgment.
- 8 Pending application, if any, stands disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Pamidighantam Sri Narasimha]

.....J.
[Manoj Misra]

New Delhi;
October 18, 2024
-S-

ITEM NO.301

COURT NO.1

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

R.P.(C) No. 359/2023 in C.A. No. 5783/2022

UNION OF INDIA & ANR.

Petitioner(s)

VERSUS

M/S. GANPATI DEALCOM PVT. LTD.

Respondent(s)

(WITH IA No. 17066/2023 - EARLY HEARING APPLICATION, IA No. 163121/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 163115/2022 - STAY APPLICATION)

WITH

SLP(C) No. 15079/2024 (XII)

(FOR ADMISSION and I.R. and IA No.139136/2024-CONDONATION OF DELAY IN FILING and IA No.139137/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 17573/2024 (XIV)

(FOR ADMISSION and I.R. and IA No.133559/2024-CONDONATION OF DELAY IN FILING and IA No.133560/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 14897/2024 (III)

(WITH IA No.131794/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 131794/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 14898/2024 (III)

(WITH IA No.139622/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 139622/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 27030/2024 (III)

(WITH IA No.187819/2024-CONDONATION OF DELAY IN FILING and IA No.187821/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.187820/2024-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

Diary No(s). 29027/2024 (III)

(FOR ADMISSION and I.R. and IA No.163374/2024-CONDONATION OF DELAY IN FILING and IA No.163375/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 32360/2024 (III)

(WITH IA No.186219/2024-CONDONATION OF DELAY IN FILING and IA No.186214/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 33397/2024 (III)
(FOR ADMISSION and I.R. and IA No.192799/2024-CONDONATION OF DELAY IN FILING and IA No.192800/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 22369/2024 (XII)
(WITH IA No.208197/2024-CONDONATION OF DELAY IN FILING and IA No.208196/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 38691/2024 (XII)
(WITH IA No.225956/2024-CONDONATION OF DELAY IN FILING and IA No.225957/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 39495/2024 (III)
(WITH IA No.222694/2024-CONDONATION OF DELAY IN FILING and IA No.222693/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 39919/2024 (III)
(WITH IA No.230170/2024-CONDONATION OF DELAY IN FILING and IA No.230171/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 40165/2024 (XII)
(WITH IA No.220601/2024-CONDONATION OF DELAY IN FILING and IA No.220600/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 40204/2024 (XII)
(WITH IA No.226097/2024-CONDONATION OF DELAY IN FILING and IA No.226098/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 40208/2024 (XII)
(WITH IA No.217588/2024-CONDONATION OF DELAY IN FILING and IA No.217589/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 40209/2024 (XII)
(WITH IA No.224078/2024-CONDONATION OF DELAY IN FILING and IA No.224079/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 40212/2024 (XII)
(WITH IA No. 229940/2024 - CONDONATION OF DELAY IN FILING, IA No. 229942/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 40627/2024 (III)
(WITH IA No.214801/2024-CONDONATION OF DELAY IN FILING and IA No.214796/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 40707/2024 (XII)
(WITH IA No.226347/2024-CONDONATION OF DELAY IN FILING and IA

No.226348/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 40913/2024 (XII)

(WITH IA No.220124/2024-CONDONATION OF DELAY IN FILING and IA No.220125/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 41598/2024 (XII)

(WITH IA No. 231878/2024 - CONDONATION OF DELAY IN FILING, IA No. 231879/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 44254/2024 (XII)

(WITH IA No. 230517/2024 - CONDONATION OF DELAY IN FILING, IA No. 230516/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 18-10-2024 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) **Mr. Tushar Mehta, Solicitor General**
Mr. Suryaprakash V Raju, A.S.G.
Mr. Vikramjit Bannerjee, Adv.
Mr. Siddharth Sinha, Adv.
Mr. Zoheb Hussain, Adv.
Mr. S A Haseeb, Adv.
Mrs. Aakansha Kaul, Adv.
Mr. Bhuvan Mishra, Adv.
Mr. Ritwiz Rishabh, Adv.
Mr. Kanu Agarwal, Adv.
Mr. Raj Bahadur Yadav, AOR

For Respondent(s) **Mr. Ajay Vohra, Sr. Adv.**
Mr. Ankit Anandraj Shah, AOR
Mr. Aniket, Adv.
Ms. Bhoomija Verma, Adv.
Mr. Abhimanyu Singh, Adv.

Mr. Shantanu Singh, Adv.
Mr. Ravi Sehgal, Adv.
Mr. Pai Amit, AOR

Ms. Manisha T Karia, Sr. Adv.
Mr. Deepin Deepak Sahni, Adv.
Ms. Ananya Arora, Adv.
Ms. Shreya Gupta, Adv.
Mr. Anandh K, Adv.
Ms. Iyer Shruti Gopal, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 The review petition is allowed in terms of the signed order and the judgment dated 23 August 2022 is recalled. Civil Appeal No 5783 of 2022 shall stand restored to file for fresh adjudication before a Bench to be nominated by the Chief Justice of India on the administrative side.
- 2 Pending application, if any, stands disposed of.

Special Leave Petitions

- 1 Some Special Leave Petitions have been directed to be tagged with the Review Petition.
- 2 Delay is condoned and notice is issued in those Special Leave Petitions.
- 3 Tag all the Special Leave Petitions with Civil Appeal No 5783 of 2022, which has been restored to file by an order passed today in Review Petition (Civil) No 359 of 2023.

**(SANJAY KUMAR-I)
ADDITIONAL REGISTRAR**

(Signed order is placed on the file)

**(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR**

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 2915/2019

1. Niharika Jain W/o Shri Andesh Jain, Aged About 39 Years, R/o Sawan, Shiv Marg, Banswara-327001
2. Ashok Jain S/o Shri Madan Lal Jain, Aged About 59 Years, R/o Sawan, Shiv Marg, Banswara-327001
3. Smt. Someshwari Jain W/o Shri Ashok Jain, Aged About 58 Years, R/o Sawan, Shiv Marg, Banswara-327001
4. Smt. Sheela Devi Jain W/o Shri Vinod Kumar Jain, Aged About 48 Years, R/o Sawan, Shiv Marg, Banswara-327001
5. Motiya Dodiya, S/o Shri Wesiya Bheel, Aged About 56 Years, R/o Village Borda Tehsil Ghantol, Distt. Banswara-327021



----Petitioners

Versus

1. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi.
2. Deputy Commissioner (Benami Prohibition) Jaipur And Initiating Officer, Office At Room No. 250, New Central Revenue Building, Income Tax Office, Statue Circle, Jaipur
3. Adjudicating Authority, The Prohibition Of Benami Property Transaction Act 1988, Office At, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001

----Respondents

Connected With

S.B. Civil Writ Petition No. 15978/2017

1. M/s Manglam Build Developers Limited (a registered Companies registered under the Companies Act, 1956) through its Director, Shri Rambabu Agarwal son of Shri Madan Lal Agarwal, resident of H-55, Jhakhreshwar Marg, Banipark, Jaipur
2. Shri Rambabu Agarwal Son Of Shri Madan Lal Agarwal, Resident Of H-55, Jhakhreshwar Marg, Banipark, Jaipur

----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction)

and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

----Respondents

S.B. Civil Writ Petition No. 19132/2017

Smt. Pallavi Mishra Wife Of Sh. Abhishek Mishra, Resident Of A-801, Auram Apartment, Tilak Marg, C-Scheme, Jaipur.

----Petitioner

Versus

1. Dy. Commissioner Benami Prohibition, Rajasthan And Initiating Officer, Prohibition Of Benami Transa, Ncrb Building, Income Tax Office, Statute Circle, Jaipur.

Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

----Respondents

S.B. Civil Writ Petition No. 21751/2017

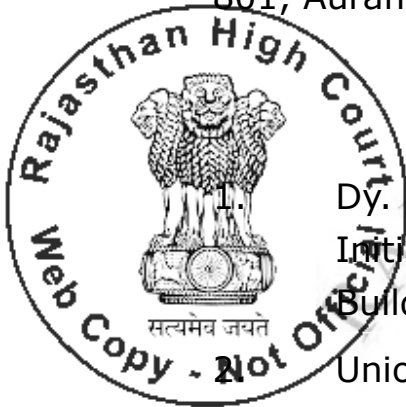
1. M/s Amar Pratap Developers Private Limited, A-21, Sadul Ganj, Bikaner through its Director Shri Ashok Kumar Modi son of Hanuman Prasad Modi, R/o A-21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Centre, Sahakar Marg, Jaipur.
2. Ashok Kumar Modi son of Hanuman Prasad Modi, resident of A- 21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

----Respondents



S.B. Civil Writ Petition No. 9162/2018

1. Dev Kishan Acharya S/o Sh. V.c. Acharya, R/o 3-H-13, 14, R.C. Vyas Colony, Bhilwara.
2. Smt. Kiran Acharya, W/o Shri Dev Kishan Acharya, R/o 3-H-13, 14, R.C. Vyas Colony, Bhilwara.
3. Shri Mohan Lal S/o Sh. Ganesh Raigar, R/o 3-H-13, 14, R.C. Vyas Colony, Bhilwara.
4. Jai Ram S/o Sh. Ram Singh, R/o 3-H-13, 14, R.C. Vyas Colony, Bhilwara.
5. Smt. Antar Bai W/o Shri Jain Ram, R/o 3-H-13, 14, R.C. Vyas Colony, Bhilwara.

----Petitioners

Versus

Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

2. Dy. Commissioner Of Income Tax Benami Transaction And Initiating Officer Under The Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.
3. Additional Commissioner Of Income Tax (BP) Jaipur, Room No. 239, New Central Revenue Building, Income Tax Office, Statue Circle, Jaipur.

----Respondents

S.B. Civil Writ Petition No. 10852/2018

1. M/s Epic Vyapaar Pvt Limited, 3rd Floor Madhav Plaza, District Shopping Center Sahakar Marg, Jaipur, (Registered Office at Darpam Appartment, 19/1/A, Mohanlal Bahalwala Road, 3rd Floor, Bally, Howrah) through its Director Shri Avinash Modi son of Arun Kumar Modi, resident of A-21, Sadul Ganj, Bikaner, at Present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.
2. Shri Avinash Modi son of Arun Kumar Modi, resident of A-21, Sadul Ganj, Bikaner, at present resident Of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

----Petitioners

Versus

1. Dy. Commissioner Of Income Tax Benami Transaction And Initiating Officer Under The Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

-----Respondents

S.B. Civil Writ Petition No. 10853/2018

M/s Avijit Agro Private Limited, Room No. 2, 3rd Floor Madhav Plaza District Shopping Center, Sahakar Jaipur, through its Director Shri Ashok Kumar Modi son of Hanuman Prasad Modi, resident of A-21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

2. Ashok Kumar Modi Son Of Hanuman Prasad Modi, Resident Of A-21, Sadul Ganj, Bikaner, At Present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

-----Petitioners

Versus

1. Dy. Commissioner Of Income Tax Benami Transaction And Initiating Officer Under The Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.
2. Union Of India Through Its Secretary, Income Tax Department, Government of India, New Delhi.
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

-----Respondents

S.B. Civil Writ Petition No. 10868/2018

Suman Devi Wife of Shri Pradeep Kumar, resident of Karni Pura Road, Uttar Mohalla, Danta Ramgarh Sikar (Raj.)

-----Petitioner

Versus

1. Dy. Commissioner Of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act, 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.



2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Leevan Deep Building, Parliament Street, New Delhi-110001.

-----Respondents

S.B. Civil Writ Petition No. 11295/2018

1. M/s Vibhuti Integrated Finance Private Limited, 3rd Floor Madhav Plaza District Shopping Centre, Sahakar Marg, Opp. Near J.P. Phatak, Jaipur, through its Director Shri Avinash Modi son of Shri Arun Kumar Modi, resident of A-21, Sadul Ganj, Bikaner, at present resident of room no. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.
2. Shri Avinash Modi Son Of Shri Arun Kumar Modi, resident of A-21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

-----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.
3. Adjudicating Authority, Under the Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4th Floor,

Jeevan Deep Building, Parliament Street, New Delhi-110001.

----Respondents

S.B. Civil Writ Petition No. 11371/2018

1. M/s Amar Pratap Developers Private Limited, A-21, Sadul Ganj, Bikaner through its Director Shri Ashok Kumar Modi son of Hanuman Prasad Modi, resident of A-21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

Ashok Kumar Modi Son Of Hanuman Prasad Modi, resident of A-21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India through its secretary, Income Tax Department, Government Of India, New Delhi.
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

----Respondents

S.B. Civil Writ Petition No. 11511/2018

1. M/s Natraj Finlease Private Limited, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Opp. Near J.P. Phatak, Jaipur through its Director Shri Ashok Kumar Modi son of Hanuman Prasad Modi, resident of A-21, Sadul Ganj, Bikaner, At Present Resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.
2. Ashok Kumar Modi Son Of Hanuman Prasad Modi, Resident Of A-21, Sadul Ganj, Bikaner, At Present Resident Of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

-----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

-----Respondents

S.B. Civil Writ Petition No. 11948/2018

St. Wilfred Education Society, Sector 10, Meera Marg, Mansarovar, Jaipur Through Its Secretary Shri Keshav Gupta S/o Shri Mahesh Kumar Gupta.

2. Adarsh Gyan Vidhalya Samiti, Badaya Chamber, Film Colony, Jaipur Through Its Secretary Shri Suresh Kumar S/o Shri Gopal Das Badaya

-----Petitioners

Versus

1. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi.
2. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
3. Additional Commissioner Of Income Tax Bp Jaipur, Room No. 239, New Central Revenue Building, Income Tax Office, Statute Circle, Jaipur.

-----Respondents

S.B. Civil Writ Petition No. 12580/2018

Jaspal Singh Son of Jangir Singh Bawari, Resident Of Chak 28 KYD, Bariyanwali, Tehasil Khajuwala, District Bikaner

-----Petitioner

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction)

and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Room No.26, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.



----Respondents

S.B. Civil Writ Petition No. 12613/2018

Shri Raghav Trading Corporation, A-12, Karni Nagar, Pawanpuri, Bikaner through its Partner Shri Anil Asopa Son of Shri Shyam Sundar Asopa, resident of Plot No. 3,4,5, Flat No. 301, Platinum, Chandra Kala Colony, Dungarpura, Paniki Tankiwali Gali, tonk Road, Jaipur

2. Shri Anil Asopa Son Of Shri Shyam Sundar Asopa, Resident Of Plot No. 3,4,5, Flat No. 301, Platinum, Chandra Kala Colony, Dungarpura, Paniki Tankiwali Gali, Tonk Road, Jaipur

----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi
3. Adjudicating Authority, under The Prohibition Of Benami Property Transaction Act, 1988, Room No. 26, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

----Respondents

S.B. Civil Writ Petition No. 12617/2018

1. M/s Naman Buildcon, A-12, Karni Nagar, Pawanpuri, Bikaner Through Its Partner Shri Vinit Asopa S/o Shri Girija Shankar Asopa R/o Plot No. 3,4,5 Flat No. 301, Platinum, Chandra Kala Colony, Durgapura, Pani Ki Tankiwali Gali, Tonk Road, Jaipur.

2. Shri Vinit Asopa S/o Shri Girija Shankar Asopa, R/o Plot No. 3,4,5 Flat No. 301, Platinum, Chandra Kala Colony, Durgapura, Pani Ki Tanki Wali Gali, Tonk Road, Jaipur.

-----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

Adjudicating Authority Under The Prohibition Of Benami Property Transaction Act, 1988, Room No. 26, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001

-----Respondents

S.B. Civil Writ Petition No. 14222/2018

Bhanwara Ram Nayak S/o Shera Ram Nayak, aged about 57 yrs, R/o Ridmalsar, Purohitan, Sagar, Bikaner.

-----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Room No. 26, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001

-----Respondents

S.B. Civil Writ Petition No. 14260/2018

Balram Meghwal S/o Ishwar Ram Meghwal, aged about 36....years, R/o Near Manoj Dal Mill, Sarvoday Basti, Bikaner.

-----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

-----Respondents

S.B. Civil Writ Petition No. 14274/2018

Kishan Lal S/o Pira Ram Nayak, aged about 45 years, R/o
Nayako ka Mohalla, Village Palana, District Bikaner.

-----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

-----Respondents

S.B. Civil Writ Petition No. 14275/2018

Shyam Lal Mehtar S/o Kalu Ram Mehtar, aged about 36 years,
R/o Behind Shiv Mandir, Shivbari, Bikaner.

-----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle,

- NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi
 3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.



----Respondents

S.B. Civil Writ Petition No. 14276/2018

Tejpal Mehtar S/o Kalu Ram Mehtar, aged about 31 years, R/o Behind Shiv Mandir, Shivbari, Bikaner

----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

----Respondents

S.B. Civil Writ Petition No. 14277/2018

Kishan Lal Mehatar S/o Kalu Ram Mehater, aged about 32 yr., R/o Behind shiv Mandir, Shivbari, Bikaner.

----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.
2. Union Of India Through Its Secretary, Income Tax

Department, Government Of India , New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

----Respondents

S.B. Civil Writ Petition No. 14279/2018

Sharwan Singh, S/o Nayak Singh Bawari, aged about 56 years, R/o 28 KYD, Khajuwala, Bikaner, through power of attorney holder Sh. Anil Lohiya S/o Nemi Chand Lohiya, aged 40 years, R/o F-101, Vallabh Garden, Bikaner.

----Petitioners

Versus

Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

----Respondents

S.B. Civil Writ Petition No. 14282/2018

Girja Shankar Asopa S/o Mahadev Asopa, aged 60 years, R/o A-12, Karni Nagar, Pawam Puri, Bikaner.

----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

----Respondents

S.B. Civil Writ Petition No. 14285/2018

Jangir Singh, S/o Nanak Singh Bawari, aged about 59 years, R/o 28 KYD, Khajuwala, Bikaner through power of attorney holder Sh. Anil Lohiya S/o Nemi Chand Lohiya, aged 40 years, R/o F-101, Vallabh Garden, Binaker.

----Petitioners

Versus



1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

----Respondents

S.B. Civil Writ Petition No. 14286/2018

Ratan Sirohi S/o Shri Gopal Kishan Sirohi, aged about 40 years, R/o Opposite Karni Market, Phar Bazar, Bikaner.

----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor,

Jeevan Deep Building, Parliament Street, New Delhi-110001.

----Respondents

S.B. Civil Writ Petition No. 14289/2018

Pratap Singh, S/o Nanak Singh Bawari, aged about 40 years, R/o 28 KYD, Khajuwala, Bikaner, throuth power of attorney holder sh. Anil Lohiya S/o Nemi chand Lohiya, aged 40 years, R/o F-101, Vallabh Garden, Bikaner.

----Petitioners



Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

----Respondents

S.B. Civil Writ Petition No. 15308/2018

Smt Beena Singh Wife Of Dr. Jitendra Singh, Aged About 53 Years, Resident Of Village Pidwali, Panchayat Samiti And Tehsil Bayana, District Bharatpur In The State Of Rajasthan

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi
2. Deputy Commissioner Of Income-Tax (Benami Prohibition) & Initiating Officer, Under The Prohibition Of Benami Property Transactions Act, 1988, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-Scheme, Jaipur

----Respondents

S.B. Civil Writ Petition No. 16304/2018

Gulab Singh Yadav alias Ramu Ram Alias Ramu Son Of Brij Lal
Alias Virdhi Chand, Aged About 45 Years, R/o Plot No. 804E,
Kisan Marg, Opp. Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur

-----Petitioner

Versus

1. Union Of India Through Its Secretary, Income Tax
Department, Government Of India New Delhi
2. Dy. Commissioner Of Income Tax (Benami Prohibition)
And Initiating Officer, Under The Prevention Of Benami
Property Transaction Act, 1988, Room No. 250, Statue
Circle, Ncrb, Statue Circle, Jaipur
3. Adjudicating Authority, Under The Prohibition Of Benami
Property Transaction Act 1988, Room No. 26, 4th Floor,
Jeevan Deep Building, Parliament Street, New Delhi
-110001



-----Respondents

S.B. Civil Writ Petition No. 21219/2018

M/s Finetech Macro Developers Pvt. Ltd., (a registered
companies registered Under The Companies Act, 1956)
Registered Office E-666, Prim Pavilion, Nakul Path, Lal Kothi
Scheme, Jaipur through its Director, Shri Charan Singh
Khangarot, S/o Shri Mukut Singh, By Caste Rajput Aged About
41 Years Resident of Plot No. M-28, Income Tax Colony, Tonk
Road, Jaipur, Rajasthan.

-----Petitioner

Versus

1. Dy. Commissioner (Benami Prohibition), Rajasthan And
Initiating Officer, Prohibition Of Benami Transactions Act,
1988, Room No. 250, Statue Circle, NSRB, Income Tax
Office, Jaipur
2. Adjudicating Authority, (Under The Prohibition Of Benami
Property Transactions Act, 1988), Office At Room No. 26,
Fourth Floor, Jeevan Deep Building, New Delhi-110001
3. Union Of India, Through Its Secretary, Income Tax
Department, Government Of India, New Delhi.

-----Respondents

S.B. Civil Writ Petition No. 21220/2018

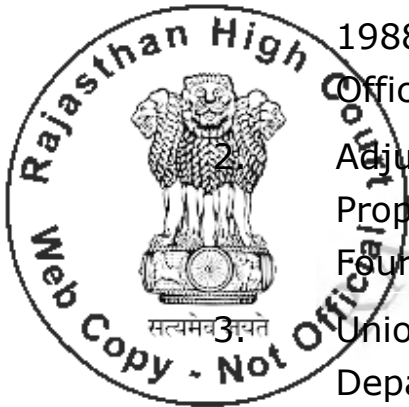
M/s Finetech Macro Developers Pvt. Ltd., (a registered
companies registered Under The Companies Act, 1956)

Registered Office E-666, Prim Pavilion, Nakul Path, Lal Kothi Scheme, Jaipur Through Its Director, Shri Charan Singh Khangarot, S/o Shri Mukut Singh, By Caste Rajput Aged About 41 years resident of Plot No. M-28, Income Tax Colony, Tonk Road, Jaipur, Rajasthan.

-----Petitioner

Versus

1. Dy. Commissioner (Benami Prohibition), Rajasthan And Initiating Officer, Prohibition Of Benami Transactions Act, 1988, Room No. 250, Statue Circle, Ncrb, Income Tax Office, Jaipur
2. Adjudicating Authority, (Under The Prohibition Of Benami Property Transactions Act, 1988), Office At Room No. 26, Fourth Floor, Jeevan Deep Building, New Delhi-110001
3. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi.



-----Respondents

S.B. Civil Writ Petition No. 21229/2018

M/s Finetech Macro Developers Pvt. Ltd., (a Registered Companies registered under the Companies Act, 1956) registered office E-666, Prim Pavilion, Nakul Path, Lal Kothi Scheme, Jaipur through its Director, Shri Charan Singh Khangarot, S/o Shri Mukut Singh, By Caste Rajput Aged About 41 Years Resident Of Plot No. M-28, Income Tax Colony, Tonk Road, Jaipur, Rajasthan.

-----Petitioner

Versus

1. Dy. Commissioner (Benami Prohibition), Rajasthan And Initiating Officer, Prohibition Of Benami Transactions Act, 1988, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Adjudicating Authority, (Under The Prohibition Of Benami Property Transactions Act, 1988), Office At Room No. 26, Fourth Floor, Jeevan Deep Building, New Delhi-110001
3. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

-----Respondents

S.B. Civil Writ Petition No. 25438/2018

Dr. Ram Singh Yadav @ Ramu Ram @ Ramu Yadav S/o Late Sh.

Braj Lal alias Virdhi Chand Yadav, Aged About 52 Years, R/o Plot No. 10, Achrol House, Civil Lines, Jaipur, Rajasthan.

-----Petitioner

Versus

1. Union Of India, Through Its Secretary, Ministry Of Finance, Department Of Revenue, Government Of India, New Delhi.
2. Dy. Commissioner Of Income Tax, (Benami Prohibition) and Initiating Officer Under The Prevention Of Benami Property Transaction Act 1988, Room No. 250, NCR Building, Statue Circle, Jaipur.
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Through Its Registrar, Room No. 17, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110001
4. Sh. Gulab Singh Yadav S/o Sh. Braj Lal @ Virdhi Chand Yadav, Aged About 45 Years, R/o Plot No. 804 E, Kisan Marg, In Front of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.

-----Respondents

S.B. Civil Writ Petition No. 25439/2018

Dr. Ram Singh Yadav @ Ramu Ram @ Ramu Yadav S/o Late Sh. Braj Lal Alias Virdhi Chand Yadav, Aged About 52 Years, R/o Plot No. 10, Achrol House, Civil Lines, Jaipur, Rajasthan.

-----Petitioner

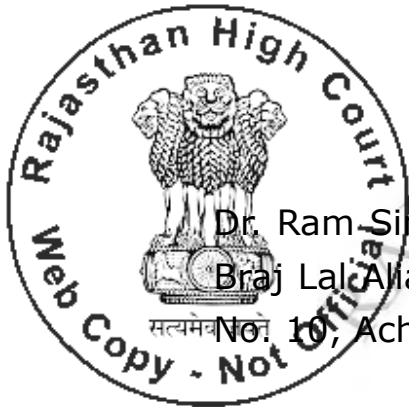
Versus

1. Union Of India, Through Its Secretary, Ministry Of Finance, Department Of Revenue, Government Of India, New Delhi.
2. Dy. Commissioner Of Income Tax, (Benami Prohibition) And Initiating Officer Under The Prevention Of Benami Property Transaction Act 1988, Room No. 250, NCR Building, Statue Circle, Jaipur.
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Through Its Registrar, Room No. 17, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110001

-----Respondents

4. Sh. Gulab Singh Yadav S/o Sh. Braj Lal @ Virdhi Chand Yadav, R/o Plot No. 804 E, Kisan Marg, in front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.
5. Smt. Vinita Yadav W/o Sh. Gulab Singh Yadav, R/o Plot No. 804 E, Kisan Marg, In Front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.
6. Ms. Riya Yadav D/o Sh. Gulab Singh Yadav R/o Plot no. 804 E, Kisan Marg, in Front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.

-----Proforma Respondents



S.B. Civil Writ Petition No. 25440/2018

Dr. Ram Singh Yadav @ Ramu Ram @ Ramu Yadav S/o Late Sh. Braj Lal Alias Virdhi Chand Yadav, Aged About 52 Years, R/o Plot No. 10, Achrol House, Civil Lines, Jaipur, Rajasthan.

-----Petitioner

Versus

1. Union Of India, Through Its Secretary, Ministry Of Finance, Department Of Revenue, Government Of India, New Delhi.
2. Dy. Commissioner Of Income Tax, (Benami Prohibition) and Initiating Officer Under The Prevention Of Benami Property Transaction Act 1988, Room No. 250, NCR Building, Statue Circle, Jaipur.
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Through Its Registrar, Room No. 17, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110001

सत्यमेव जयते

-----Respondents

4. Sh. Gulab Singh Yadav S/o Sh. Braj Lal @ Virdhi Chand Yadav, R/o Plot No. 804 E, Kisan Marg, In Front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.

-----Proforma Respondents

S.B. Civil Writ Petition No. 25441/2018

Dr. Ram Singh Yadav @ Ramu Ram @ Ramu Yadav S/o Late Sh. Braj Lal Alias Virdhi Chand Yadav, Aged About 52 Years, R/o Plot No. 10, Achrol House, Civil Lines, Jaipur, Rajasthan.

-----Petitioner

Versus

1. Union Of India, Through Its Secretary, Ministry Of Finance, Department Of Revenue, Government Of India, New Delhi.
2. Dy. Commissioner Of Income Tax, (Benami Prohibition) And Initiating Officer Under The Prevention Of Benami Property Transaction Act 1988, Room No. 250, Ncr Building, Statue Circle, Jaipur.
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Through Its Registrar, Room No. 17, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110001
4. Sh. Gulab Singh Yadav S/o Sh. Braj Lal @ Virdhi Chand Yadav, R/o Plot No. 804 E, Kisan Marg, In Front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.



----Respondents

S.B. Civil Writ Petition No. 25602/2018

Dr. Ram Singh Yadav @ Ramu Ram @ Ramu Yadav S/o. Late Sh. Braj Lal Alias Virdhi Chand Yadav, Aged About 52 Years, R/o. Plot No. 10, Achrol House, Civil Lines, Jaipur, Rajasthan.

----Petitioner

Versus

1. Union Of India, Through Its Secretary, Ministry Of Finance, Department Of Revenue, Government Of India, New Delhi.
2. Dy. Commissioner Of Income Tax (Benami Prohibition), And Initiating Officer Under The Prevention Of Benami Property Transaction Act 1988, Room No. 250, NCR Building, Statue Circle, Jaipur.
3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Through Its Registrar, Room No. 17, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110 001.

----Respondents

4. Sh. Gulab Singh Yadav S/o. Sh. Braj Lal @ Virdhi Chand Yadav, Aged About 45 Years, R/o Plot No. 804 E, Kisan Marg, In Front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.

----Proforma Respondents

S.B. Civil Writ Petition No. 27102/2018

1. Sitaram Meena S/o Shri Phool Chand Meena, aged about 33 Years, By Caste Meena, R/o 199, Patel Colony, Badi Ka Baas, via-Sitapura Tehsil Sanganer, Jaipur (Rajasthan)
2. Charan Singh Khangarot S/o Shri Mukut Singh Khangarot, aged about 40 Years, By Caste Rajput, R/o M-28, Income Tax Colony, Durgapura Tonk Road, Jaipur, Rajasthan
3. Udai Buildhome Pvt. Ltd., having its registered office at 302, Golden Sunrise Apartment, Lajpat Nagar, C-Scheme, Jaipur through its principal officer/ director duly Shri Sandeep Sharma S/o Shri Totaram Sharma aged 36 Years R/o 74-B, Phool Kunj, Gaurav Nagar, Civil Lines, Jaipur duly authorized by the company

----Petitioners

Versus

1. Dy Commissioner (Benami Prohibition), Rajasthan And Initiating Officer, Prohibition of Benami Transactions Act, 1988, Room No. 250, Statue Circle, Ncrb, Income Tax Office, Jaipur
2. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi
3. Adjudicating Authority (Under The Prohibition Of Benami Property Transactions Act, 1988), Office at Room No. 26, Fourth Floor, Jeevan Deep Building, New Delhi-110001

----Respondents

S.B. Civil Writ Petition No. 27114/2018

1. Sitaram Meena S/o Shri Phool Chand Meena, aged about 33 Years, By caste Meena , R/o 199, Patel Colony, Badi Ka Baas, via-Sitapura Tehsil Sanganer, Jaipur (Rajasthan)
2. Charan Singh Khangarot S/o Shri Mukut Singh Khangarot, aged about 40 Years, By Caste Rajput, R/o M-28, Income Tax Colony, Durgapura Tonk Road, Jaipur, Rajasthan
3. Udai Buildhome Pvt. Ltd., having its registered office at 302, Golden Sunrise Apartment, Lajpat Nagar, C-Scheme, Jaipur through its principal officer/ director duly Shri Sandeep Sharma S/o Shri Totaram Sharma aged 36 Years R/o 74-B, Phool Kunj, Gaurav Nagar, Civil Lines, Jaipur duly authorized by the company

----Petitioners

Versus

1. Dy. Commissioner (Benami Prohibition), Rajasthan and Initiating Officer, Prohibition of Benami Transactions Act, 1988, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur
2. Union of India, Through its Secretary, Income Tax Department, Government Of India, New Delhi
3. Adjudicating Authority (Under The Prohibition Of Benami Property Transactions Act, 1988), Office At Room No. 26, Fourth Floor, Jeevan Deep Building, New Delhi-110001

----Respondents

S.B. Civil Writ Petition No. 27550/2018

Kishan Singh, S/o Shri Gopal Singh, aged about 50 Years, R/o 13, Jai Kishan Colony, Tonk Phatak, Jaipur In The State Of Rajasthan

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi
2. Deputy Commissioner Of Income-Tax (Benami Prohibition) & Initiating Officer, Under The Prohibition Of Benami Property Transactions Act, 1988, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-Scheme, Jaipur

----Respondents

S.B. Civil Writ Petition No. 27551/2018

Chandra Mohan Bhati, S/o Shri Gendilal Ji Bhati, Aged About 53 Years, R/o 17, Kalyan Colony, Barkat Nagar, Tonk Phatak, Jaipur In The State of Rajasthan.

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi
2. Deputy Commissioner Of Income-Tax (Benami Prohibition) & Initiating Officer, Under The Prohibition Of Benami Property Transactions Act, 1988, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-Scheme, Jaipur

----Respondents

S.B. Civil Writ Petition No. 27552/2018

Vinika Bhati, D/o Shri Chandra Mohan Bhati, Aged About 26 Years, R/o 17, Kalyan Colony, Barkat Nagar, Tonk Phatak, Jaipur In The State Of Rajasthan

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi
2. Deputy Commissioner Of Income-Tax (Benami Prohibition) And Initiating Officer, Under The Prohibition Of Benami Property Transactions Act, 1988, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-Scheme, Jaipur

----Respondents



S.B. Civil Writ Petition No. 27553/2018

Laxmi Bhati, W/o Shri Chandra Mohan Bhati, Aged About 51 Years, R/o 17, Kalyan Colony, Barkat Nagar, Tonk Phatak, Jaipur In The State Of Rajasthan

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi
2. Deputy Commissioner Of Income-Tax (Benami Prohibition) And Initiating Officer, Under The Prohibition Of Benami Property Transactions Act, 1988, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-Scheme, Jaipur

----Respondents

S.B. Civil Writ Petition No. 27554/2018

Anjali Rathore, W/o Shri Kishan Singh, Aged About 49 Years, R/o 13, Jai Kishan Colony, Tonk Phatak, Jaipur In The State Of Rajasthan

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi
2. Deputy Commissioner Of Income-Tax (Benami Prohibition) & Initiating Officer, Under The Prohibition Of

Benami Property Transactions Act, 1988, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-Scheme, Jaipur

----Respondents

S.B. Civil Writ Petition No. 4212/2019

Ramdhan Meena S/o Rewad Mal Meena, Village - Langdiyawad, Tehsil- Jamwaramgarh, District- Jaipur.

----Petitioner

Versus



1. Deputy Commissioner Of Income Tax, (Benami Prohibition) & Initiating Officer Under The Prohibition Of Benami Property Transactions Act For The State Of Rajasthan, Room No. 250, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur (Rajasthan).

Union Of India, Through Secretary, Ministry Of Finance, Department Of Revenue, Income Tax Department, Government Of India, New Delhi.

----Respondents

S.B. Civil Writ Petition No. 4396/2019

Ramdhan Meena S/o Rewad Mal Meena, Village- Langdiyawad, Tehsil- Jamwaramgarh, District- Jaipur (Rajasthan).

----Petitioner

Versus

1. Deputy Commissioner Of Income Tax, (Benami Prohibition) & Initiating Officer Under The Prohibition Of Benami Property Transactions Act For The State Of Rajasthan, Room No. 250, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur (Rajasthan)
2. Union Of India, Through Secretary, Ministry Of Finance, Department Of Revenue, Income Tax Department, Government Of India, New Delhi.

----Respondents

S.B. Civil Writ Petition No. 4704/2019

Sita Devi W/o Shri Ramdhan Meena, Aged About 28 Years, R/o Village - Langdiyawad, Tehsil - Jamwaramgarh, District - Jaipur. (Rajasthan).

----Petitioner

Versus

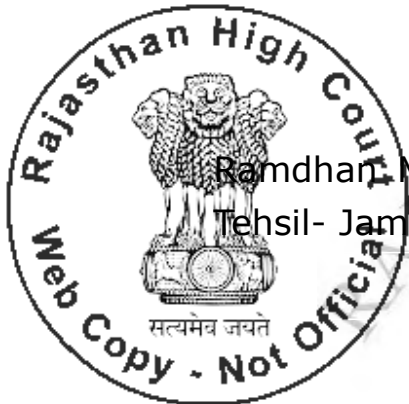
1. Deputy Commissioner Of Income Tax, (Benami Prohibition) & Initiating Officer Under The Prohibition Of Benami Property Transactions Act For The State Of Rajasthan, Room No. 250, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur (Rajasthan).
2. Union Of India, Through Secretary, Ministry Of Finance, Department Of Revenue, Income Tax Department, Government Of India, New Delhi.

-----Respondents

S.B. Civil Writ Petition No. 4897/2019

Ramdhani Meena S/o Rewad Mal Meena, Village- Langdiyawad, Tehsil- Jamwaramgarh, District- Jaipur. (Rajasthan).

-----Petitioner



Versus

1. Deputy Commissioner Of Income Tax, (Benami Prohibition) & Initiating Officer Under The Prohibition Of Benami Property Transactions Act For The State Of Rajasthan, Room No. 250, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur (Rajasthan).
2. Union Of India, Through Secretary, Ministry Of Finance, Department Of Revenue, Income Tax Department, Government Of India, New Delhi.

-----Respondents

S.B. Civil Writ Petition No. 5284/2019

1. M/s Manglam Build Developers Limited, (a registered companies registered under The Companies Act, 1956) through its Authorized Signatory, Shri Sanjay Gupta Son Of Shri Nand Kishore Gupta, resident of C-9, Barwada House, Civil Lines, Jaipur.
2. Shri Sanjay Gupta Son Of Shri Nand Kishore Gupta, Resident Of C-9, Barwada House, Civil Lines, Jaipur.

-----Petitioners

Versus

1. Dy. Commissioner Of Income Tax, (Benami Transaction) and Initiating Officer Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.
2. Union Of India Through Its Secretary, Income Tax

Department, Government Of India, New Delhi.

----Respondents

S.B. Civil Writ Petition No. 5352/2019

Ram Singh Meena S/o Sh. Ramkaran, Aged About 50 Years, R/o Mohalla Mainpura, Sawaimadhopur (Rajasthan).

----Petitioner

Versus

1. Dy. Commissioner Of Income Tax, (Benami Transaction) And Initiating Officer Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 250, Statue Circle, Ncrb, Income Tax Office, Jaipur.
2. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

----Respondents



For Petitioner(s) : Mr. K.K. Sharma, Sr. Adv. with
Mr. Sandeep Taneja
Mr. M.M. Ranjan, Sr. Adv. with
Mr. Rohan Agarwal
Mr. Anant Kasliwal with
Mr. Vaibhav Kasliwal, Ms. Charu
Pareek, Mr. Pradeep Kumar
Mr. Gunjan Pathak
Mr. N.L. Agarwal

For Respondent(s) : Mr. Prabhuling K Navadgi, Sr. Adv.
with Mr. Prabhansh Sharma,
Mr. R.B. Mathur

HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Order

12th July, 2019

The above noted batch of writ applications, projects a challenge to the jurisdiction of the income tax authorities in initiation of proceedings under section 24 of the Prohibition of Benami Property Transactions Act, 1988 (for short, Benami Act of 1988), as amended vide Benami Transactions (Prohibition) Amendment Act, 2016 (for short, Benami Amendment Act of

2016), which came into effect on 01st November, 2016. Hence, the matters have been entertained collectively for final adjudication at this stage by this common order consented by the counsel for the parties.

2. Shorn off unnecessary details, the essential skeletal material facts needs to be taken note of for adjudication of the controversy are: that the Income Tax Department conducted search and seizure under Section 132 of the Income Tax Act, 1961, on various premises belonging to the petitioners and in course of search and seizure, several incriminating documents were found, indicating several *benami transactions* in purchase of lands involved herein.

Accordingly, show cause notices were issued under section 24 (1) of the amended Benami Act of 1988, to show cause why action should not be taken against them under Section 24 (4) of the amended Benami Act of 1988, as the consideration was actually paid by the petitioners but the land was purchased in the name and by another person, thus, making it a clear case of *benami transaction*. The respondent department made order of provisional attachment under Section 24 (3) of the amended Benami Act, in respect of the properties mentioned in the show cause notices. It is pleaded case of the petitioners that the initiating officer has acted without jurisdiction, as the Benami Transaction (Prohibition) Amendment Act, 2016, came into effect on 01st November, 2016 and the alleged *benami transactions* took place prior to that date. The said notices were responded in the same terms. However, the Initiating Officer of the respondent department made order under Section 24 (4) of the amended Benami Amendment Act of 2016, continuing the provisional attachment of the properties involved

herein. Thereafter, further show cause notices were issued by the Adjudicating Authority under the provisions of the Benami Amendment Act of 2016, as to why the order of provisional attachment of the benami properties should not be confirmed and the matters are still pending before the said authority. The petitioners, aggrieved of initiation of the proceedings and orders aforesaid, for being without jurisdiction, have instituted the instant writ petitions before this court.

3. Mr. Kamlakar Sharma, learned senior counsel for the petitioner(s), stated that the initiation of the very proceedings for provisional attachment of the alleged benami properties, from the very beginning is *per se* illegal and arbitrary, as the alleged benami transactions took place before the search proceedings and the Benami Amendment Act of 2016, that came into existence with effect from 01st November, 2016, vide notification dated 25th October, 2016, and therefore, the Benami Amendment Act of 2016, shall have prospective effect. Since the alleged *benami transactions* and date of discovery of the alleged *benami transactions*, are, of a date prior to coming into force of the Benami Amendment Act of 2016; hence, the provisions as such are inapplicable to the present cases.

4. Learned counsel for the petitioners vehemently asserted that the intent in introduction of the Benami Amendment Act of 2016, was to eradicate the discrepancies and loop holes that have crept in with passage of time after the introduction of the Benami Act of 1988. Further, referring to the text of section 1 and 6 of the Benami Amendment Act of 2016, it is vociferously contended that it was never the intention of either the legislation or the executive

that the provisions of the Benami Amendment Act of 2016; be applicable with retrospective effect. According to the learned counsel for the petitioners, the language employed with the statement that *whoever enters into any benami transaction on and after the date of commencement of the Benami Amendment Act of 2016*, that is on 1st November, 2016 or afterwards; leaves no room for any doubt that the alleged benami transactions so transacted by the petitioners, before the commencement of the Benami Amendment Act of 2016, doesn't fall under its purview.

5. In the backdrop of section 3 (3) of Benami Act of 1988 and new section 53 of Benami Amendment Act of 2016, it is pointed out that the punishment for *benami transaction* under Benami Act of 1988, was imprisonment for 3 years, which has been now extended to 7 years, through the Benami Amendment Act of 2016. Therefore, the said amendment and provisions introduced, cannot be applied retrospectively with penal consequences.

6. It was further added by the learned senior counsel for the petitioners that as per the earlier provisions of the Benami Act of 1988, the benami property was to be acquired by the Government by acquisition and no compensation was to be paid for the such acquisition. Rules and Regulations for the acquisition aforesaid, were supposed to follow the Act of 1988, but the same were never framed and notified thus making the acquisition of land through *benami transaction*, under the old/un-amended provisions redundant. Now, as per the provisions of the Benami Amendment Act of 2016, the said *benami property* shall be *confiscated* instead of acquisition. For **confiscation** of property, is a penal provision which can only be prospective and if the penal provision is to be

applied retrospectively, that would be arbitrary, illegal and in violation of the Article 20 of the Constitution of India in absence of any contemplation to that effect under the amended Act. Thus, Benami Amendment Act of 2016; cannot have retrospective application.

7. Counsel for the petitioners repelling the preliminary contention as to the very maintainability of the instant writ petitions for the matters were stated to be pending before the Adjudicating Authority, and therefore, being pre-mature and not maintainable before this court; contended that a glance of section 24 of the Benami Amendment Act of 2016; would reflect that writ petitions are very much maintainable. For as per Section 24 (1) of the Benami Amendment Act of 2016, the Initiating Officer shall issue notice to show cause as to why the property in question shall not be considered a benami property and further issue notice of provisional attachment of the said benami property. Moreover, there is no provision provided in section 24 of the Benami Amendment Act of 2016, to file an appeal against the provisional attachment of the alleged benami property. Thus, the petitioners are left with no option other than to invoke the jurisdiction of this court under Article 226 and/or 227 of the Constitution of India. Further, the petitioners have challenged the very jurisdiction and authority of the respondent department to make such a provisional attachment of the alleged benami property, and therefore, the instant writ petitions are maintainable as the petitioners have no other remedy for redressal of their grievance.

8. It is further alleged that the respondent department has initiated the proceeding involved herein in order to harass and

torment the petitioners for it is evident from the fact that the respondent department referred the matters to the Adjudicating Authority so soon they learned of the institution of the instant writ applications by the petitioners before this court. Furthermore, the respondent department issued notices under Section 24 (3) of the Benami Amendment Act of 2016, to the petitioners on the very same day when it issued notice to the local authorities to provide information with respect to the transactions made in regard to the alleged subject benami property. The notices under Section 24 (3) of the Benami Amendment Act of 2016; are to be issued after making thorough inquiries and examination of reports or evidences and not after issuing notices. Therefore, oblique intent of the respondent department is apparent on the face of record.

9. It is also pointed that no Rules could have been framed in exercise of powers under section 68 of the Benami Amendment Act of 2016, before 1st November, 2016 i.e. the date of its commencement. Hence, the Rules framed under the Benami Amendment Act of 2016, are of no consequence. In order to fortify their stand learned counsel for the petitioners have relied upon the following dictionary meaning of term confiscation, phrase 'Jaipur Region', Notifications, and opinions:

1. Notification of Ministry of Finance (Central Board of Direct Taxes), dated 25th October, 2016.
2. Notification of Ministry of Finance (Department of Revenue), dated 25th October, 2016.
3. Notification of Ministry of Finance (Department of Revenue), dated 25th October, 2016, S.O. 3288 (E), S.O. 3289(E) and 6A. 6.

Notification of Ministry of Finance (Department of Revenue), dated 19th May, 2016, S.O. 1830 (E), (iii)

4. The Benami Transactions (Prohibition) Act, 1988 (for short, 'the Act of 1988')

5. In the case of *R. Rajagopal Reddy (dead) by LRs. And Ors. Vs. Padmini Chandrashekharan (Dead) by LRs.*: (1995)2 SCC 630.

6. In the case of *Mangathai Ammal (died) through Lrs and Ors. Vs. Rajeshwari & Ors.*: Civil Appeal No. 4805 of 2019, decided by the Apex Court of the land, on 9th May, 2019.

7. In the case of *K.T. Plantation Pvt. Ltd. and Anr. Vs. State of Karnataka*: AIR 2011 SC 3430.

8. In the case of *Garikapati Veeraya vs. N. Subbiah Choudhary and Ors.* : AIR 1957 SC 540.

9. In the case of *Keshavan Madhava Menon Vs State of Bombay*: AIR 1951 SC 128.

10. In the case of *Monnet Ispat & Energy Ltd. Vs. UOI & Ors.* (2012) 11 SCC 1.

11. *Commissioner of Income Tax vs. Vatika Township Private Limited* (2015) 1 SCC 1

12. *Prakash and Ors. vs. Phulavati and Ors.* (2016) 2 SCC 36

13. *Sukhdev Singh vs. State of Haryana* (2013) 2 SCC 212

14. *J.S Yadav Vs. State of U.P. & Ors.* 2011 6 Scc 570

15. *Shakti Tubes Ltd. vs. State of Bihar and Ors.* (2009) 7 SCC 673

16. *O. Konavalov vs. Commander, Coast Guard Region and Ors.*
(2006)4SCC620

17. *M/S Pepsi Foods Ltd. and Ors. vs. Special Judicial Magistrate and Ors.* AIR 1998 SC 128

18. *Collector of Central Excise, Ahmedabad vs. Orient Fabrics Pvt. Ltd.* (2004) 1 SCC 597

19. *Suhas H. Pophale vs. Oriental Insurance Co. Ltd. and its Estate Officer* (2014) 4 SCC 657

20. *State of Punjab and Ors. vs. Bhajan Kaur and Ors.* (2008)
12SCC 112

21. *Jeans Knit (P) Ltd. vs. Deputy Commissioner of Income Tax and Ors* (2018) 12 SCC 36

22. *Calcutta Discount Company Limited vs. Income Tax Officer, Companies District, I and Ors.* AIR 1961 SC 372

23. *Raza Textiles Ltd. vs. Income Tax Officer, Rampur* (1973) 1
SCC 633

24. *Malayala Manorama Co. Ltd vs Assistant Commissioner, Commercial Taxes , Civil Appeal No. 2267/2007, decided on July 8, 2010*

25. *In the case of Bhibhuti Bhusan Bankura Vs. Sate of West Bengal:* 1994 (1) CLJ 353

26. *In the case of Thakur Bhim Singh (dead) By Lrs and Ors. Vs. Thakur Kan Singh:* AIR 1980 SC 727.

27. *Joseph Isharat vs. Rozy Nishikant Gaikwad* 2017(5)ABR706



10. *Per contra*: Mr. Prabhuling K. Navadgi, learned Sr. counsel with Mr. Prabhansh Sharma and Mr. R.B. Mathur, advocates, resisted the claim of the petitioners raising preliminary objections as to the very maintainability of the writ applications at this stage while the entire proceedings are pending consideration before the Adjudicating Authority. Learned counsel vehemently contended that it is well settled proposition of law that jurisdiction under Article 226 and/or 227 of the Constitution of India can only be exercised when there is no remedy available to the parties. According to the learned counsel for the respondents, law in this reference is no more *res-integra*, as has been declared by the Apex Court of the land on several occasions. In the backdrop of the provisions of Benami Act of 1988, as amended vide Benami Amendment Act of 2016, it is contended that any order made by the authority therein, would be open to inquiry before the Adjudicating Authority under Section 25 and 26 of the amended Act. Further, the order made by Adjudicating Authority under Section 26 (3), is open to an appeal before the Appellate Tribunal as would be evident from Section 46 of the amended Benami Act of 1988. And finally, Section 49 contemplates an appeal to the High Court, to any party aggrieved by any decision or order of the Appellate Tribunal within a period of 60 days, from the date of communication of the order made by the Appellate Tribunal, on any question of law arising out of such an order.

11. Furthermore, according to learned senior counsel, the petitioners have admitted the fact that the matters are still pending before the Adjudicating Authority. Thus, the petitioners have instituted the present writ applications, contrary to the

Scheme of the Benami Act of 1988, as amended in the year 2016, which provides a complete self contained procedure for resolution of the matters arising therein; hence, the instant batch of writ applications is premature and is not maintainable, and therefore, deserve to be dismissed on that ground alone.

12. Learned Senior Counsel for the respondents also emphasized that the provisions introduced by way of Benami Amendment Act of 2016 would have retrospective application and cannot be considered to be prospective keeping in view of the underlying object and intendment in introduction of amended Benami Act of 1988. It is urged that the main object behind introduction of the Benami Act of 1988, on 19 May 1988, was to make benami transactions offence and to acquire such benami properties through acquisition without compensation as per the procedure prescribed therein, so that the unjust gains and benefits of evasion of taxes could be avoided. Hence, keeping in view the intendment and object in introduction of amended Benami Act of 1988; incorporating necessary amendments introduced through Benami Amendment Act of 2016, only clarified and amplified the intention of legislature in order to effectively cure and curb the mischief of ever increasing corruption, which was the also intended under the Principal Act i.e. Benami Act of 1988; enacted on 19 May 1988.

13. According to learned counsel for the respondents, **confiscation** of the benami property, a replacement, by way of amendment, is not a new introduction in totality to the Benami Act of 1988. **Acquisition** without compensation is nothing but **confiscation** only; therefore, substitution of the term

acquisition by another term i.e. **confiscation**, cannot be termed as **penal**, in the backdrop of the object sought to be achieved through the Benami Amendment Act of 2016.

14. It is further pointed out that similarly, change in the definition of all 'Benami Transaction' would not alter the object and purpose which remains the same as contemplated under the principal Benami Act of 1988. The change in definition only clarifies and amplifies the existing definition, without imposing any new liability or right accruing to the parties. Thus, the amendment in the definition of 'Benami Transaction' is only descriptive and explanatory substitution. Referring to Rule of Hayden's case, it is contended that Lord Edverd Coke evolved the well accepted test to understand the effectiveness of a new amendment on the following criteria:

- (i) what was the law before making of the law;
- (ii) what was the mischief and defect before the Act was passed;
- (iii) what remedy the Parliament as appointed; and
- (iv) what was the reason of the remedy.

15. Hence, applying the test aforesaid, to the question of **retrospective application of the amended provisions**, involved in the instant batch of writ applications, would make it evident that the object in introduction of the amendments, through Benami Amendment Act of 2016, is to effectively cure the mischief which could not be checked effectively, as intended by the Principal Act of 1988. Therefore, if the amendments are not applied retrospectively, that would defeat the very purpose and object of its introduction. Hence, provisions of Benami Amendment

Act of 2016, keeping in view the underlying object, shall have retrospective application in order to effectively cure the mischief that persisted all along even after enactment of the unamended Benami Act of 1988, which consisted only of 9 Sections.

16. Learned counsel would further contend that a glance of text of section 3 (3) of the Benami Amendment Act of 2016, in no uncertain terms contemplates that penalty for *benami transactions*, on or after commencement of the Benami Amendment Act of 2016, would only be punishable in accordance with the provisions contained under Chapter VII of the Amendment Act of 2016. Since, the provision itself contemplates penalty for *benami transactions* on or after the commencement of the Benami Amendment Act of 2016, that would not mean that the benami transactions prior to its commencement, shall be free from liability. According to learned counsel, the intended object of the statute by amendment, involved herein is two fold; firstly, benami transactions entered into on or after commencement of Benami Amendment Act of 2016, shall be punishable under the amended provisions contained in Chapter VII by imprisonment for seven years, and; secondly, the benami transactions prior to the commencement of Benami Amendment Act of 2016, shall be penalized by the existing provisions contained in the unamended Benami Act of 1988, i.e by three years imprisonment. Thus, the provision only provides for an enhanced punishment for benami transactions entered into on or after commencement of Benami Amendment Act of 2016. Hence, no right to any party has accrued nor a new liability created as to the pending benami transactions.



17. Reference has also been made to text of Section 65 of the amended Benami Act of 1988, which contemplates transfer of pending cases. According to learned senior counsel, a glance of the text of Section 65 would reflect that the procedure provided therein for prevention of 'Benami Transactions' under the provisions of Benami Amendment Act of 2016, shall also apply to all the 'Benami Transactions' pending on enactment of the Benami Amendment Act of 2016. Hence, retrospective applicability of the amended Act of the Benami Act of 1988, is explicit. In order to buttress his contentions reliance is placed on the following opinions:

1. Sree Bank Ltd. vs. Sarkar Dutt Roy and Co. AIR 1966 SC 1953
2. The Buckingham and Carnatic Co.Ltd. vs. Venkatiah and Ors. [1964]4SCR 265
3. Rai Bahadur Seth Shreeram Durgaprasad vs. Director of Enforcement (1987)3SCC 27
4. Nar Bahadur Bhandari and Ors. vs. State of Sikkim and Ors. (1998) 5 SCC 39
5. State of Punjab vs. Mohar Singh [1955]1SCR 893
6. Zile Singh vs. State of Haryana and Ors. (2004) 8 SCC 1
7. Yogendra Kumar Jaiswal and Ors. vs. State of Bihar and Ors. (2016)3SCC 183
8. Titaghur Paper Mills Co. Ltd. and Ors. vs. State of Orissa and Ors. (1983)2SCC 433
9. Thansingh Nathmal and Ors. vs. A. Mazid [1964]6SCR 654

10. State of H.P. and Ors. vs. Gujarat Ambuja Cement Ltd. and Ors. AIR2005SC3936

11. Commissioner of Income Tax and Ors. vs. Chhabil Dass Agarwal (2014)1SCC 603

12. Harbanslal Sahnia and Ors. vs. Indian Oil Corpn. Ltd. and Ors. (2003) 2 SCC 107

13. Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors. (1998)8 SCC 1

14. Vodafone International Holdings B.V. vs. Union of India (UOI) and Ors. (2009) 321 CTR 617 (SC)

15. The Management of Express Newspapers Ltd. vs. Workers and Staff Employed under it and Ors. (1963) 3 SCR 540

16. Raghuwinder Singh Vs Dy. Commissioner Of Income Tax, (Benami Transaction) And Initiating Officer Under The Prevention Of Benami Transaction Act 2016, S.B. Civil Writs No. 18701/2018 decided on 27/08/2018 Rajasthan High Court, Jaipur

17. S.B. Civil Writ Petition No. 2426 / 2018 Great Pacific General Trading Company (Limited Liability Partnership), Vs. Union of India, Through the Secretary, Ministry of Finance, Department of Revenue, Decided on 27/02/2018 Rajasthan High Court, Jodhpur. The same judgement was challenged in D.B. Spl. Appl. Writ No. 1315/2018 , decided on 22/10/2018.

18. MP-531-2017,decided on 09-01-2018, Dheeru Gond Vs. Union of India, High Court of Madhya Pradesh

19. CIT, New Delhi Vs. Ram Kishan Dass 2019 (5) SCALE 312

20. Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C. (2018) 3 SCC 85

21. R. Rajgopal Reddy (Dead) by L.Rs. And Ors. Vs. Padmini Chandrasekhara (Dead) by L.Rs. (1995) 2 SCC 630

22. WA-704-2017, Kailash Assudani vs Commissioner Of Income Tax decided on 16 August, 2017

23. His Highness Maharaja Pratap Singh Vs. Maharani Sajojani Devi and ors. :1994 supp (1) SCC 734

24. Kapur Chand Pokhraj Vs. State of Bombay: AIR 1958 SC 993

25. Canbank Financial Services Ltd. vs. The Custodian and Ors. (2004) 8 SCC 355

18. Heard the learned counsel for the parties and with their assistance perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at bar and the opinions referred to and relied upon.

19. Considering the entire factual matrix, materials available on record and pleadings of the parties, in the above noted writ applications in totality, this court concluded to deal with the larger question of retrospective applicability of the Benami Amendment Act, 2016, consented by the counsel for the parties. Thus, the question framed for determination, in substance, is:

Whether the provisions of Benami Amendment Act, 2016, shall be applicable retrospectively or not?

20. At the very outset, it will be in the fitness of things to deal with the preliminary objection raised by the learned senior counsel, appearing on behalf of the respondents as to the

maintainability of the writ applications in view of the scheme of the Benami Amendment Act, 2016, and in view of the opinion of the Supreme Court in the case of **Vodafone International Holdings B.V.** (supra). A glance of the opinion referred to and relied upon would reflect that the Supreme Court while relying upon earlier opinion in the case of the **Management of Express Newspapers Ltd. vs. Workers and Staff Employed under it**

and Ors.: AIR 1963 SC 569; observed that normally, the questions of facts, though they may be jurisdictional facts, the decision of which depends upon the appreciation of evidence, should be left to be tried by the Special Tribunals constituted for that purpose. The Supreme Court in no uncertain terms, in the same opinion, observed that it did not lay down any fixed or inflexible rule; whether or not even the preliminary facts should be tried by a High Court in a writ petition, for the same would depend upon the facts and circumstances of each case and upon the nature of the preliminary issue raised between the parties.

21. The factual matrix of the matters at hand, is entirely different and distinguishable, wherein the fact that the alleged *benami transactions*, involved herein, are of a date prior to seizure and search conducted by the respondent-department, and also, of the date the provisions of **Benami Amendment Act of 2016, brought into force i.e. 1st November, 2016**. Hence, the question in the instant batch of writ applications for determination and adjudication, as to the retrospective application of the amended provisions introduced vide Benami Amendment Act of 2016, amending the Prohibition of Benami Transactions Act, 1988; is a pure question of law. Thus, there is no factual matrix which

requires evidence and consequent appreciation and determination thereon, in view of the undisputed statement as to the alleged benami transactions, which happens to be of dates precedent to the enactment of Benami Amendment Act of 2016.

22. It is also not in dispute that the rules in exercise of powers conferred by virtue of Section 68 of the Benami Amendment Act of 2016, have been notified on 25th October, 2016, even before the substantive section 68 of the Benami Amendment Act of 2016, was made effective for which date appointed is 1st November, 2016.

23. In the case of **Whirlpool Corporation** (supra), the Apex Court of the land held thus:

"13. Learned counsel for the appellant has contended that since suo motu action Under Section 56(4) could be taken only by the High Court and not by the Registrar, the notice issued to the appellant was wholly without jurisdiction and, therefore, a writ petition even at that stage was maintainable. The appellant, in these circumstances, was not obliged to wait for the Registrar to complete the proceedings as any further order passed by the Registrar would also have been without jurisdiction.

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Qua Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court

would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.



20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

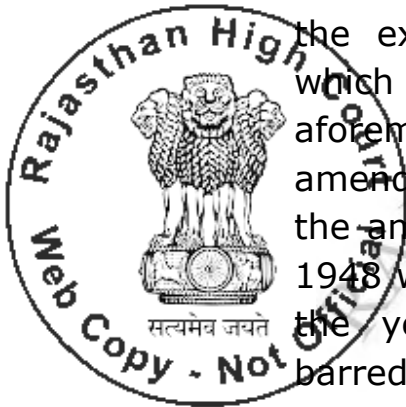
21. That being so, the High Court was not justified in dismissing the Writ Petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "TRIBUNAL".

24. A glance of the observations of the Apex Court of the land, as extracted herein-above, would reflect that factual matrix of the matters at hand, is entirely different and distinguishable from the factual matrix of the **Vodafone International Holdings B.V.** (supra), that fell for consideration of the Supreme Court. Hence, the opinion referred to and relied upon is of no help to the respondents in support of preliminary objection as to maintainability of the writ applications under Article 226 of the Constitution.

25. In the case of **Calcutta Discount Company Limited** (supra), a Constitution Bench of the Apex Court of the land while examining the rejection order on a writ application under Article 226 of the Constitution of India, in the backdrop of notices issued under Section 34 of the Indian Income Tax Act, 1922, wherein the Income Tax Officer called upon the Company to submit fresh returns of its total income; in no uncertain terms observed that the pretended notice was issued without existence of the necessary conditions precedent, which confers jurisdiction under section 34; and therefore, the aggrieved party approaching the court at the earliest opportunity, could not be denied relief for existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action. At this juncture, it will relevant to take note of the text of the opinion aforesaid, which reads thus:

"1. This appeal is against an appellate decision of a Bench of the Calcutta High Court by which in reversal of the order made by the Trial Judge the Bench rejected the present appellant's application under Article 226 of the Constitution. The appellant is a private limited company incorporated under the Indian Company's Act and has its registered office in Calcutta. It was assessed to income-tax for the assessment years, 1942-43, 1943-44 and 1944-45 by three separate orders dated January 26, 1944, February 12, 1944, and February 15, 1945, respectively. These assessments were made under section 23(3) of the Indian Income-tax Act upon returns filed by it accompanied by statements of account. The first two assessments were made by Mr. L. D. Rozario the then Income-tax Officer had the last one by Mr. K. D. Banerjee. The taxes assessed were duly paid up. On March 28, 1951, three notices purporting to be under section 34 of the Indian Income-tax Act, 1922, were issued by the Income-tax Officer calling upon the company to submit fresh returns of its total income and

the total world income assessable for the three accounting years relating to the three assessment years, 1942-43 1943-44 and 1944-45. The appellant company furnished returns in compliance with the notices but on September 18, 1951, applied to the High Court of Calcutta for issue under article 226 of the Constitution of appropriate writs or orders directing the Income-tax Officer not to proceed to assess it on the basis of these notices. The first ground on which this prayer was based was mentioned in the petition in these terms: - "The said pretended notice was issued without the existence of the necessary conditions precedent which confers jurisdiction under section 34 aforementioned, whether before or after the amendment in 1948." The other ground urged was that the amendment to section 34 of the Income-tax Act in 1948 was not retrospective and that the assessment for the years 1942-43, 1943-44 and 1944-45 became barred long before March 1951.

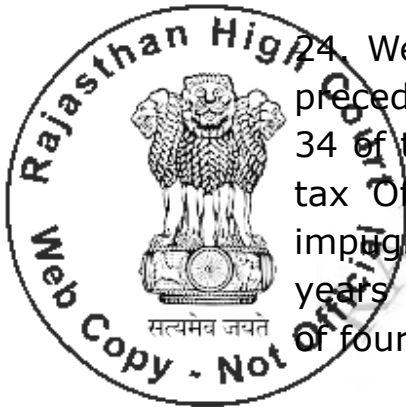


2. The Trial Judge held that the first ground was not made out but being of opinion that the amending Act of 1948 was not retrospective, he held that the notices issued were without jurisdiction. Accordingly he made an order prohibiting the Income-tax Officer from continuing the assessment proceedings on the basis of the impugned notices.

3. The learned Judges who heard the appeal agreed with the Trial Judge that the first ground had not been made out. They held however that in consequence of the amendment of section 34 in 1948 the objection on the ground of limitation must also fail. A point of constitutional law which appears to have been raised before the appeal court was also rejected. The appeal was allowed and the company's application under article 226 was dismissed with costs.

6. To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year two conditions have therefore to be satisfied. The first is that the Income-tax Officer must have reason to believe that income, profits or gains chargeable to income-tax have been under-assessed. The second is that he must have also reason to believe that such "under assessment" has occurred

by reason of either (i) omission or failure on the part of an assessee to make a return of his income under section 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly and all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income-tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years but within the period of eight years, from the end of the year in question.



24. We are therefore bound to hold that the conditions precedent to the exercise of jurisdiction under section 34 of the Income-tax Act did not exist and the Income-tax Officer had therefore no jurisdiction to issue the impugned notices under section 34 in respect of the years 1942-43, 1943-44 and 1944-45 after the expiry of four years.

25. Mr. Sastri argued that the question whether the Income-tax Officer had reason to believe that under-assessment had occurred "by reason of non-disclosure of material facts" should not be investigated by the courts in an application under article 226. Learned Counsel seems to suggest that as soon as the Income-tax Officer has reason to believe that there has been under-assessment in any year he has jurisdiction to start proceedings under section 34 by issuing a notice provided 8 years have not elapsed from the end of the year in question, but whether the notices should have been issued within a period of 4 years or not is only a question of limitation which could and should properly be raised in the assessment proceedings. It is wholly incorrect however to suppose that this is a question of limitation only not touching the question of jurisdiction. The scheme of the law clearly is that where the Income-tax Officer has reason to believe that an under assessment has resulted from non-disclosure he shall have jurisdiction to start proceedings for re-assessment within a period of 8 years; and where he has reason to believe that an under assessment has resulted from other causes he shall have jurisdiction to start proceedings for reassessment within 4 years. Both the conditions, (i) the Income-tax Officer having reason to believe that there has been under assessment and (ii) his having reason to believe that such under assessment has resulted from non-disclosure of material

facts, must co-exist before the Income-tax Officer has jurisdiction to start proceedings after the expiry of 4 years. The argument that the Court ought not to investigate the existence of one of these conditions, viz., that the Income-tax Officer has reason to believe that under assessment has resulted from non-disclosure of material facts cannot therefore be accepted.

26. Mr. Sastri next pointed out that at the stage when the Income-tax Officer issued the notices he was not acting judicially or quasi-judicially and so a writ of certiorari or prohibition cannot issue. It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority from acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.

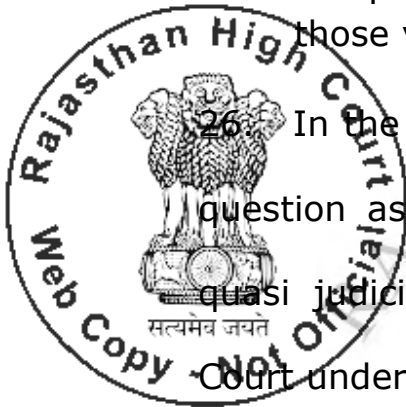
27. Mr. Sastri mentioned more than once the fact that the company would have sufficient opportunity to raise this question, viz., whether the Income-tax Officer had reason to believe that under assessment had resulted from non-disclosure of material facts, before the Income-tax Officer himself in the assessment proceedings and, if unsuccessful there, before the appellate Officer or the appellate tribunal or in the High Court under section 66(2) of the Indian Income-tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

28. In the present case the company contends that the conditions precedent for the assumption of jurisdiction under section 34 were not satisfied and came to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is



refused without adequate reasons. In the present case we can find no reason for which relief should be refused.

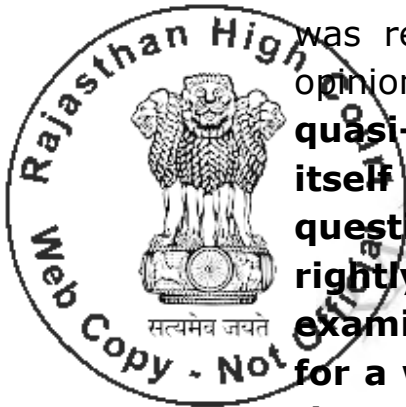
38. That the Income Tax Officer has reason to believe that there was under assessment in the material years was not challenged by the appellant and in our opinion rightly. There are on the record the reports of Income Tax Officer in which the belief is expressly set out. It also appears from the assessment orders for the years 1945-46 and 1946-47 that tax has been assessed on the profits made by sale of shares by the company in those years."



26. In the **Raza Textiles Ltd.** (supra), while examining the question as to whether the order of Income Tax Officer, a quasi judicial authority, is, subject to review by the High Court under Article 226 of the Constitution of India, was ruled in affirmative. At this stage, it will be profitable to take note of contents of paragraph 3 of the opinion aforesaid, which reads thus:

"3. Aggrieved by that order the appellant went up in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner rejected the appeal on the ground that the same was not maintainable. He took the view that an appeal lay only under Section 30(1A). But before such an appeal can be entertained the appellant must satisfy two conditions, namely, (1) he had deducted the tax due from the non-resident in accordance with the provisions of Sub-section 3(B) and (2) that he had paid the sum deducted to the Government. The appellant having not complied with those two conditions, the Appellate Assistant Commissioner held that the appeal was incompetent. The order of the Appellate Assistant Commissioner was confirmed by- the Tribunal. Thereafter the appellant moved the High Court under Article 226 of the Constitution. That application came up before a single Judge. The single Judge after going into the matter in detail came to the conclusion that M/s. Nathirmal and Sons is not a non-resident firm and that being so the appellant was not required to act under Section 18(3B). He accordingly, set aside the order impugned. The revenue went up in appeal against the order of the

learned single Judge to the Appellate Bench. That Bench allowed the appeal with the observations, "In the present case the question before the Income-tax Officer, Rampur, was whether the firm Nathirmal and Sons was non-resident or not. There was material before him on this question. He had jurisdiction to decide the question either way. It cannot be said that the officer assumed jurisdiction by wrong decision on this question of residence". The Appellate Bench appears to have been under the impression that the Income-tax Officer was the sole judge of the fact whether the firm in question was resident or non-resident. This conclusion, in our opinion, is wholly wrong. **No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned single Judge has done in this case, that the Income-tax Officer had clutched at the jurisdiction by deciding a jurisdictional fact erroneously, then the assessee was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income-tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen.** In our opinion the Appellate Bench is wholly wrong in opining that the Income-tax Officer can "decide either way".



27. In the case of **Malayala Manorama Co. Ltd.** (supra), the Apex Court of the land on a survey of earlier opinions including **Whirlpool Corporation** (supra), repelling the plea of availability of statutory alternative remedy while remanding the matter back to the High Court, observed thus:

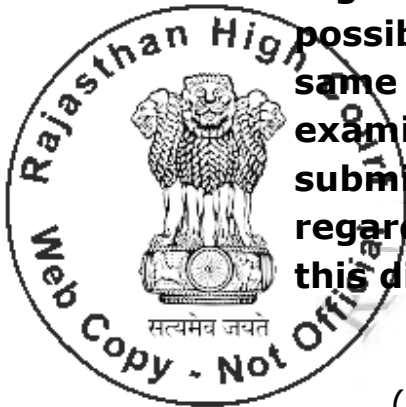
"5. The assessee firm did not take recourse to the statutory remedies available under the Act but questioned the very correctness and legality of the issuance of the notice as well as the order passed by the Assistant Commissioner before the High Court of

Kerala at Ernakulam, by filing a writ petition under Article 226 of the Constitution of India.

6. This writ petition was contested by the Department which filed detailed counter affidavit. It was specifically pleaded by the Department that for availability of statutory alternative remedy as well as for other reasons and facts stated in the reply, the writ petition itself was not maintainable. The Division Bench of the High Court while considering this primary objection raised by the Department before the High Court, came to the conclusion that as the facts were not in dispute and questions raised were purely legal and are to be tested in view of the judgment of this Court in the case of *Printers (Mysore) Ltd. v. Assistant Commercial Tax Officer* [(1994) 93 Sales Tax Cases 95 : (1994) 2 SCC 434], *Whirlpool Corporation v. Registrar of Trade Marks* [(1998) 8 SCC 1] as well as the judgment in the case of *State of H.P. & Ors. v. Gujarat Ambuja Cements Ltd.* [(2005) 6 SCC 499 : (2005) 142 Sales Tax Cases 1], the writ petition was maintainable. However, while laying emphasis that the newspaper would not fall within the expression 'goods' under sub-section 3 of Section 5 of the Act, the High Court held that the notice issued was proper as Form No. 18 which gives benefit of concessional rate of tax was factually not correct. While dismissing the writ petition, however, the Bench issued a direction to the assessing authority to examine whether the imposition of penalty at double the rate is justified in the facts and circumstances of the case, within a period of two months from the date of receipt of the copy of the judgment. It is this judgment of the High Court which has been assailed in the present appeal under Article 136 of the Constitution of India.

9. Having heard the learned senior counsel appearing for the parties, we are of the considered view that the order under challenge requires interference by this Court. There is no dispute to the fact that the material amendments were carried out in the provisions of [Section 5\(3\)](#) of the Act with effect from 01.04.2002. The existing 1st proviso to [Section 5\(3\)\(i\)](#) was deleted as well as the expression 'or uses the same in the manufacture of any goods which are not liable to tax in this Act' in [Section 5\(3\)\(i\)](#) was also deleted. Despite these amendments, as it appears from the record

before the Court, format of Form No. 18 has not been amended consequently. **However, the fact of the matter remains that the High Court has not dwelt upon these legal issues which are the core issues involved in the present case. In our view, the discussion on the first issue would certainly have some bearing on the alternative argument raised on behalf of the appellant before us. Thus, it may not be possible for this Court to sustain the finding recorded by the High Court in that regard. Of course, we are not ruling out all the possibilities of the High Court arriving at the same conclusion if it is of that view after examining the amendments as well as the submissions made on behalf of the appellant with regard to its alternative submissions. In light of this discussion, we pass the following order :**



(a) The impugned order dated 2nd August, 2006 passed by the High Court is hereby set aside.

(b) The matter is remanded to the High Court for consideration afresh in accordance with law on both the aforesaid submissions while leaving all the contentions of the assessee and the Department open for the year 2000- 2001, in relation to imposition of penalty under Section 45 (A) of the Act.

(c) The legality and validity or otherwise of the notice dated 16.01.2006 and 17.01.2006 shall be subject to the final decision of the High Court.

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28. Applying the principle deducible from the opinions *supra*, to the preliminary objections raised by the learned senior counsel for the respondents, as to maintainability of the writ applications; merits rejection, and is, hereby rejected.

29. Indisputably, in all the writ applications constituting the batch; the alleged benami transactions are of a date preceding 1st November, 2016. In some of the matters, even prior to the

commencement of unamended Benami Act of 1988, which came into effect on 5th September, 1988 whereas Sections 3, 5 and 8 of the unamended Benami Act, 1988, were deemed to have come into force on 19th day of May, 1988 i.e with **retrospective effect**.

The Benami Amendment Act, 2016 (43 of 2016), has been made applicable from the date appointed by the Central Government

vide notification dated 25th October, 2016. And the appointed date determined, is, 1st November, 2016, as the date on which the provisions of the Benami Amendment Act, 2016, shall come into force.

30. A comparative consideration of Section 2 of the Benami Act, 1988 and the Benami Amendment Act, 2016, would reflect that the definitions under the unamended Act contains sub-section (1) to (4) only, whereas the amending Benami Amendment Act, 2016, contains sub-section (1) to (31), defining various terms and phrases elaborately. Learned counsel for the parties referring to the aims, objects and scope of amendment in the Principal Act of 1988 vide Benami Transactions (Prohibition) Amendment Act, 2016, contended that while the earlier unamended Benami Act, 1988, consisted of only 9 Sections, the Benami Amendment Act, 2016, consisted of as many as 72 Sections.

31. However, the unamended Benami Act of 1988, for the first time contemplated prohibition of benami transactions vide Section 3. Section 4 prohibited right to recover property held benami. Section 5 contemplated properties held benami subject to acquisition by such authority in such manner and following such procedure as may be prescribed; without payment of any amount for acquisition of any property that was held *benami*. The

unamended Benami Act, 1988, vested the Central Government with the power to frame rules for carrying out the purpose of the Benami Act, 1988, by notification in the official gazette. Since no rules were framed by the Central Government in exercise of powers under Section 8 of the unamended Benami Act, 1988, for acquisition of properties held *benami*; no property was acquired despite the unamended Benami Act of 1988, remained in force all along until amendments introduced in the year 2016.

Admittedly, the unamended Benami Act, of 1988, did not contain any specific provision for vesting of ***benami property*** with Central Government. Furthermore, there was no provision for an appellate mechanism against action taken by the authorities under the unamended the Benami Act, 1988 while barring the jurisdiction of Civil Court. No powers with the authorities concerned for its implementation. However, in order to deal with the *benami transactions* involving large amounts of unaccounted black money, a mechanism has been introduced to make operative the intention and object of the unamended Benami Act of 1988 by the Benami Amendment Act, 2016; is the plea in support of its retrospective applicability of amended the Benami Act, 1988 through the Benami Amendment Act, 2016.

32. In order to appreciate the rival contentions of the parties on the question for determination, it will be profitable to take note of the relevant provisions of the unamended Benami Act of 1988 so also the relevant provisions of the Benami Amendment Act, 2016 along with text of Article 20 of the Constitution of India, which reads thus:

Article 20 of the Constitution:-

"20. Protection in respect of conviction for offences:

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence

(2) No person shall be prosecuted and punished for the same offence more than once

(3) No person accused of any offence shall be compelled to be a witness against himself."



Unamended Benami Transactions (Prohibition) Act,

1988

1. Short title, extent and commencement- (1) This Act may be called the Benami Transactions (Prohibition) Act, 1988.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) The provisions of sections 3, 5 and 8 shall come into force at once, and the remaining provisions of this Act shall be deemed to have come into force on the 19th day of May, 1988.

2. Definitions- In this Act, unless the context otherwise requires,--

(a) benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person;

(b) prescribed means prescribed by rules made under this Act;

(c) property means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

3. Prohibition of benami transactions- (1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife of the unmarried daughter.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this section shall be non-cognizable and bailable.

4. Prohibition of the right to recover property held benami- (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,--

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

5. Property of benami liable to acquisition- (1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedure as may be prescribed.



(2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1).

8. Power to make rules- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the authority competent to acquire properties under section 5;

(b) the manner in which, and the procedure to be followed for, the acquisition of properties under section 5;

(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, so soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Benami Transactions (Prohibition) Amendment Act, 2016.

(1) This Act may be called the Benami Transactions (Prohibition) Amendment Act, 2016.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any

reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

(8) "**benami property**" means any property which is the subject matter of a benami transaction and also includes the proceeds from such property;

(9) "**benami transaction**" means,-

(A) a transaction or an arrangement-

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by-

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

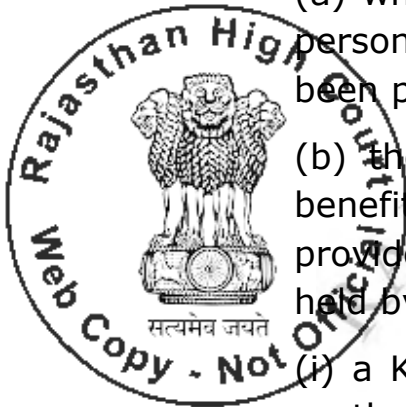
(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such

property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or



(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

(19) **"Initiating Officer"** means an Assistant Commissioner or a Deputy Commissioner as defined in clauses (9A) and (19A) respectively of [section 2](#) of the Income-tax Act, 1961 (43 of 1961);

In [section 3](#) of the principal Act,-

(a) sub-section (2) shall be omitted;

(b) sub-section (3) shall be renumbered as sub-section (2) thereof;

(c) after sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:-

"(3) Whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.";

24. Notice and attachment of property involved in benami transaction

(1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property.

(2) Where a notice under sub-section (1) specifies any property as being held by a benamidar referred to in that sub-section, a copy of the notice shall also be issued to the beneficial owner if his identity is known.

(3) Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the date of issue of notice under sub-section (1).



(4) The Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1),-

(a) where the provisional attachment has been made under sub-section (3), -

(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;

(b) where provisional attachment has not been made under sub-section (3),-

(i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

(5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

26. Adjudication of benami property

(1) On receipt of a reference under sub-section (5) of section 24, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons, namely:-

(a) the person specified as a **benamidar** therein;

(b) any person referred to as the beneficial owner therein or identified as such;

(c) any interested party, including a banking company;

(d) any person who has made a claim in respect of the property:

Provided that the Adjudicating Authority shall issue notice within a period of thirty days from the date on which a reference has been received:

Provided further that the notice shall provide a period of not less than thirty days to the person to whom the notice is issued to furnish the information sought.

(2) Where the property is held jointly by more than one person, the Adjudicating Authority shall make all endeavours to serve notice to all persons holding the property:

Provided that where the notice is served on anyone of the persons, the service of notice shall not be invalid on the ground that the said notice was not served to all the persons holding the property.

(3) The Adjudicating Authority shall, after-

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) making or causing to be made such inquiries and calling for such reports or evidence as it deems fit; and

(c) taking into account all relevant materials,

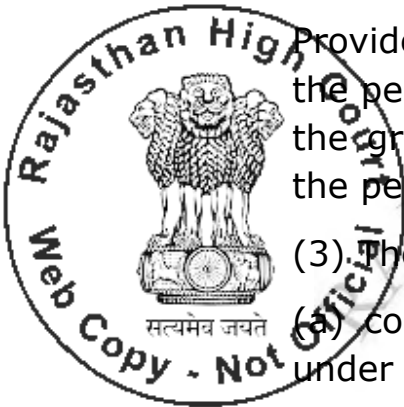
provide an opportunity of being heard to the person specified as a benamidar therein, the Initiating Officer, and any other person who claims to be the owner of the property, and, thereafter, pass an order-

(i) holding the property not to be a benami property and revoking the attachment order; or

(ii) holding the property to be a benami property and confirming the attachment order, in all other cases.

(4) Where the Adjudicating Authority is satisfied that some part of the properties in respect of which reference has been made to him is benami property, but is not able to specifically identify such part, he shall record a finding to the best of his judgment as to which part of the properties is held benami.

(5) Where in the course of proceedings before it, the Adjudicating Authority has reason to believe that a property, other than a property referred to it by the Initiating Officer is benami property, it shall provisionally attach the property and the property shall be deemed to be a property referred to it on the date of receipt of the reference under sub-section (5) of section 24.



(6) The Adjudicating Authority may, at any stage of the proceedings, either on the application of any party, or suo motu, strike out the name of any party improperly joined or add the name of any person whose presence before the Adjudicating Authority may be necessary to enable him to adjudicate upon and settle all the questions involved in the reference.

(7) No order under sub-section (3) shall be passed after the expiry of one year from the end of the month in which the reference under sub-section (5) of section 24 was received.

(8) The benamidar or any other person who claims to be the owner of the property may either appear in person or take the assistance of an authorised representative of his choice to present his case.

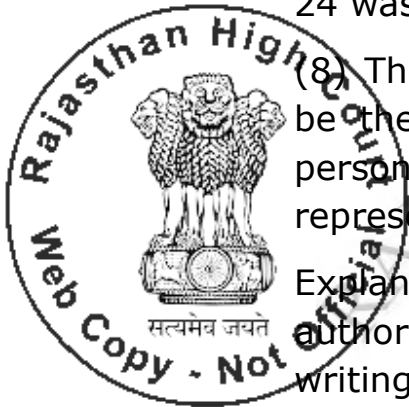
Explanation.-For the purposes of sub-section (8), authorised representative means a person authorised in writing, being-

- (i) a person related to the benamidar or such other person in any manner, or a person regularly employed by the benamidar or such other person as the case may be; or
- (ii) any officer of a scheduled bank with which the benamidar or such other person maintains an account or has other regular dealings; or
- (iii) any legal practitioner who is entitled to practice in any civil court in India; or
- (iv) any person who has passed any accountancy examination recognised in this behalf by the Board; or
- (v) any person who has acquired such educational qualifications as the Board may prescribe for this purpose.

53. Penalty for benami transaction

(1) Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction.

(2) Whoever is found guilty of the offence of benami transaction referred to in sub-section (1) shall be punishable with rigorous imprisonment for a term



which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent. of the fair market value of the property.

65. Transfer of pending cases

(1) Every suit or proceeding in respect of a benami transaction pending in any Court (other than a High Court) or Tribunal or before any forum on the date of the commencement of this Act shall stand transferred to the Adjudicating Authority or the Appellate Tribunal, as the case may be, having jurisdiction in the matter.

(2) Where any suit, or other proceeding stands transferred to the Adjudicating Authority or the Appellate Tribunal under sub-section (1),-

(a) the court, Tribunal or other forum shall, as soon as may be, after the transfer, forward the records of the suit, or other proceeding to the Adjudicating Authority or the Appellate Tribunal, as the case may be;

(b) the Adjudicating Authority may, on receipt of the records, proceed to deal with the suit, or other proceeding, so far as may be, in the same manner as in the case of a reference made under sub-section (5) of section 24, from the stage which was reached before the transfer or from any earlier stage or de novo as the Adjudicating Authority may deem fit.

68. Power to make rules

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

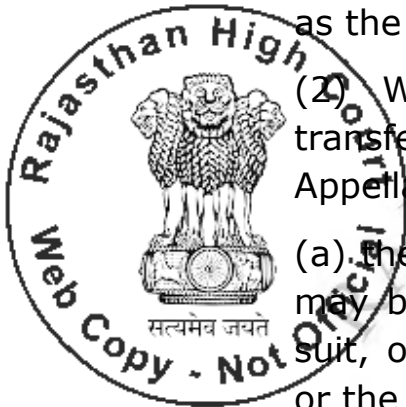
(a) manner of ascertaining the fair market value under clause 16 of section 2;

(b) the manner of appointing the Chairperson and the Member of the Adjudicating Authorities under sub-section (2) of section 9;

(c) the salaries and allowances payable to the Chairperson and the Members of the Adjudicating Authority under sub-section (1) of section 13;

(d) the powers and functions of the authorities under sub-section (2) of section 18;

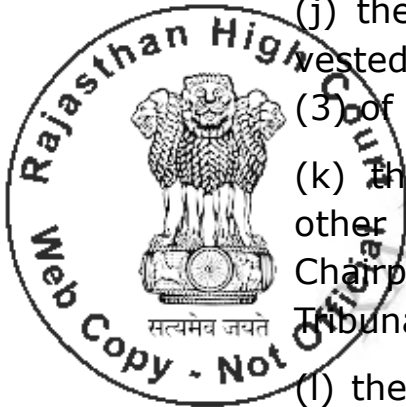
(e) other powers of the authorities under clause (f) of sub-section (1) of section 19;



- (f) the form and manner of furnishing any information to the authority under sub-section (2) of section 21;
- (g) the manner of provisional attachment of property under sub-section (3) of section 24;
- (h) the procedure for confiscation of benami property under the second proviso to sub-section (1) of section 27;
- (i) the manner and conditions to receive and manage the property under sub-section (1) of section 28;
- (j) the manner and conditions of disposal of property vested in the Central Government under sub-section (3) of section 28;
- (k) the salaries and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 33;
- (l) the manner of prescribing procedure for removal of Chairperson or Member under sub-section (4) of section 35;
- (m) the salaries and allowances payable to and the other terms and conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 39;
- (n) any power of the Appellate Tribunal under clause (i) of sub-section (2) of section 40;
- (o) the form in which appeal shall be filed and the fee for filing the appeal under sub-section (1) of section 46;
- (p) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

71. Transitional provision

The Central Government may, by notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under this Act, the Adjudicating Authority appointed under sub-section (1) of section 6 of the Money-Laundering Act, 2002 (15 of 2003) and the Appellate Tribunal established under section 25 of that Act may discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under this Act."



33. From a glance of notification dated 25th October, 2016, it is evident that Central Government, in exercise of powers conferred by Section 68 of the Benami Amendment Act, 2016; has framed the rules and made them effective w.e.f. 1st November, 2016, i.e. the date from which the Benami Amendment Act, 2016, has been enacted. Thus, it is evident that the Central Government exercised the powers, to frame the rules, conferred by virtue of Section 68, introduced vide Benami Amendment Act, 2016, which itself came into effect from the appointed date i.e. 1st November, 2016. Hence, the rules framed, in exercise of power under Section 68, have been framed and notified by notification dated 25th October, 2016, even before the amendment incorporating Section 68, was made operative that is w.e.f. 1st November, 2016. Therefore, the plea of the petitioners as to the rules having been framed contrary to and in absence of power available to the Central Government under Section 68 of the Benami Amendment Act, 2016, which was made operative and effective w.e.f. 1st November, 2016; has substance.

34. Further, to understand the true character and meaning of Benami Transactions, under the English law and Indian Law; it will be relevant to take note of the text of para 14 of the Apex Court of the land in the case of **Thakur Bhim Singh (dead) By Lrs and Ors.** (supra), which reads thus:

“14. Under the English law, when real or personal property is purchased in the name of a stranger, a resulting trust will be presumed in favour of the person who is proved to have paid the purchase money in the character of the purchaser. It is, however, open to the transferee to rebut that presumption by showing that the intention of the person who contributed the

purchase money was that the transferee should himself acquire the beneficial interest in the property. There is, however, an exception to the above rule of presumption made by the English law when the person who gets the legal title under the conveyance is either a child or the wife of the person who contributes the purchase money or his grand child, whose father is dead. The rule applicable in such cases is known as the doctrine of advancement which requires the court to presume that the purchase is for the benefit of the person in whose favour the legal title is transferred even though the purchase money may have been contributed by the father or the husband or the grandfather, as the case may be, unless such presumption is rebutted by evidence showing that it was the intention of the person who paid the purchase money that the transferee should not become the real owner of the property in question. The doctrine of advancement is not in vogue in India. The counterpart of the English law of resulting trust referred to above is the Indian law of benami transactions. Two kinds of benami transactions are generally recognized in India. Where a person buys a property with his own money but in the name of another person without any intention to benefit such other person, the transaction is called benami. In that case, the transferee holds the property for the benefit of the person who has contributed the purchase money, and he is the real owner. The second case which is loosely termed as a benami transaction is a case where a person who is the owner of the property executes a conveyance in favour of another without the intention of transferring the title to the property thereunder. In this case, the transferor continues to be the real owner. The difference between the two kinds of benami transactions referred to above lies in the fact that whereas in the former case, there is an operative transfer from the transferor to the transferee though the transferee holds the property for the benefit of the person who has contributed the purchase money, in the latter case, there is no operative transfer at all and the title rests with the transferor notwithstanding the execution of the conveyance. One common feature, however, in both these cases is that the real title is divorced from the ostensible title and they are vested in different persons. The question whether a transaction is a benami transaction or not mainly depends upon the intention of the person who has contributed the purchase money in the former case and



upon the intention of the person who has executed the conveyance in the latter case. The principle underlying the former case is also statutorily recognized in Section 82 of the Indian Trusts Act, 1882 which provides that where property is transferred to one person for a consideration paid or provided by another person and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration. This view is in accord with the following observations made by this Court in *Meenakshi Mills. Madurai v. The Commissioner of Income-Tax, Madras* MANU/SC/0044/1956 : [1956]1SCR691 .:



In this connection, it is necessary to note that the word 'benami' is used to denote two classes of transactions which differ from each other in their legal character and incidents. In one sense, it signifies a transaction which is real, as for example when A sells properties to B but the sale deed mentions X as the purchaser. Here the sale itself is genuine, but the real purchaser is B, X being his benamidar. This is the class of transactions which is usually termed as benami. But the word 'benami' is also occasionally used, perhaps not quite accurately, to refer to a sham transaction, as for example, when A purports to sell his property to B without intending that his title should cease or pass to B. The fundamental difference between these two classes of transactions is that whereas in the former there is an operative transfer resulting in the vesting of title in the transferee, in the latter there is none such, the transferor continuing to retain the title notwithstanding the execution of the transfer deed. It is only in the former class of cases that it would be necessary, when a dispute arises as to whether the person named in the deed is the real transferee or B, to enquire into the question as to who paid the consideration for the transfer, X or B. But in the latter class of cases, when the question is whether the transfer is genuine or sham, the point for decision would be, not who paid the consideration but whether any consideration was paid."

35. In the case of *Calcutta Discount Company Limited (supra)*, Supreme Court, held thus:

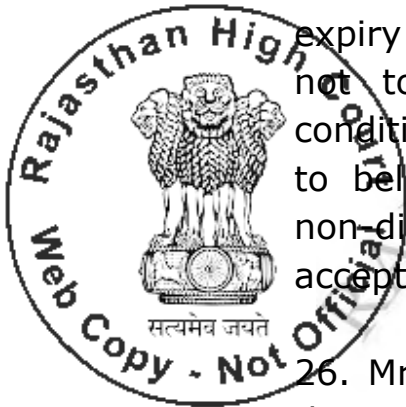
6. To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year two conditions have therefore to be satisfied. The first is that the Income-tax Officer must have reason to believe that income, profits or gains chargeable to income-tax have been under-assessed. The second is that he must have also reason to believe that such "under assessment" has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under section 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly and all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income-tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years but within the period of eight years, from the end of the year in question.



24. We are therefore bound to hold that the conditions precedent to the exercise of jurisdiction under section 34 of the Income-tax Act did not exist and the Income-tax Officer had therefore no jurisdiction to issue the impugned notices under section 34 in respect of the years 1942-43, 1943-44 and 1944-45 after the expiry of four years.

25. Mr. Sastri argued that the question whether the Income-tax Officer had reason to believe that under-assessment had occurred "by reason of non-disclosure of material facts" should not be investigated by the courts in an application under article 226. Learned Counsel seems to suggest that as soon as the Income-tax Officer has reason to believe that there has been under-assessment in any year he has jurisdiction to start proceedings under section 34 by issuing a notice provided 8 years have not elapsed from the end of the year in question, but whether the notices should have been issued within a period of 4 years or not is only a question of limitation which could and should properly be raised in the assessment proceedings. It is wholly incorrect however to suppose that this is a question of limitation only not touching the question of jurisdiction. The scheme of the law clearly is that where the Income-tax Officer has reason to believe that an under assessment has resulted from non-disclosure he shall

have jurisdiction to start proceedings for re-assessment within a period of 8 years; and where he has reason to believe that an under assessment has resulted from other causes he shall have jurisdiction to start proceedings for reassessment within 4 years. Both the conditions, (i) the Income-tax Officer having reason to believe that there has been under assessment and (ii) his having reason to believe that such under assessment has resulted from non-disclosure of material facts, must co-exist before the Income-tax Officer has jurisdiction to start proceedings after the expiry of 4 years. The argument that the Court ought not to investigate the existence of one of these conditions, viz., that the Income-tax Officer has reason to believe that under assessment has resulted from non-disclosure of material facts cannot therefore be accepted.



26. Mr. Sastri next pointed out that at the stage when the Income-tax Officer issued the notices he was not acting judicially or quasi-judicially and so a writ of certiorari or prohibition cannot issue. It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority from acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.

27. Mr. Sastri mentioned more than once the fact that the company would have sufficient opportunity to raise this question, viz., whether the Income-tax Officer had reason to believe that under assessment had resulted from non-disclosure of material facts, before the Income-tax Officer himself in the assessment proceedings and, if unsuccessful there, before the appellate Officer or the appellate tribunal or in the High Court under section 66(2) of the Indian Income-tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

28. In the present case the company contends that the conditions precedent for the assumption of jurisdiction

under section 34 were not satisfied and came to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused.

29. We have therefore come to the conclusion that the company was entitled to an order directing the Income-tax Officer not to take any action on the basis of the three impugned notices.

30. We are informed that assessment orders were in fact made on March 25, 1952, by the Income-tax Officer in the proceedings started on the basis of these impugned notices. This was done with the permission of the learned Judge before whom the petition under article 226 was pending, on the distinct understanding that these orders would be without prejudice to the contentions of the parties on the several questions raised in the petition and without prejudice to the orders that may ultimately be passed by the Court. The fact that the assessment orders have already been made does not therefore affect the company's right to obtain relief under article 226. In view however of the fact that the assessment orders have already been made we think it proper that in addition to an order directing the Income-tax Officer not to take any action on the basis of the impugned notices a further order quashing the assessment made be also issued.

36. In the case of **Commissioner of Income Tax vs. Vatika Township Private Limited** (supra), the Supreme Court, observed thus:

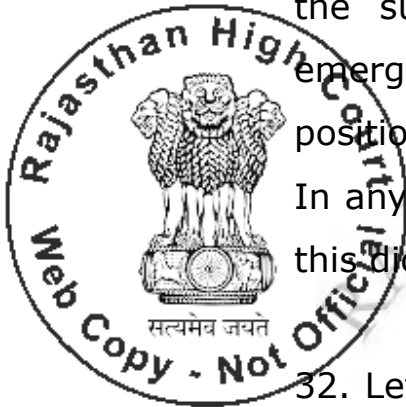
27. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of

statements, such as one finds in a work of fiction/non fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of 'Interpretation of Statutes'. Vis-à-vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Phillips v. Eyre* (1870) LR 6 QB 1, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.* (1994) 1 AC

486. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.



32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labeled as "declaratory statutes". The circumstances under which a provision can be termed as "declaratory statutes" is explained by Justice G.P. Singh in the following manner:

"Declaratory statutes"

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court: "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the

word 'enacted'. But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law.

The above summing up is factually based on the judgments of this Court as well as English decisions.

37. When we examine the insertion of proviso in Section 113 of the Act, keeping in view the aforesaid principles, our irresistible conclusion is that the intention of the legislature was to make it prospective in nature. This proviso cannot be treated as declaratory/statutory or curative in nature.



42.2 Thus, it was a conscious decision of the legislature, even when the legislature knew the implication thereof and took note of the reasons which led to the insertion of the proviso, that the amendment is to operate prospectively. Learned Counsel appearing for the Assessee sagaciously contrasted the aforesaid stipulation while effecting amendment in Section 113 of the Act, with various other provisions not only in the same Finance Act but Finance Acts pertaining to other years where the legislature specifically provided such amendment to be either retrospective or clarificatory. In so far as amendment to Section 113 is concerned, there is no such language used and on the contrary, specific stipulation is added making the provision effective from 1st June, 2002.



44. Finance Act, 2003, again makes the position clear that surcharge in respect of block assessment of undisclosed income was made prospective. Such a stipulation is contained in second proviso to Sub-section (3) of Section 2 of Finance Act, 2003. This proviso reads as under:

“Provided further that the amount of income-tax computed in accordance with the provisions of Section 113 shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule of the Finance Act of the year in which the search is initiated Under Section 132 or requisition is made Under Section 132A of the income-tax Act.”

Addition of this proviso in the Finance Act, 2003 further makes it clear that such a provision was necessary to provide for surcharge in the cases of block assessments and thereby making it prospective in nature. The charge in respect of the surcharge, having been created for the

first time by the insertion of the proviso to Section 113, is clearly a substantive provision and hence is to be construed prospective in operation. The amendment neither purports to be merely clarificatory nor is there any material to suggest that it was intended by Parliament. Furthermore, an amendment made to a taxing statute can be said to be intended to remove 'hardships' only of the Assessee, not of the Department. On the contrary, imposing a retrospective levy on the Assessee would have caused undue hardship and for that reason Parliament specifically chose to make the proviso effective from 1.6.2002.



In the case of Commissioner of Prakash and Ors. vs. Phulavati and Ors. (supra), the Apex Court of the land, held thus:

17. The text of the amendment itself clearly provides that the right conferred on a 'daughter of a coparcener' is 'on and from the commencement of Hindu Succession (Amendment) Act, 2005'. Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective Shyam Sunder v. Ram Kumar (2001) 8 SCC 24, Paras 22 to 27. In the present case, there is neither any express provision for giving retrospective effect to the amended provision nor necessary intendment to that effect. Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per unamended provision, having regard to nature of such partition which is by operation of law. The intent and effect of the Amendment will be considered a little later. On this finding, the view of the High Court cannot be sustained.

18. Contention of the Respondents that the Amendment should be read as retrospective being a piece of social legislation cannot be accepted. Even a social legislation cannot be given retrospective effect

unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the Amendment applicable on and from its commencement and only if death of the coparcener in question is after the Amendment. Thus, no other interpretation is possible in view of express language of the statute. The proviso keeping dispositions or alienations or partitions prior to 20th December, 2004 unaffected can also not lead to the inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main provision is applicable. Similarly, Explanation has to be read harmoniously with the substantive provision of Section 6(5) by being limited to a transaction of partition effected after 20th December, 2004. Notional partition, by its very nature, is not covered either under proviso or under Sub-section 5 or under the Explanation.



38. In the case of ***Sukhdev Singh vs. State of Haryana***: (supra), the Supreme Court, observed thus:

"Another Bench of this Court in the case of Jawahar Singh @ Bhagat Ji. v. State of GNCT of Delhi (2009) 6 SCC 490], while dealing with the amendments of Section 21 of the NDPS Act, the Court took the view that amendments made by Act 9 of 2001 could not be given retrospective effect as if it was so given, it would warrant a retrial which is not the object of the Act. The Court held as under:

"9. It is now beyond any doubt or dispute that the quantum of punishment to be inflicted on an accused upon recording a judgment of conviction would be as per the law which was prevailing at the relevant time. As on the date of commission of the offence and/or the date of conviction, there was no distinction between a small quantity and a commercial quantity, question of infliction of a lesser sentence by reason of the provisions of the amending Act, in our considered opinion, would not arise.

10. It is also a well-settled principle of law that a substantive provision unless

specifically provided for or otherwise intended by Parliament should be held to have a prospective operation. One of the facets of the rule of law is also that all statutes should be presumed to have a prospective operation only.”

18. No law can be interpreted so as to frustrate the very basic rule of law. It is a settled principle of interpretation of criminal jurisprudence that the provisions have to be strictly construed and cannot be given a retrospective effect unless legislative intent and expression is clear beyond ambiguity. The amendments to criminal law would not intend that there should be undue delay in disposal of criminal trials or there should be retrial just because the law has changed. Such an approach would be contrary to the doctrine of finality as well as avoidance of delay in conclusion of criminal trial.”



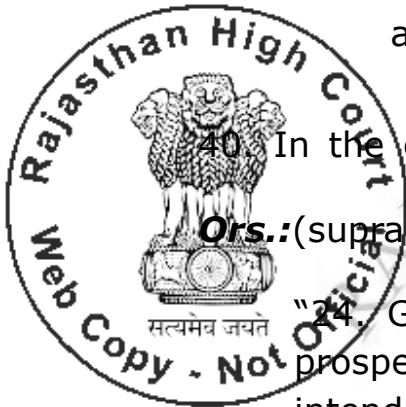
39. In the case of ***J.S. Yadav vs. State of U.P. and Ors.*** (*supra*), the Supreme Court held thus:

24. The Legislature is competent to unilaterally alter the service conditions of the employee and that can be done with retrospective effect also, but the intention of the Legislature to apply the amended provisions with retrospective effect must be evident from the Amendment Act itself expressly or by necessary implication. The aforesaid power of the Legislature is qualified further that such a unilateral alteration of service conditions should be in conformity with legal and constitutional provisions. *Roshan Lal Tandon v. Union of India and Ors.* AIR 1967 SC 1889; *State of Mysore v. Krishna Murthy and Ors.* AIR 1973 SC 1146; *Raj Kumar v. Union of India and Ors.* AIR 1975 SC 1116; *Ex-Capt. K.C. Arora and Anr. v. State of Haryana and Ors.* (1984) 3 SCC 281; and *State of Gujarat and Anr. v. Raman Lal Keshav Lal Soni and Ors.* AIR 1984 SC 161.

25. In *Union of India and Ors. v. Tushar Ranjan Mohanty and Ors.* (1994) 5 SCC 450, this Court declared the amendment with retrospective operation as ultra vires as it takes away the vested rights of the Petitioners therein and thus, was unreasonable, arbitrary and violative of Articles 14 and 16 of the Constitution. While deciding the said case, this Court

placed very heavy reliance on the judgment in P.D. Aggarwal and Ors. v. State of U.P. and Ors. AIR 1987 SC 1676, wherein this Court has held as under:

"18. ...the Government has power to make retrospective amendments to the Rules but if the Rules purport to take away the vested rights and are arbitrary and not reasonable then such retrospective amendments are subject to judicial scrutiny if they have infringed Articles 14 and 16 of the Constitution."



In the case of **Shakti Tubes Ltd. vs. State of Bihar and Ors.** (supra), the Apex Court of the land observed thus:

"24. Generally, an Act should always be regarded as prospective in nature unless the legislature has clearly intended the provisions of the said Act to be made applicable with retrospective effect.

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. The aforesaid rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only -- "nova Constitution futuris formam imponere debet non praeteritis" -- a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).

25. There is no dispute with regard to the fact that the Act in question is a welfare legislation which was enacted to protect the interest of the suppliers especially suppliers of the nature of a small scale industry. But, at the same time, the intention and the purpose of the Act cannot be lost sight of and the Act in question cannot be given a retrospective effect so long as such an intention is not clearly made out and derived from the Act itself."

41. In the case of **O. Konavalov vs. Commander, Coast Guard Region and Ors.: (supra)**, the Supreme Court observed thus:



"POWER TO CONFISCATE

30. The power to confiscate and the consequent forfeiture of rights or interests are drastic, being penal in nature. Statutes conferring such powers must be read very strictly. There can be no exercise of power under such statutes by way of extension or implication. No expansive meaning can be given therefore to Section 115 of the Customs Act merely from the dictionary meaning the word absolute as has been done by the Division Bench of the High Court.

42. In the case of M/S **Pepsi Foods Ltd. and Ors. vs. Special Judicial Magistrate and Ors.**(supra), the Supreme Court held thus:

"29. No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants. If, however, we refer to the impugned judgment of the High Court it has come to

the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused." We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the magistrate as well, as the magistrate will not give any different conclusion on an application filed under Section 245 of the Code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. If we now refer to the facts of the case before us it is clear to us that not only that allegations against the appellants do not make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegations. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Pepsi". The complaint does not show what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturer of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as accused No. 3. The preliminary evidence on which the 1st respondent relied in issuing summon to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955 made Fruit Products Order, 1955 (for short, the "Fruit Order"). It is not disputed that the beverage in the question is a "fruit product" within the meaning of Clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The Fruit Order defines the manufacturer and also sets out as to what the



manufacturer is required to do in regard to the packaging, marking and labelling of containers of fruit products. One of such requirement is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacturer to be displayed on the top or neck of the bottle. The licence number of manufacturer shall also be exhibited prominently on the side label on such bottle [Clause (8) (1) (b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that in *The Hamdard Dawakhana .(WAKF) Delhi and Anr. v. The Union of India and Ors.*, [1965]2SCR192 , an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954. This Court negatived this plea and said that the Fruit order was validly issued under the Essential Commodities Act. What we find in the present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the offending beverage and if, as noted above, the first appellant was the manufacturer thereof.

29. It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in the Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the courts and the High Court should not have shied away in exercising its jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is



discretionary but this was a case where the High Court should have exercised it."

43. In the case of **Collector of Central Excise, Ahmedabad vs. Orient Fabrics Pvt. Ltd.:** (*supra*) , the Apex Court of the land, held thus:

"3. The Tribunal relying upon the decision in the case of Pioneer Silk Mills Pvt. Ltd. v. Union of India, reported in 1995(80)ELT507(Del) , allowed the appeals, holding that the provisions of Central Excise Act and the Rules made thereunder, so far as they relate to confiscation cannot be made applicable for the breach of provisions of the Act. It is against the said judgment and order of the Tribunal, the appellant is in appeal before us.

4. Mr. S.R. Bhat, learned counsel appearing for the appellant, urged that the view taken by the Tribunal in allowing the appeals was erroneous inasmuch as it is contrary to the decisions in the case of Khema & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra, reported in [1975]3SCR753 and Commissioner of Central Excise v. Ashok Fashion Ltd., reported in 2002(141)ELT606(Guj).

5. In order to appreciate the issue, it is relevant to set out the Sub-section (3) of Section 3 of the Act, as applicable in this matter and which runs as under:

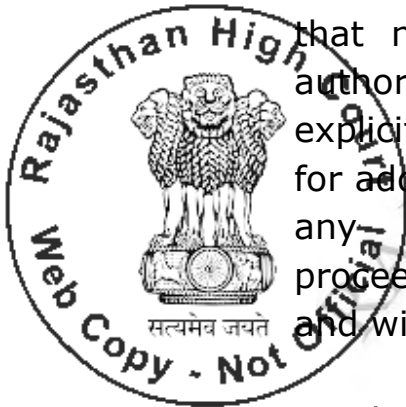
"SECTION 3: Levy and collection of additional duties:

(1).....

(2).....

(3) The provisions of the Central Excise and Salt Act, 1944 and the rules made thereunder including those relating to refunds and exemptions from duty shall, so far as may be apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in Sub-section (1)."

6. A perusal of the said provision shows that the breach of the provision of the Act has not been made penal or an offence and no power has been given to confiscate the goods. It only provides for application of the procedural provisions of the Central Excise and Salt Act, 1944 and the Rules made thereunder. It is no longer res integra that when the breach of the provisions of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. The authority has to be specific and explicit and expressly provided. The Act created liability for additional duty for excise, but created no liability for any penalty. That being so, the confiscation proceedings against the respondents were unwarranted and without authority of law.



7. The Parliament by reason of Section 63(a) of the Finance Act, 1994 (Act No. 32 of 1994) substituted Sub-section (3) of Section 3 of the said Act, which now reads as under:

"3. Levy and collection of Additional Duties:-

(1).....

(2).....

(3) The provisions of the [Central Excise Act, 1944] (1 of 1944), and the rules made thereunder, including those relating to refunds, exemptions from duty, offences and penalties, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in Sub-section (1)."

19. It is now a well settled principles of law that expropriatory legislation must be strictly construed (see D.L.F. Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and Ors., reported in : [2003]2SCR1). It is further trite that a penal statute must receive strict construction.

20. The matter may be considered from another angle. The Parliament by reason of the Amending Act 32 of

1994 consciously brought in the expression 'offences and penalties' in Sub-section (3) of Section 3 of the Act. The mischief rule, if applied, would clearly show that such amendment was brought with a view to remedy the defect contained in the unamended provisions of Sub-section (3) of Section 3 of the Act. Offences having regard to the provisions contained in Article 20 of the Constitution of India cannot be given a retrospective effect. In that view of the matter too Sub-section (3) of Section 3 of the Act as amended cannot be said to have any application at all.



21. In view of the aforesaid decisions, it must be held that the confiscation proceedings taken against the respondents and the penalty imposed upon them were totally without the authority of law and were rightly set aside by the Tribunal."

44. In the case of **Suhas H. Pophale vs. Oriental Insurance**

Co. Ltd. and its Estate Officer: (*supra*) , the Supreme Court,

held thus:

"45. It has been laid down by this Court time and again that if there are rights created in favour of any person, whether they are property rights or rights arising from a transaction in the nature of a contract, and particularly if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect. This is because prima facie every legislation is prospective (see para 7 of the Constitution Bench judgment in *Janardan Reddy v. The State* reported in AIR 1951 SC 124). In the instant case, the Appellant was undoubtedly protected as a 'deemed tenant' under Section 15A of the Bombay Rent Act, prior to the merger of the erstwhile insurance company with a Government Company, and he could be removed only by following the procedure available under the Bombay Rent Act. A 'deemed tenant' under the Bombay Rent Act, continued to be protected under the succeeding Act, in view of the definition of a 'tenant' under Section 7(15)(a)(ii) of the Maharashtra Rent Control Act, 1999. Thus, as far as the tenants of the premises which are not covered under the Public Premises Act are concerned, those tenants who were deemed tenants under the Bombay Rent Act continued

to have their protection under the Maharashtra Rent Control Act, 1999. Should the coverage of their premises under the Public Premises Act make a difference to the tenants or occupants of such premises, and if so, from which date?

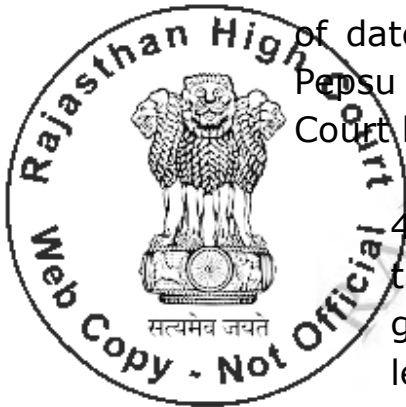
46. It has been laid down by this Court through a number of judgments rendered over the years, that a legislation is not be given a retrospective effect unless specifically provided for, and not beyond the period that is provided therein. Thus, a Constitution Bench held in *Garkiapati Veeraya v. N. Subbiah Choudhry* reported in AIR 1957 SC 540 that in the absence of anything in the enactment to show that it is to be retrospective, it cannot be so constructed, as to have the effect of altering the law applicable to a claim in litigation at the time when the act was passed. In that matter, the Court was concerned with the issue as to whether the Appellant's right to file an appeal continued to be available to him for filing an appeal to the Andhra Pradesh High Court after it was created from the erstwhile Madras High Court. The Constitution Bench held that the right very much survived, and the vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

49. The same has been the view taken by a bench of three Judges of this Court in *J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad v. Induprasad Devshanker Bhatt* reported in AIR 1969 SC 778 in the context of a provision of the Income Tax Act, 1961, in the matter of reopening of assessment orders. In that matter the Court was concerned with the issue as to whether the Income Tax Officer could re-open the assessment under Section 297(2) (d)(ii) and 148 of the Income Tax Act, 1961, although the right to re-open was barred by that time under the earlier Income Tax Act, 1922. This Court held that the same was impermissible and observed in paragraph 5 as follows:

5.....The reason is that such a construction of Section 297(2)(d)(ii) would be tantamount to giving of retrospective operation to that section which is not warranted either by the express language of the section or by necessary implication. The principle is based on the well-known

rule of interpretation that unless the terms of the statute expressly so provide or unless there is a necessary implication, retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by efflux of time.

50. In *Arjan Singh v. State of Punjab* reported in AIR 1970 SC 703, this Court was concerned with the issue of date of application of Section 32KK added into the Pepsu Tenancy and Agricultural Lands Act, 1955. This Court held in paragraph 4 thereof as follows:

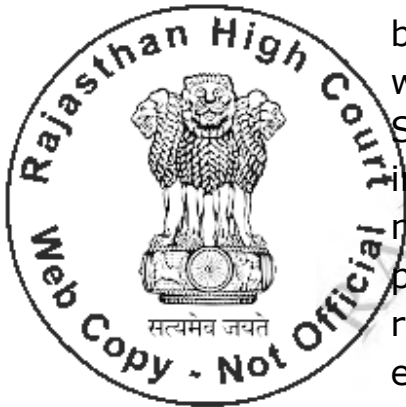


4. It is a well-settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that where a provision is made retrospective, care should be taken not to extend its retrospective effect beyond what was intended.

52. In the case of *K.S. Paripoornan v. State of Kerala* reported in AIR 1995 SC 1012, a Constitution Bench of this Court was concerned with the retrospective effect of Section 23(1A) introduced in the Land Acquisition Act. While dealing with this provision, this Court has observed as follows:

64. A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it

affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. (See: Halsbury's Laws of England, 4th Edn. Vol. 44, paras 921, 922, 925 and 926).

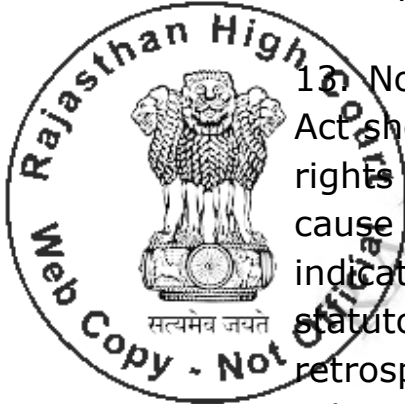


54. Having noted the aforesaid observations, it is very clear that in the facts of the present case, the Appellant's status as a deemed tenant was accepted under the state enactment, and therefore he could not be said to be in "unauthorised occupation". His right granted by the state enactment cannot be destroyed by giving any retrospective application to the provisions of Public Premises Act, since there is no such express provision in the statute, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, until they belonged to the Respondent No. 1, i.e. until 1.1.1974. The corollary is that if the Respondent No. 1 wanted to evict the Appellant, the remedy was to resort to the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act."

45. In the case of **State of Punjab and Ors. vs. Bhajan Kaur and Ors.:** (*supra*) , the Apex Court of the land, held thus:

"9. A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of rule of law.

10. Section 92-A of the 1939 Act created a right and a liability on the owner of the vehicle. It is a statutory liability. Per se it is not a tortious liability. Where a right is created by an enactment, in absence of a clear provision in the statute, it is not to be applied retrospectively.



16. No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing the claim petition arises. As indicated hereinbefore, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by the Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly, when it came into force on or about 1.07.1989.

17. In Garikapati v. Subbaiah Chowdhary [1957]1SCR488 , the law is stated, thus:

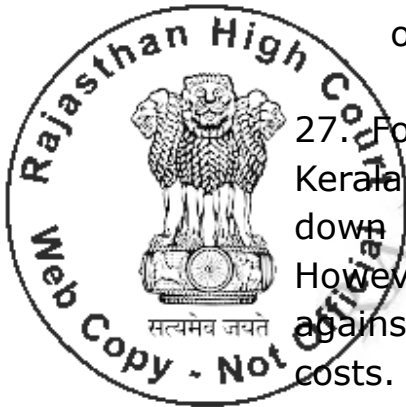
25...The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed....

23. In Madishetti Bala Ramul (D) by LRs. v. The Land Acquisition Officer: (2007)9SCC650 , this Court observed:

"19. In Land Acquisition Officer-cum-DSWO, A.P. v. B.V. Reddy and Sons this Court opined that Section 25 being not a procedural provision will have no retrospective effect, holding:

6. Coming to the second question, it is a well- settled principle of construction that a

substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24-9-1984, the date on which Act 68 of 1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30-4-1982 and came into operation with effect from 24-9-1984....



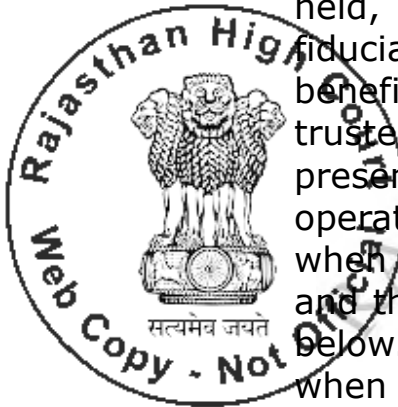
27. For the reasons aforementioned, the decisions of Kerala and Punjab & Haryana High Court do not lay down a good law. They are overruled accordingly. However, as the State has not asked for any relief against the respondents, this appeal is dismissed. No costs.

46. In the case of **Joseph Isharat vs. Rozy Nishikant**

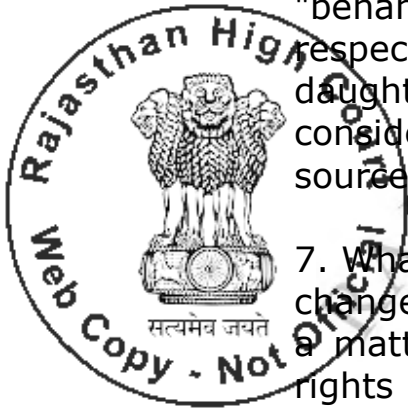
Gaikwad:(supra), the Bombay High Court, held thus:

"4. Under the Benami Act, as it stood on the date of the suit as well as on the date of filing of written statement and passing of the decree by the courts below, provided for the definition of a "benami transaction" under clause (a) of Section 2. Under that provision, any transaction in which property is transferred to one person for consideration paid or provided by another came within the definition of "benami transaction". Section 3 of the Benami Act, in sub-section (1), provided that no person shall enter into any benami transaction. Sub-section (2) contained two exceptions to the prohibition contained in sub-section (1). The first exception, contained in clause (a) of sub-section (2), was in respect of purchase of property by any person in the name of his wife or unmarried daughter. In the case of such purchase, it was to be presumed, unless the contrary was proved, that the property was purchased for the benefit of the wife or unmarried daughter, as the case may be. Simultaneously, Section 4 of the Benami Act contained a prohibition in respect of right to recover property held benami. Sub-section (1) provided that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held, or against any other person, shall lie by or on behalf of a person claiming to be the real owner of such property. Sub-section (2) made provisions likewise in respect of a defence based on a plea of benami transaction. Sub-

section (2) provided that no defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. There was a twofold exception to this restriction. First was in respect of the person in whose name the property is held being a coparcener in a Hindu undivided family and the property being held for the benefit of the coparceners of the family. The second exception was in respect of the person, in whose name the property was held, being a trustee or other person standing in a fiduciary capacity and the property being held for the benefit of another person for whom he was such trustee or towards whom he stood in such capacity. The present suit was filed when these provisions were in operation. These provisions continued to apply even when the written statement was filed by the Defendant and the suit was heard and decreed by both the courts below. The legal provisions continued to apply even when the second appeal was filed before this court. It is only now during the pendency of the second appeal, when it has come up for final hearing, that there is a change in law. The Benami Act has been amended by the Parliament in 2016 with the passing of the Benami Transactions (Prohibition) Amendment Act, 2016. This amendment has come into effect from 01 November 2016. In the Amended Act the definition of "benami transaction" has undergone a change. Under the Amended Act "benami transaction" means (under Section 2(9) of the Act) a transaction or an arrangement where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration. There are four exceptions to this rule. The first is in respect of a karta or a member of a Hindu undivided family holding the property for the benefit of the family. The second exception is in respect of a person standing in a fiduciary capacity holding the property for the benefit of another person towards whom he stands in such capacity. The third exception is in the case of an individual who purchases the property in the name of his spouse or child, the consideration being provided or paid out of the known sources of the individual. The fourth exception is in the case of purchase of property in the name of brother or sister or lineal ascendant or descendant where the names of such brother or sister or lineal ascendant or descendant, as the case may be, and the individual appear as joint owners in any document. Sub-section (1) of Section 3 contains the very same prohibition as under the unamended Act, in



that it prohibits all benami transactions. Section 4 likewise prohibits suits, claims or actions or defences based on the plea of benami as in the case of the unamended Act. The submission is that under this scheme of law, step-daughter not having been defined under the Benami Act, but having been defined under the Income Tax Act, 1961, by virtue of sub-section (31) of Section 2 of the amended Benami Act, the meaning of the expression will be the one assigned to it under the Income Tax Act. The definition of daughter under the Income Tax Act admits of a step-child within it. It is submitted that under the amended definition of "benami transaction", thus, there is a clear exception in respect of a purchase made in the name of a step-daughter by an individual provided, of course, the consideration has been provided or paid out of known sources of the individual.

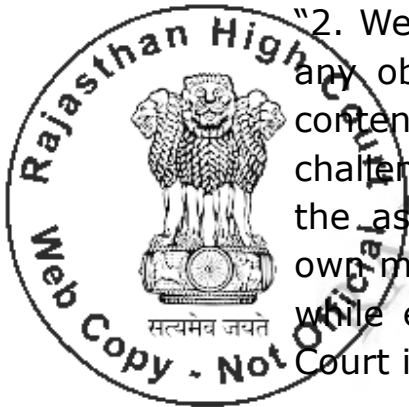


7. What is crucial here is, in the first place, whether the change effected by the legislature in the Benami Act is a matter of procedure or is it a matter of substantial rights between the parties. If it is merely a procedural law, then, of course, procedure applicable as on the date of hearing may be relevant. If, on the other hand, it is a matter of substantive rights, then prima facie it will only have a prospective application unless the amended law speaks in a language "which expressly or by clear intention, takes in even pending matters.". Short of such intendment, the law shall be applied prospectively and not retrospectively.

8. As held by the Supreme Court in the case of R. Rajagopal Reddy v. Padmini Chandrasekharan (1995) 2 SCC 630, Section 4 of the Benami Act, or for that matter, the Benami Act as a whole, creates substantive rights in favour of benamidars and destroys substantive rights of real owners who are parties to such transaction and for whom new liabilities are created under the Act. Merely because it uses the word "it is declared", the Act is not a piece of declaratory or curative legislation. If one has regard to the substance of the law rather than to its form, it is quite clear, as noted by the Supreme Court in R. Rajagopal Reddy, that the Benami Act affects substantive rights and cannot be regarded as having a retrospective operation. The Supreme Court in R. Rajagopal Reddy also held that since the law nullifies the defences available to the real owners in recovering the properties held benami, the law must apply irrespective of the time of the benami transaction and that the expression "shall lie" in Section 4(1) or "shall be allowed" in Section 4(2) are prospective and apply to the present

(future stages) as well as future suits, claims and actions only. These observations clearly hold the field even as regards the present amendment to the Benami Act. The amendments introduced by the Legislature affect substantive rights of the parties and must be applied prospectively."

47. In the case of *Jeans Knit (P) Ltd. vs. Deputy Commissioner of Income Tax and Ors* (supra), the Supreme Court, held thus:



"2. We may make it clear that this Court has not made any observations on the merits of the cases, i.e. the contentions which are raised by the Appellant challenging the move of the IT authorities to reopen the assessment. Each case shall be examined on its own merits keeping in view the scope of judicial review while entertaining such matters, as laid down by this Court in various judgments.

3. We are conscious of the fact that the High Court has referred to the judgment of this Court in *CIT v. Chhabil Dass Agarwal* (2013) 261 CTR (SC) 113 : (2013) 91 DTR (SC) 193 : (2013) 357 ITR 357 (SC). We find that the principle laid down in the said case does not apply to these cases.

4. During the pendency of these appeals, stay of reassessment was granted, which shall continue till the disposal of the writ petitions before the High Courts. The appeals are allowed in the aforesaid terms.

48. In the case of ***Raza Textiles Ltd. vs. Income Tax Officer, Rampur***:(supra), the Apex Court of the land, observed thus:

3. There was material before him on this question. He had jurisdiction to decide the question either way. It cannot be said that the officer assumed jurisdiction by wrong decision on this question of residence". The Appellate Bench appears to have been under the impression that the Income-tax Officer was the sole judge of the fact whether the firm in question was resident or non-resident. This conclusion, in our opinion, is wholly wrong. No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question

whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned single Judge has done in this case, that the Income-tax Officer had clutched at the jurisdiction by deciding a jurisdictional fact erroneously, then the assessee was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income-tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen. In our opinion the Appellate Bench is wholly wrong in opining that the Income-tax Officer can "decide either way".



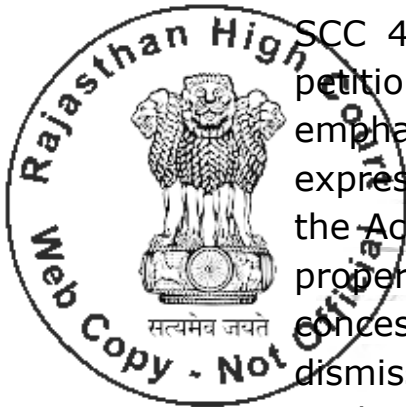
49. In the case of **Malayala Manorama Co. Ltd vs Assistant Commissioner, Commercial Taxes**, (supra), it has been held thus:

"4. The Assistant Commissioner, Commercial Tax, who had issued the notice, came to the conclusion that the concession has been extended to non-taxable goods also and formed an opinion that the concession is applicable only to 'goods' and newspaper was not a 'goods' within the meaning of Section 2 of the Act. While referring to another judgment of this Court in Collector of Central Excise v. Ballarpur Industries Ltd. [(1989) 4 SCC 566 : (1990) 77 Sales Tax Cases 282], the said Assistant Commissioner concluded that newspaper was not a 'goods' and, therefore, the declaration was not appropriate and imposed a penalty of Rs. 14,66,256 for the year 2000-2001.

5. The assessee firm did not take recourse to the statutory remedies available under the Act but questioned the very correctness and legality of the issuance of the notice as well as the order passed by the Assistant Commissioner before the High Court of Kerala at Ernakulam, by filing a writ petition under Article 226 of the Constitution of India.

6. This writ petition was contested by the Department which filed detailed counter affidavit. It was specifically pleaded by the Department that for availability of statutory alternative remedy as well as for other reasons and facts stated in the reply, the writ petition

itself was not maintainable. The Division Bench of the High Court while considering this primary objection raised by the Department before the High Court, came to the conclusion that as the facts were not in dispute and questions raised were purely legal and are to be tested in view of the judgment of this Court in the case of [Printers \(Mysore\) Ltd. v. Assistant Commercial Tax Officer](#) [(1994) 93 Sales Tax Cases 95 : (1994) 2 SCC 434], [Whirlpool Corporation v. Registrar of Trade Marks](#) [(1998) 8 SCC 1] as well as the judgment in the case of [State of H.P. & Ors. v. Gujarat Ambuja Cements Ltd.](#) [(2005) 6 SCC 499 : (2005) 142 Sales Tax Cases 1], the writ petition was maintainable. However, while laying emphasis that the newspaper would not fall within the expression 'goods' under sub-section 3 of Section 5 of the Act, the High Court held that the notice issued was proper as Form No. 18 which gives benefit of concessional rate of tax was factually not correct. While dismissing the writ petition, however, the Bench issued a direction to the assessing authority to examine whether the imposition of penalty at double the rate is justified in the facts and circumstances of the case, within a period of two months from the date of receipt of the copy of the judgment. It is this judgment of the High Court which has been assailed in the present appeal under Article 136 of the Constitution of India.



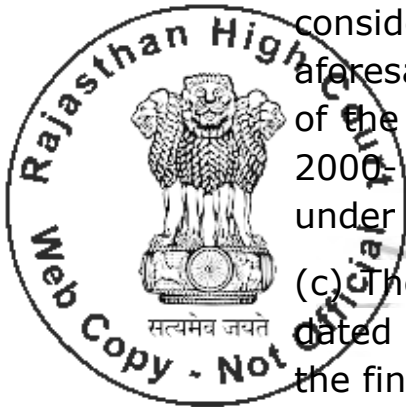
9. Having heard the learned senior counsel appearing for the parties, we are of the considered view that the order under challenge requires interference by this Court. There is no dispute to the fact that the material amendments were carried out in the provisions of [Section 5\(3\)](#) of the Act with effect from 01.04.2002. The existing 1st proviso to [Section 5\(3\)\(i\)](#) was deleted as well as the expression 'or uses the same in the manufacture of any goods which are not liable to tax in this Act' in [Section 5\(3\)\(i\)](#) was also deleted. Despite these amendments, as it appears from the record before the Court, format of Form No. 18 has not been amended consequently. However, the fact of the matter remains that the High Court has not dwelt upon these legal issues which are the core issues involved in the present case. In our view, the discussion on the first issue would certainly have some bearing on the alternative argument raised on behalf of the appellant before us. Thus, it may not be possible for this Court to sustain the finding recorded by the High Court in that

regard. Of course, we are not ruling out all the possibilities of the High Court arriving at the same conclusion if it is of that view after examining the amendments as well as the submissions made on behalf of the appellant with regard to its alternative submissions. In light of this discussion, we pass the following order :

(a) The impugned order dated 2nd August, 2006 passed by the High Court is hereby set aside.

(b) The matter is remanded to the High Court for consideration afresh in accordance with law on both the aforesaid submissions while leaving all the contentions of the assessee and the Department open for the year 2000-2001, in relation to imposition of penalty under Section 45 (A) of the Act.

(c) The legality and validity or otherwise of the notice dated 16.01.2006 and 17.01.2006 shall be subject to the final decision of the High Court."



50. In the case of **K.T. Plantation Pvt. Ltd. and Ors. vs. State of Karnataka**, (supra), the Supreme Court observed thus:

"110. Article 300A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression 'Property' in Article 300A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law. This Court in *State of W.B. and Ors. v. Vishnunarayan and Associates (P) Ltd and Anr.* MANU/SC/0199/2002 : (2002) 4 SCC 134, while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300A that the State or executive offices cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights. Article 300A, therefore, protects private property against executive action. But the question that looms large is as to what extent their rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation. Further, it was also

argued that the twin requirements of 'public purpose' and 'compensation' in case of deprivation of property are inherent and essential elements or ingredients, or "inseparable concomitants" of the power of eminent domain and, therefore, of entry 42, List III, as well and, hence, would apply when the validity of a statute is in question. On the other hand, it was the contention of the State that since the Constitution consciously omitted Article 19(1)(f), Articles 31(1) and 31(2), the intention of the Parliament was to do away the doctrine of eminent domain which highlights the principles of public purpose and compensation.

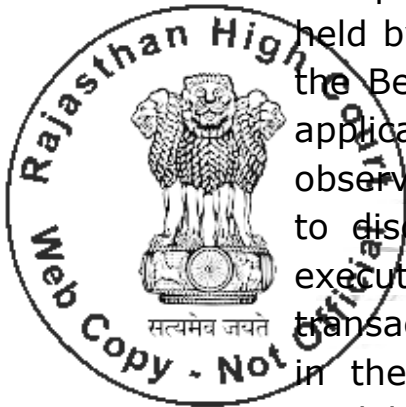


111. Seervai in his celebrated book 'Constitutional Law of India' (Edn. IV), spent a whole Chapter XIV on the 44th Amendment, while dealing with Article 300A. In paragraph 15.2 (pages 1157-1158) the author opined that confiscation of property of innocent people for the benefit of private persons is a kind of confiscation unknown to our law and whatever meaning the word "acquisition" may have does not cover "confiscation" for, to confiscate means "to appropriate to the public treasury (by way of penalty)". Consequently, the law taking private property for a public purpose without compensation would fall outside Entry 42 List III and cannot be supported by another Entry in List III. Requirements of a public purpose and the payment of compensation according to the learned author be read into Entry 42 List III. Further the learned author has also opined that the repeal of Article 19(1)(f) and 31(2) could have repercussions on other fundamental rights or other provisions which are to be regarded as part of the basic structure and also stated that notwithstanding the repeal of Article 31(2), the word "compensation" or the concept thereof is still retained in Article 30(1A) and in the second proviso to Article 31A(1) meaning thereby that payment of compensation is a condition of legislative power in Entry 42 List III.

51. In the case of **Mangathai Ammal (Died) through L.Rs. and Ors. vs. Rajeswari and Ors. (supra)**, it has been held thus:

"12. It is required to be noted that the benami transaction came to be amended in the year 2016. As per Section 3 of the Benami Transaction (Prohibition)

Act 1988, there was a presumption that the transaction made in the name of the wife and children is for their benefit. By Benami Amendment Act, 2016, Section 3(2) of the Benami Transaction Act, 1988 the statutory presumption, which was rebuttable, has been omitted. It is the case on behalf of the Respondents that therefore in view of omission of Section 3(2) of the Benami Transaction Act, the plea of statutory transaction that the purchase made in the name of wife or children is for their benefit would not be available in the present case. Aforesaid cannot be accepted. As held by this Court in the case of Binapani Paul (Supra) the Benami Transaction (Prohibition) Act would not be applicable retrospectively. Even otherwise and as observed hereinabove, the Plaintiff has miserably failed to discharge his onus to prove that the Sale Deeds executed in favour of Defendant No. 1 were benami transactions and the same properties were purchased in the name of Defendant No. 1 by Narayanasamy Mudaliar from the amount received by him from the sale of other ancestral properties.



52. In the case of ***R. Rajagopal Reddy (Dead) by L.Rs. and Ors. vs. Padmini Chandrasekharan (Dead) by L.Rs. (supra)***, the Supreme Court held thus:

"A mere look at the above provisions shows that the prohibition under Section 3(1) is against persons who are to enter into benami transactions and it has laid down that no person shall enter into any benami transaction which obviously means from the date on which this prohibition comes into operation i.e. with effect from September 5, 1988. That takes care of future benami transactions. We are not concerned with Sub-section (2) but subsection (3) of Section 3 also throws light on this aspect. As seen above, it states that whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. Therefore, the provision creates a new offence of entering into such benami transactions. It is made non-cognizable and bailable as laid down under Sub-section (4). It is obvious that when a statutory provision creates new liability and new offence, it would naturally have prospective operation and would cover only those offences which

take place after Section 3(1) comes into operation. In fact Saikia J. speaking for the Court in Mithilesh Kumari's case (supra) has in terms observed at page 635 of the report that Section 3 obviously cannot have retrospective operation. We respectfully concur with this part of the learned Judge's view. The real problem centers round the effect of Section 4(1) on pending proceedings wherein claim to any property on account of it being held benami by other side is on the anvil and such proceeding had not been finally disposed of by the time Section 4(1) came into operation, namely, on 19th May, 1988. Saikia J. speaking for the Division Bench in the case of Mithilesh Kumari (supra) gave the following reasons for taking the view that though Section 3 is prospective and though Section 4(1) is also not expressly made retrospective, by the legislature, by necessary implication, it appears to be retrospective and would apply to all pending proceedings wherein right to property allegedly held benami is in dispute between parties and that Section 4(1) will apply at whatever stage the litigation might be pending in the hierarchy of the proceedings :-

(1).....

(2).....

(3) When an Act is declaratory in nature, the presumption against retrospectivity is not applicable. A statute declaring the benami transactions to be unenforceable belongs to this type. The presumption against taking away vested right will not apply in this case in as much as under law it is the benamidar in whose name the property stands, and law only enabled the real owner to recover the property from him which right has now been ceased by the Act. In one sense there was a right to recover or resist in the real owner against the benamidar. Ubi Jus ibi remedium. Where the remedy is barred, the right is rendered unenforceable.

(4) When the law nullifies the defences available to the real owners in recovering the benami property from the benamidar, the law must apply irrespective of the time of the benami transactions. The expression "shall lie" under Section 4(1) and "shall be allowed" in Section 4(2) are prospective and shall apply to present (future stages) and future suits, claims or action only.

(5).....

(6)

11. Before we deal with these six considerations which weighed with the Division Bench for taking the view that Section 4 will apply retrospectively in the sense that it will get telescoped into all pending proceedings, howsoever earlier they might have been filed, if they were pending at different stages in the hierarchy of the proceedings even upto this Court, when Section 4 came into operation, it would be apposite to recapitulate the salient feature of the Act. As seen earlier, the preamble of the Act itself states that it is an act to prohibit benami transactions and the right to recover property held benami, for matters connected therewith or incidental thereto. Thus it was enacted to efface the then-existing rights of the real owners of properties held by others benami. Such an act was not given any retrospective effect by the legislature. Even when we come to Section 4, it is easy to visualise that Sub-section (1) of Section 4 states that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other shall lie by or on behalf of a person claiming to be the real owner of such property. As per Section 4(1) no such suit shall thenceforth lie to recover the possession of the property held benami by the defendant. Plaintiffs right to that effect is sought to be taken away and any suit to enforce such a right after coming into operation of Section 4(1) that is 19th May, 1988, shall not lie. The legislature in its wisdom has nowhere provided in Section 4(1) that no such suit, claim or action pending on the date when Section 4 came into force shall not be proceeded with and shall stand abated. On the contrary, clear legislative intention is seen from the words "no such claim, suit or action shall lie", meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any Court for seeking such a relief after coming into force of Section 4(1). In Collins English Dictionary, 1979 Edition as reprinted subsequently, the word 'lie' has been defined in connection with suits and proceedings. At page 848 of the Dictionary while dealing with topic No. 9 under the definition of term 'lie' it is stated as under :-

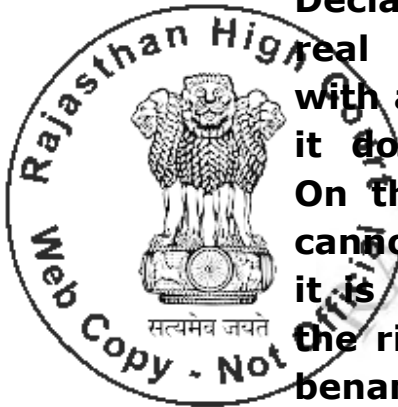
"For an action, claim appeal ect. to subsist; be maintainable or admissible."

The word 'lie' in connection with the suit, claim or action is not defined by the Act. If we go by the aforesaid dictionary meaning it would mean that such suit, claim or action to get any property declared benami will not be admitted on behalf of such plaintiff or applicant against the concerned defendant in whose name the property is held on and from the date on which this prohibition against entertaining of such suits comes into force. With respect, the view taken by that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the Section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the Section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and hence-after Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the Section may be retroactive. To highlight this aspect we may take an illustration. If a benami transaction has taken place in 1980 and suit is filed in June 1988 by the plaintiff claiming that he is the real owner of the property and defendant is merely a benamidar and the consideration has flown from him then such a suit would not lie on account of the provisions of Section 4(1). Bar against filing, entertaining and admission of such suits would have become operative by June, 1988 and to that extent Section 4(1) would take in its sweep even past benami transactions which are sought to be litigated upon after coming into force of the prohibitory provision of Section 4(1); but that is the only effect of the retroactivity of Section 4(1) and nothing more than that. From the conclusion that Section 4(1) shall apply even to past benami transactions to the aforesaid



extent, the next step taken by the Division Bench that therefore, the then existing rights got destroyed and even though suits by real owners were filed prior to coming into operation of Section 4(1) they would not survive, does not logically follow.

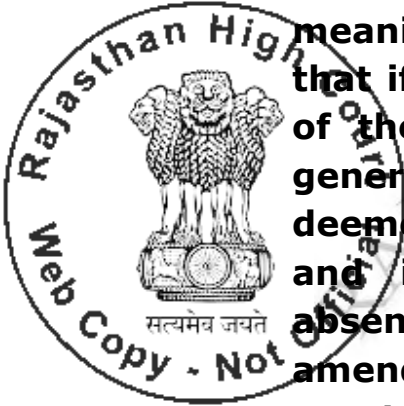
"17. As regards, reason No. 3, we are of the considered view that the Act cannot be treated to be declaratory in nature.



Declaratory enactment declares and clarifies the real intention of the legislature in connection with an earlier existing transaction or enactment, it does not create new rights or obligations. On the express language of Section 3, the Act cannot be said to be declaratory but in substance it is prohibitory in nature and seeks to destroy the rights of the real owner qua properties held benami and in this connection it has taken away the right of the real owner both for filing a suit or for taking such a defence in a suit by benamidar. Such an Act which prohibits benami transactions and destroys rights flowing from such transactions as existing earlier is really not a declaratory enactment. With respect, we disagree with the line of reasoning which commanded to the Division Bench. In this connection, we may refer to the following observations in 'Principles of Statutory Interpretation', 5th Edition 1992, by Shri G.P. Singh, at page 315 under the caption 'Declaratory statutes' :-

The presumption against retrospective operation is not applicable to declaratory statutes. As states in CRAIES and approved by the Supreme Court : "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word enacted". But the use of the words 'it is declared'

is not conclusive that the Act is declaratory for these words may, at times be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is to explain an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force the amending Act also will be part of the existing law.



In *Mithilesh Kumari v. Prem Bihari Khare*, Section 4 of the Benami Transactions (Prohibition) Act, 1988 was, it is submitted, wrongly held to be an Act declaratory in nature for it was not passed to clear any doubt existing as to the common law or the meaning or effect of any statute. The conclusion however, that Section 4 applied also to past benami transactions may be supportable on the language used in the section.

18. No exception can be taken to the aforesaid observations of learned author which in our view can certainly be pressed in service for judging whether the impugned section is declaratory in nature or not. Accordingly it must be held that

Section 4 or for that matter the Act as a whole is not a piece of declaratory or curative legislation. It creates substantive rights in favour of benamidars and destroys substantive rights of real owners

who are parties to such transactions and for whom new liabilities are created by the Act."

53. In the case of **Garikapatti Veeraya Vs. N. Subbiah**

Choudhury, AIR 1957 SC 540, the Supreme Court observed thus:

25. In construing the articles of the Constitution we must bear in mind certain cardinal rules of construction. It has been said in *Hough v. Windus* [1884] 12 Q.B.D. 224, that "statutes should be interpreted, if possible, so as to respect vested right."

The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed [*Leeds and County Bank Ltd. v. Walker* (1883) 11 Q.B.D. 84; *Moon v. Durden* (1848) 2 Ex. 22; 76 R.R. 479. The following observation of Rankin C.J. in *Sadar Ali v. Dalimuddin* (supra) at page 520 is also apposite and helpful : "Unless the contrary can be shown the provision which takes away the jurisdiction is itself subject to the implied saving of the litigant's right." In *Janardan Reddy v. The State* [1950]1SCR940 Kania C.J. in delivering the judgment of the Court observed that our Constitution is generally speaking prospective in its operation and is not to have retroactive operation in the absence of any express provision to that effect. The same principle was reiterated in *Keshavan Madhava Menon v. The State of Bombay* 1951CriLJ680 and finally in *Dajisaheb Mane and Others v. Shankar Rao Vithal Rao* [1955]2SCR872 to which reference will be made in greater detail hereafter.

54. In the case of **Keshavan Madhava Menon vs. The State of Bombay**, (supra), the Supreme Court held thus:

7. It will be noticed that all that this clause declares is that all existing laws, in so far as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency, be void. Every statute is prima facie prospective unless it is expressly or by necessary implications made to have retrospective operation.

There is no reason why this rule of interpretation should not be applied for the purpose of interpreting our Constitution. We find nothing in the language of article 13(1) which may be read as indicating an intention to give it retrospective operation. On the contrary, the language clearly points the other way. The provisions of Part III guarantee what are called fundamental rights. Indeed, the heading of Part III is "Fundamental Rights". These rights are given, for the first time, by and under our Constitution. Before the Constitution came into force there was no such thing as fundamental right.

What article 13(1) provides is that all existing laws which clash with the exercise of the fundamental rights (which are for the first time created by the Constitution) shall to that extent be void. As the fundamental rights became operative only on and from the date of the Constitution the question of the inconsistency of the existing laws with those rights must necessarily arise on and from the date those rights came into being. It must follow, therefore, that article 13(1) can have no retrospective effect but is wholly prospective in its operation. After this first point is noted, it should further be seen that article 13(1) does not in terms make the existing laws which are inconsistent with the fundamental rights void ab initio or for all purposes. On the contrary, it provides that all existing laws, in so far as they are inconsistent with the fundamental rights, shall be void to the extent of their inconsistency.

They are not void for all purposes but they are void only to the extent they come into conflict with the fundamental rights. In other words, on and after the commencement of the Constitution no existing law will be permitted to stand in the way of the exercise of any of the fundamental rights. Therefore, the voidness of the existing law is limited to the future exercise of the fundamental rights.

Article 13(1) cannot be read as obliterating the entire operation of the inconsistent laws, or to wipe them out altogether from the statute book, for to do so will be to give them retrospective effect which, we have said, they do not possess.

Such laws exist for all past transactions and for enforcing all rights and liabilities accrued before the date of the Constitution.



Learned counsel for the appellant has drawn our attention to articles 249(3), 250, 357, 358 and 369 where express provision has been made for saving things done under the laws which expired. It will be noticed that each of those articles was concerned with expiry of temporary statutes. It is well known that on the expiry of a temporary statute no further proceedings can be taken under it, unless the statute itself saved pending proceedings. If, therefore, an offence had been committed under a temporary statute and the proceedings were initiated but the offender had not been prosecuted and punished before the expiry of the statute, then, in the absence of any saving clause, the pending prosecution could not be proceeded with after the expiry of the statute by efflux of time. It was on this principle that express provision was made in the several articles noted above for saving things done or omitted to be done under the expiring laws referred to therein. As explained above, article 13(1) is entirely prospective in its operation and as it was not intended to have any retrospective effect there was no necessity at all for inserting in that article any such saving clause. The effect of article 13(1) is quite different from the effect of the expiry of a temporary statute or the repeal of a statute by a subsequent statute. As already explained, article 13(1) only has the effect of nullifying or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution. It has no retrospective effect and if, therefore, an act was done before the commencement of the Constitution in contravention of the provisions of any law which, after the Constitution, becomes void with respect to the exercise of any of the fundamental rights, the inconsistent law is not wiped out so far as the past act is concerned for, to say that it is, will be to give the law retrospective effect.

There is no fundamental right that a person shall not be prosecuted and punished for an offence committed before the Constitution came into force. So far as the past acts are concerned the law exists, notwithstanding that it does not exist with respect to the future exercise of fundamental rights. We, therefore, agree with the conclusion arrived at by the High Court on the second question, although on

different grounds. In view of that conclusion, we do not consider it necessary to examine the reasons of the High Court for its conclusion. In our opinion, therefore, this appeal fails, and is dismissed.

19. A reference to the Constitution will show that the framers thereof have used the word "repeal" wherever necessary (see articles 252, 254, 357, 372 and 395). They have also used such words as "invalid" (see articles 245, 255 and 276), "cease to have effect" (see articles 358 and 372), "shall be inoperative", etc. They have used the word "void" only in two articles, these being article 13(1) and article 154, and both these articles deal with cases where a certain law is repugnant to another law to which greater sanctity is attached. It further appears that where they wanted to save things done or omitted to be done under the existing law, they have used apt language for the purpose; see for example articles 249, 250, 357, 358 and 369. The thoroughness and precision which the framers of the Constitution have observed in the matters to which reference has been made, disinclines me to read into article 13(1) a saving provision of the kind which we are asked to read into it.

Nor can I be persuaded to hold that treating an Act as void under article 13(1) should have a milder effect upon transactions not past and closed than the repeal of an Act or its expiry in due course of time. In my opinion, the strong sense in which the word "void" is normally used and the context in which it has been used are not to be completely ignored. Evidently, the framers of the Constitution did not approve of the laws which are in conflict with the fundamental rights, and, in my judgment, it would not be giving full effect to their intention to hold that even after the Constitution has come into force, the laws which are inconsistent with the fundamental rights will continue to be treated as good and effectual laws in regard to certain matters, as if the Constitution had never been passed. How such a meaning can be read into the words used in article 13(1), it is difficult for me to understand. There can be no doubt that article 13(1) will have no retrospective operation, and transactions which are past and closed, and rights which have already vested, will remain untouched. But with regard to inchoate matters which were still not determined when the Constitution came into force, and as regards proceedings whether not yet



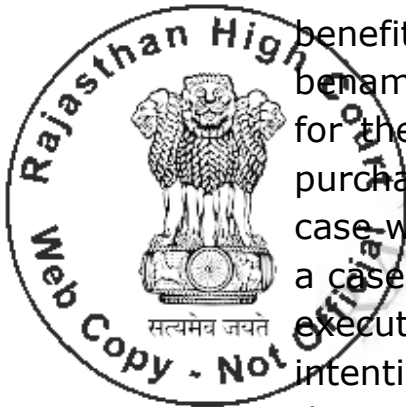
begun, or pending at the time of enforcement of the Constitution and not yet prosecuted to a final judgment, the very serious question arises as to whether a law which has been declared by the Constitution to be completely ineffectual can yet be applied. On principle and on good authority, the answer to this question would appear to me to be that the law having ceased to be effectual can no longer be applied. In *R. v. Mawgan (Inhabitants)* (1888) 8 A. & E. 496 a presentment as to the non-repair of a highway had been made under 13 Geo. 3, c. 78, s. 24, but before the case came on to be tried, the Act was repealed. In that case, Lord Denman C.J. said : "If the question had related merely to the presentment, that no doubt is complete. But dum loquimur, we have lost the power of giving effect to anything that takes place under that proceeding." And Littledale J. added : "I do not say that what is already done has become bad, but that no more can be done." In my opinion, this is precisely the way in which we should deal with the present case.



55. In the case of **Thakur Bhim Singh (Dead) by Lrs and Ors. vs. Thakur Kan Singh** (1980) 3 SCC 72, the Supreme Court held thus:

14. Under the English law, when real or personal property is purchased in the name of a stranger, a resulting trust will be presumed in favour of the person who is proved to have paid the purchase money in the character of the purchaser. It is, however, open to the transferee to rebut that presumption by showing that the intention of the person who contributed the purchase money was that the transferee should himself acquire the beneficial interest in the property. There is, however, an exception to the above rule of presumption made by the English law when the person who gets the legal title under the conveyance is either a child or the wife of the person who contributes the purchase money or his grand child, whose father is dead. The rule applicable in such cases is known as the doctrine of advancement which requires the court to presume that the purchase is for the benefit of the person in whose favour the legal title is transferred even though the purchase money may have been contributed by the father or the husband or the grandfather, as the case

may be, unless such presumption is rebutted by evidence showing that it was the intention of the person who paid the purchase money that the transferee should not become the real owner of the property in question. The doctrine of advancement is not in vogue in India. The counterpart of the English law of resulting trust referred to above is the Indian law of benami transactions. Two kinds of benami transactions are generally recognized in India. Where a person buys a property with his own money but in the name of another person without any intention to benefit such other person, the transaction is called benami. In that case, the transferee holds the property for the benefit of the person who has contributed the purchase money, and he is the real owner. The second case, which is loosely termed as a benami transaction is a case where a person who is the owner of the property executes a conveyance in favour of another without the intention of transferring the title to the property thereunder. In this case, the transferor continues to be the real owner. The difference between the two kinds of benami transactions referred to above lies in the fact that whereas in the former case, there is an operative transfer from the transferor to the transferee though the transferee holds the property for the benefit of the person who has contributed the purchase money, in the latter case, there is no operative transfer at all and the title rests with the transferor notwithstanding the execution of the conveyance. One common feature, however, in both these cases is that the real title is divorced from the ostensible title and they are vested in different persons. The question whether a transaction is a benami transaction or not mainly depends upon the intention of the person who has contributed the purchase money in the former case and upon the intention of the person who has executed the conveyance in the latter case. The principle underlying the former case is also statutorily recognized in Section 82 of the Indian Trusts Act, 1882 which provides that where property is transferred to one person for a consideration paid or provided by another person and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration. This view is in accord with the following observations made by this Court in Meenakshi Mills.



Madurai v. The Commissioner of Income-Tax, Madras
[1956]1SCR691 .:



In this connection, it is necessary to note that the word 'benami' is used to denote two classes of transactions which differ from each other in their legal character and incidents. In one sense, it signifies a transaction which is real, as for example when A sells properties to B but the sale deed mentions X as the purchaser. Here the sale itself is genuine, but the real purchaser is B, X being his benamidar. This is the class of transactions which is usually termed as benami. But the word 'benami' is also occasionally used, perhaps not quite accurately, to refer to a sham transaction, as for example, when A purports to sell his property to B without intending that his title should cease or pass to B. The fundamental difference between these two classes of transactions is that whereas in the former there is an operative transfer resulting in the vesting of title in the transferee, in the latter there is none such, the transferor continuing to retain the title notwithstanding the execution of the transfer deed. It is only in the former class of cases that it would be necessary, when a dispute arises as to whether the person named in the deed is the real transferee or B, to enquire into the question as to who paid the consideration for the transfer, X or B. But in the latter class of cases, when the question is whether the transfer is genuine or sham, the point for decision would be, not who paid the consideration but whether any consideration was paid.

The Buckingham and Carnatic Co.Ltd. vs. Venkatiah and Ors.
(supra)

10. Section 73 of the Act reads as under :

'Employer not to dismiss or punish employee during period of sickness, etc. -

(1) No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.



(2) No notice of dismissal or discharge or reduction given to an employee during the period specified in sub-section (1) shall be valid or operative."

Mr. Dolia contends that since this Act has been passed for conferring certain benefits on employees in case of sickness, maternity and employment injury, it is necessary that the operative provisions of the Act should receive a liberal and beneficent construction from the court.

It is a piece of social legislation intended to confer specified benefits on workmen to whom it applies, and so, it would be inappropriate to attempt to construe the relevant provisions in a technical or a narrow sense. This position cannot be disputed. But in dealing with the plea raised by Mr. Dolia that the section should be liberally construed, we cannot overlook the fact that the liberal construction must ultimately flow from the words used in the section. If the words used in the section are capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, courts would be justified in preferring that construction to the other which may not be able to further the object of the Act. But, on the other hand, if the words used in the section are reasonably capable of only one construction and are clearly intractable in regard to the construction for which Mr. Dolia contends, the doctrine of liberal construction can be of no assistance.

56. In the case of Sree Bank Ltd. vs. Sarkar Dutt Roy and Co.

(Supra), the Supreme Court observed thus:

5. Two reasons have operated on my mind to lead me to the conclusion that the general rule should not be applied in the present case. First, it is recognised that the general rule is not invariable and that it is a sound principle in considering whether the intention was that the general rule should not be applied, to "look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law and what it was that the Legislature contemplated." : see *Pardo v. Bingham* (1869) L.R. 4 Ch. A. 735. Again in *Craies on Statute Law*, 6th ed., it is stated at p. 395, "If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right." To the same effect is the observation in *Halsbury's Laws of England*, 3rd ed., vol. 36 p. 425. This seems to me to be plain commonsense. In ascertaining the intention of the legislature it is certainly relevant to enquire what the Act aimed to achieve. In *Pardo v. Bingham* L.R.(1869)Ch. A. 735 a statute which took away the benefit of a longer period of limitation for a suit provided by an earlier Act was held to have retrospective operation as otherwise it would not have any operation for fifty years or more in the case of persons who were at the time of its passing residing beyond the seas. It was thought that such an extraordinary result could not have been intended. In *R. v. Vine* (1875) 10 Q.B. 195 the words "Every person convicted of felony shall for ever be disqualified from selling spirits by retail.... and if any person shall, after having been so convicted, take out or have any licence to sell spirits by retail, the same shall be void to all intents and purposes" were applied to a person who had been convicted of felony before the Act was passed though by doing so vested rights were affected. Mellor J. observed, (pp. 200-201). "It appears to me to be the general object of this statute that there should be restraints as to the persons who should be qualified to hold licences, not as a punishment, but for the public good, upon the ground of character.. A man convicted before the Act passed is quite as much tainted as a man convicted after; and it appears to me not only the possible but the natural interpretation of the section that any one convicted of felony shall be ipso facto disqualified, and the licenses, if granted, void."



8. If that is not the intention, then it is clear to me that sub-s. (3) need not have been enacted at all for clearly the first sub-section would by its own terms have applied to cases of winding up on a petition presented before the amending Act. It applies to all banking companies being wound up and, therefore, also to such companies as are being wound up on a petition presented before that Act. It could be said that even then the first sub-section would not have a retrospective operation but would only apply prospectively to a banking company being wound up on a petition presented before the Act. This may be illustrated by two cases. In *R. v. St. Mary, Whitechapel (Inhabitants)* (1848) 12 Q.B. 120 Lord Denman C.J. said that a statute "is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing." Again in *Master Ladies Tailors Organisation v. Minister of Labour and National Service* (1950) 2 All. F.R. 525 it was observed, "The fact that a prospective benefit is in certain cases to be measured by or depends on antecedent facts does not necessarily... make the provision retrospective."

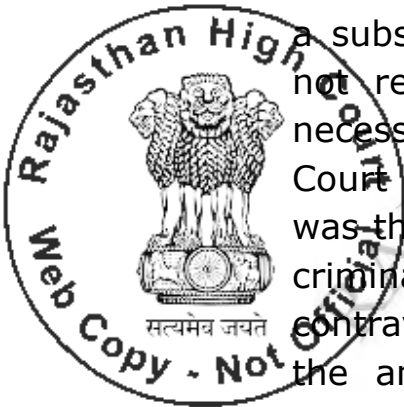


57. In the case of **Rai Bahadur Seth Shreeram Durgaprasad vs. Director of Enforcement** (supra), the Supreme Court observed thus:

"8. The contention of the learned Counsel that recourse could not be had to the amended Section 23(1) read with Section 23C of the Act in respect of the contravention of Section 12(2) for failure on the part of the appellants to repatriate foreign exchange on shipments of manganese ore made prior to September 20, 1957, and there could be no initiation of adjudication proceedings under the amended Section 23(1) read with Section 23C or levy of penalty on the appellants must also fail for another reason. In *Sukumar Pyne's* case the Court reversed the decision of the Calcutta High Court in *Sukumar Pyne v. Union of India and Ors.*, AIR 1962 Cal 590 striking down Section 23(1)(a) as being violative of Article 14 of the Constitution. Regarding the point, namely, whether Section 23(1)(a) having been substituted by Amendment Act XXXIX of 1957 would have retrospective operation in respect of the alleged offence which took place in 1954, the High Court came to the

conclusion that the petitioner had a vested right to be tried by an ordinary court of the land with such rights of appeal as were open to all and although Section 23(1)(a) was procedural, where a vested right was affected, prima facie, it was not a question of procedure. Therefore, the High Court came to the conclusion that the provision as to adjudication by the Director of Enforcement could not have any retrospective operation. It was held that 'the impairment of a right by putting a new restriction thereupon is not a matter of procedure only'. It impairs a substantive right and an enactment that does so is not retrospective unless it says so expressly or by necessary intendment. The Court reversed the High Court decision and held that effect of these provisions was that after the amendment of 1957, adjudication or criminal proceedings could be taken up in respect of a contravention mentioned in section 23(1) while before the amendment only criminal proceedings before a Court could be instituted to punish the offender. In repelling the contention advanced by Shri N.C. Chatterjee that the new amendments did not apply to contravention which took place before the Act came into force, the Court observed:

In our opinion, there is force in the contention of the learned Solicitor-General. As observed by this Court in Rao Shiv Bahadur Singh vs. The State of Vindhya Pradesh (1953) SCR 1188, a person accused of the commission of an offence has no vested right to be tried by a particular court or a particular procedure except in so far as there is any constitutional objection by way of discrimination or the violation of any other fundamental right is involved. It is well recognised that "no person has a vested right in any course of procedure" (vide Maxwell 11th Edition, p. 216), and we see no reason why this ordinary rule should not prevail in the present case. There is no principle underlying Art. 20 of the Constitution which makes a right to any course of procedure a vested right.



58. In the case of **Nar Bahadur Bhandari and Ors. vs. State of Sikkim and Ors.** (supra) , the Supreme Court held thus:

"10.....The said Sub-section while on the one hand ensures that the application of Section 6 of the General Clauses Act is not prejudiced, on the other it expresses a different intention as contemplated by the said Section 6. The last part of the above Sub-section introduces a legal fiction whereby anything done or action taken under or in pursuance of the Act of 1947 shall be deemed to have been done or taken under or in pursuance of corresponding provisions of the Act of 1988. That is, the fiction is to the effect that the Act of 1988 had come into force when such thing was done or action was taken.

11. This aspect of the matter was clearly elucidated by the Constitution Bench in B. N. Kohli's case (supra). In that case Ordinance 27/49 repealed Ordinance 12/49. The relevant provision in the repealing Ordinance was sub-sec.(3) of Section 58. That read as follows:

"The repeal by this Act of the Administration of Evacuee Property Ordinance, 1949 or the Hyderabad Administration of Evacuee Property Regulation or of any corresponding law shall not affect the previous operation of that Ordinance, Regulation or corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance, Regulation or corresponding law, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken."

12. While construing the said Sub-section, the Court observed as follows:

"...By the first part of Section 58(3) repeal of the statutes mentioned therein did not operate to vacate things done or action taken under those statutes. This provision appears to have been enacted with a view to

avoid the possible application of the rule of interpretation that where statute expires or is repealed, in the absence of a provision to the contrary, it is regarded as having never existed except as to matters and transactions past and closed: (see *Surtees v. Ellison*, 1829) 9 B & C 752. This rule was altered by an omnibus provision in General Clauses Act, 1897, relating to the effect of repeal of statutes by any Central Act or Regulation. By Section 6 of the General Clauses Act, it is provided, in so far as it is material, that any Central Act or Regulation made after the commencement of the General Clauses Act or repeals any enactment, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, occurred or incurred under any enactment so repealed or affect any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, any such penalty, forfeiture or punishment may be imposed, as if the Repealing Act or Regulation had not been passed. But the rule contained in Section 6 applies only if a different intention does not appear, and by enacting Section 58(3) the Parliament has expressed a different intention, for whereas the General Clauses Act keeps alive the previous operation of the enactment repealed, and things done and duly suffered, the rights, privileges, obligations or liabilities acquired or incurred, and authorities the investigation, legal proceeding and remedies in respect of rights, privileges, obligations, liabilities, penalties, forfeitures and punishment and if the repealing Act or Regulation had not been passed, Section 58(3) of Act 31 of 1950 directs that things done or actions taken in exercise of power conferred by the repealed statutes shall be deemed to be done or taken under the repealing Act as if that latter Act were in force on the day on which such thing was done or action was taken. The rule so enunciated makes a clear departure from the rules enunciated in Section 6 of the General Clauses Act, 1897. By the first part of Section 58(3) which is in terms negative, the previous operation of the repealed statutes survives the repeal. Thereby matters and transactions past and closed remain operative; so does the previous operation of the repealed statute. But as pointed out by this Court in



Indira Sohanlal's case, [1955]2SCR1117, the saving of the previous operation of the repealed law is not to be read, as saving the future operation of the previous law. The previous law stands repealed, and it has not for the future the partial operation as it is prescribed by Section 6 of General Clauses Act. All things done and actions taken under the repealed statute are deemed to be done or taken in exercise of powers conferred by or under the repealing Act, as if that Act were in force on the day on which that thing was done or action was taken. It was clearly the intention of the parliament that matters and transactions past and closed were not to be deemed vacated by the repeal of the statute under which they were done. The previous operation of the statute repealed was also affirmed expressly but things done or actions taken Under the repealed statute are to be deemed by fiction to have been done or taken under the repealing Act."

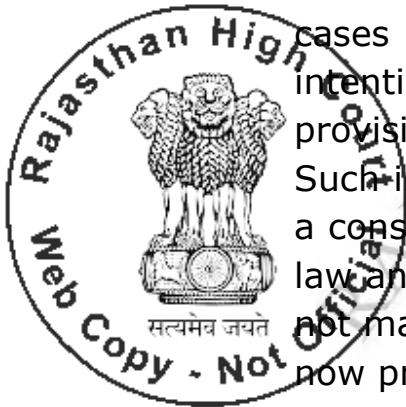


59. In the case of **State of Punjab vs. Mohar Singh:** (supra) , the Supreme Court observed thus:

"8..... These observations could not undoubtedly rank higher than mere obiter dictum for they were not at all necessary for purposes of the case, though undoubtedly they are entitled to great respect. In agreement with this dictum of Sulaiman C.J. the High Court of Punjab, in its judgment in the present case, has observed that where there is a simple repeal and the Legislature has either not given its thought to the matter of prosecuting old offenders, or a provision dealing with that question has been inadvertently omitted, section 6 of the General Clauses Act will undoubtedly be attracted. But no such inadvertence can be presumed where there has been a fresh legislation on the subject and if the new Act does not deal with the matter, it may be presumed that the Legislature did not deem it fit to keep alive the liability incurred under the old Act. In our opinion the approach of the High Court to the question is not quite correct. Whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by

fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section.

Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case.



60. In the case of **Zile Singh vs. State of Haryana and Ors.:**

(supra), the Supreme Court held thus:

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only. 'nova Constitution futuris formam imponere debet non praeteritis' - a new law ought to regulate what is to follow, not the past. (See : Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, 2004 at p.438). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole. (ibid, p.440)

14. The presumption against retrospective operation is not applicable to declaratory statutes.....

In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.

.....

An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect. (ibid, pp.468-469).



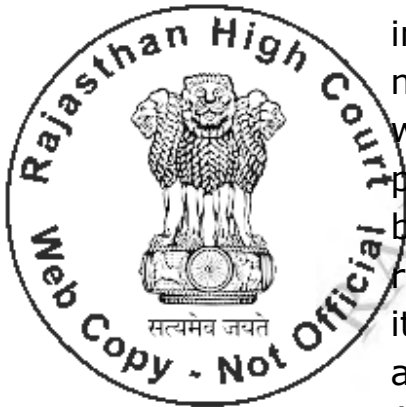
15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, Seventh Edition), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the Statute retrospectivity.

Four factors are suggested as relevant: (i) general scope and purview of , the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated (p.388). The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right (p.392).

16. Where a Statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. The classic illustration is the case of *Att. Gen. v. Pougett* [1816] 2 Pri 381. By a Customs Act of 1873

53 Geo. 3 a duty was imposed upon hides of 9s. 4d., but the Act omitted to state that it was to be 9s. 4d. per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s. 4d. per cwt., but Thomson C.B., in giving judgment for the Attorney-General, said:

"The duty in this instance was in fact imposed by the first Act, but the gross mistake of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act, but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act." (p.395).



17. Maxwell states in his work on Interpretation of Statutes, (Twelfth Edition) that the rule against retrospective operation is a presumption only, and as such it "may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it." (p.225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary secundum materiam" (p.226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p.231).

18. In a recent decision of this Court in National Agricultural Cooperative Marketing Federation of India Ltd. And Anr. v. Union of India and Ors., (2003)181CTR(SC)1, it has been held

that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the

question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as : (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent.

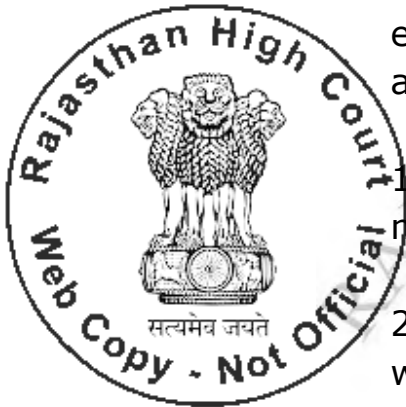


19. The Constitution Bench in *Shyam Sunder and Ors. v. Ram Kumar and Anr.*, AIR2001SC2472 , has held -- "

Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or explain previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed invariably it has been held to be retrospective. Mere absence of use of word 'declaration' in an Act explaining what was the law before may not appear to be a declaratory Act but if the Court finds an Act as declaratory or explanatory it has to be construed as retrospective.
" (p. 2487).

20. In *The Bengal Immunity Company Ltd. v. The State of Bihar and Ors.*, [1955] 2SCR603, Heydon's case 3 C. R.7a; 76 E.R.637 was cited with approval. Their Lordships have said --

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case was decided that --".....for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:-



1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.,

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico".

22. The State Legislature of Haryana intended to impose a disqualification with effect from 5.4.1994 and that was done. Any person having more than two living children was disqualified on and from that day for being a member of municipality. However, while enacting a proviso by way of an exception carving out a fact-situation from the operation of the newly introduced disqualification the draftsman's folly caused the creation of trouble. A simplistic reading of the text of the proviso spelled out a consequence which the Legislature had never intended and could not have intended. It is true that the Second Amendment does not expressly give the amendment a retrospective

operation. The absence of a provision expressly giving a retrospective operation to the legislation is not determinative of its prospectivity or retrospectivity. Intrinsic evidence may be available to show that the amendment was necessarily intended to have the retrospective effect and if the Court can unhesitatingly conclude in favour of retrospectivity, the Court would not hesitate in giving the Act that operation unless prevented from doing so by any mandate contained in law or an established principle of interpretation of statutes.



23. The text of Section 2 of the Second Amendment Act provides for the word "upto" being substituted for the word "after". What is the meaning and effect of the expression employed therein - "shall be substituted".

24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. 'Substitution' has to be distinguished from 'supersession' or a mere repeal of an existing provision.

25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (See Principles of Statutory Interpretation, *ibid*, p.565). If any authority is needed in support of the proposition, it is to be found in *West U.P. Sugar Mills Assn. and Ors. v. State of U.P. and Ors.* - : [2002]1SCR897, *State of Rajasthan v. Mangilal Pindwal* - : (1997)IILLJ756SC, *Koteswar Vittal Kamath v. K. Rangappa Baliga and Co.* - [1969]3SCR40 and *A.L.V.R.S.T. Veerappa Chettiar v. S. Michael and Ors.* - AIR1963SC933. In *West U.P. Sugar Mills Association and Ors.'s case* (supra) a three-Judges Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In *Mangilal Pindwal's case* (supra) this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In *Koteswar's case* (supra) a three-Judges Bench of this Court emphasized

the distinction between 'supersession' of a rule and 'substitution' of a rule and held that the process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place.

61. In the case of **Yogendra Kumar Jaiswal and Ors. vs. State of Bihar and Ors.** : (supra), the Supreme Court observed thus:



Section 14 provides for issuance of show cause notice by the Authorised Officer to the person concerned to explain his source of income and other assets and why such money or property or both should not be declared to have been acquired by means of the offence and be confiscated to the State Government. Sub-section (2) provides that where a notice Under Sub-section (1) to any person specifies any money or property or both has been held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person. Sub-section (3) lays down that the evidence, information or particulars brought on record before the authorised officer shall not be used against the accused in the trial before the special court. Section 15 deals with the confiscation of property in certain cases. It provides a detailed procedure and obliges the authorised officer to follow the principles of natural justice. It prescribes a time limit for disposal of the proceeding and gives immense stress on identification of property or money or both which have been acquired by means of the offence and further it makes the confiscation subject to the order passed in appeal Under Section 17 of the Orissa Act. It may be noted here that the proviso to Section 15(3) stipulates that the market price of the property confiscated, if deposited with the Authorised Officer, the property shall not be confiscated. Section 16 lays down that after the issue of notice Under Section 14, any money or property or both referred to in the said notice are transferred by any mode whatsoever, such transfer shall for the purposes of the proceedings under the Orissa Act, be void and if such money or property or both are subsequently confiscated to the State Government Under Section 15, then the transfer of such money or property or both shall be deemed to be null and void. Section 17(1) enables the aggrieved

person by the order passed by an authorised officer to prefer an appeal within thirty days from the date on which the order appealed against was passed. Sub-section (2) provides that upon appeal being preferred under the said provision, the High Court may, after giving such parties, as it thinks proper, an opportunity of being heard, pass such order as it thinks fit; Sub-section (3) requires the High Court to dispose of the appeal within three months from the date it is preferred and stay order, if any, passed in appeal shall not remain in force beyond the period prescribed for disposal of appeal. Sub-section (1) of Section 18 of the Orissa Act empowers the State Government to take possession. It stipulates that where any money or property has been confiscated to the State Government under the Act, the concerned authorised officer shall order the person affected as well as any other person who may be in possession of the money or property or both, to surrender or deliver possession thereof to the concerned authorised officer or to any person duly authorised by in this behalf, within thirty days of the service of the order. The proviso to the said Sub-section stipulates that the authorised officer, on an application being made in that behalf and being satisfied that the person affected is residing in the property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be specified on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property. Sub-section (2) provides that if any person refuses or fails to comply with an order made Under Sub-section (1), the authorised officer may take possession of the property and may, for that purpose, use such force as may be necessary. Sub-section (3) confers powers on the authorised officer to requisition service of any police officer to assist and mandates the concerned police officer to comply with such requisition.



Section 15. Confiscation of property in certain cases -

(1).....

(2).....

(3) Where the authorised officer records a finding under this section to the effect that any money or property or both have been acquired by means of the offence, he shall declare that such money or property or both shall, subject to the provisions of this Act,

stand confiscated to the State Government free from all encumbrances.

Provided that if the market price of the property confiscated is deposited with the authorised officer, the property shall not be confiscated.

(4).....

(5).....

(6).....

147. The next facet of the said submission pertains to retrospective applicability. The submission has been put forth on the ground that by transfer of cases to the Special Courts under the Orissa Act in respect of the accused persons who are arrayed as accused under the 1988 Act, have been compelled to face harsher punishment which is constitutionally not permissible. It is contended that there was no interim confiscation under the 1988 Act but under the Orissa Act they have to face confiscation. We have already opined that confiscation is not a punishment and, therefore, Article 20(1) is not attracted. Thus, the real grievance pertains to going through the process of confiscation and suffering the same after the ultimate adjudication of the said proceeding which is subject to appeal.....

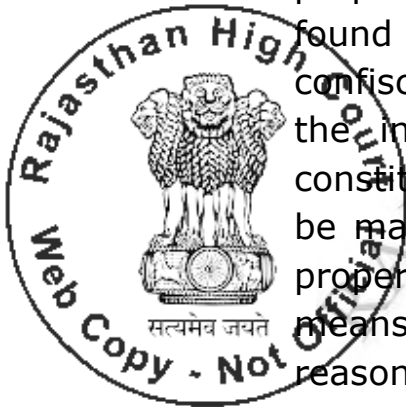


151. We are absolutely conscious that the said judgment was delivered in a different context. What is prohibited Under Article 20(1) is imposition of greater punishment that might have been imposed and prohibition of a conviction of any person for violation of law at the time of commission of the act. We repeat at the cost of repetition that confiscation being not a punishment does not come in either of the categories. Thus viewed, the property of an accused facing trial under the 1988 Act could be attached and there can be administration by third party of the said property and eventual forfeiture after conviction. The term "attachment" has been understood by this Court in Kerala State Financial Enterprises Ltd. v. Official Liquidator, High Court of Kerala (2006) 10 SCC 709 in the following manner:

11. The word "attachment" would only mean "taking into the custody of the law the person or property of one already before the court, or of one whom it is sought to bring before it". It is used for

two purposes: (i) to compel the appearance of a Defendant; and (ii) to seize and hold his property for the payment of the debt. It may also mean prohibition of transfer, conversion, disposition or movement of property by an order issued by the court.

152. The legislature has thought it proper to change the nature and character of the interim measure. The property obtained by ill-gotten gains, ii prima facie found to be such by the authorised officer, is to be confiscated. An accused has no vested right as regards the interim measure. He is not protected by any constitutional right to advance the plea that he cannot be made liable to face confiscation proceedings of the property which has been accumulated, by illegal means. That being the litmus test, the filament of reasoning has to rest in favour of confiscation and not against it. Therefore, we are of the considered view that the provision does not violate any constitutional assurance.



62. In the case of **Titaghur Paper Mills Co. Ltd. and Ors. vs. State of Orissa and Ors.:** (supra), Supreme Court, observed thus:

"6. We are constrained to dismiss these petitions on the short ground that the petitioners have an equally efficacious alternative remedy by way of an appeal to the prescribed authority under Sub-section (1) of Section 23 of the Act, then a second appeal to the Tribunal under Sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 23 of the Act. In *Raleigh Investment Co. Limited v. Governor General in Council*, 74 I.A. 50 Lord Uthwart, J. in delivering the judgment of the Board observed that in the provenance of tax where the Act provided for a complete machinery which enabled an assessee to effectively to raise in the courts the question of the validity of an assessment denied an alternative jurisdiction to the High Court to interfere. It is true that the decision of the Privy Council in *Raleigh Investment Company's case*, supra, was in relation to a suit brought for a declaration that an assessment made by

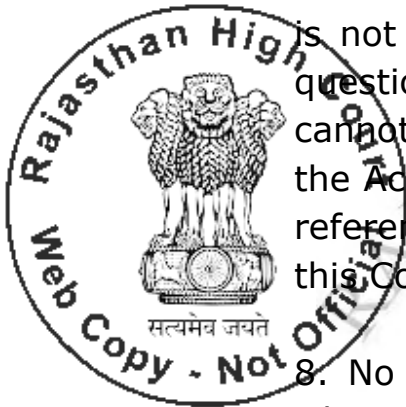
the Income Tax Officer was a nullity, and it was held by the Privy Council that an assessment made under the machinery provided by the Act, even if based on a provision subsequently held to be ultra vires, was not a nullity like an order of a court lacking jurisdiction and that Section 67 of the Income Tax Act, 1922 operated as a bar to the maintainability of such a suit. In dealing with the question whether Section 67 operated as a bar to a suit to set aside or modify an assessment made under a provision of the Act which is ultra vires, the Privy Council observed:



In construing the section it is pertinent, in their Lordships opinion to ascertain whether the Act contains machinery which enables an assessee effectively to raise in the courts the question whether a particular provision of the Income Tax Act bearing on the assessment made is or is not ultra vires. The presence of such machinery, though by no means conclusive, marches with a construction of the section which denies an alternative jurisdiction to inquire into the same subject-matter.

7. We are not oblivious of the fact that this Court in K.S. Venkataraman and Co. v. State of Madras, [1966]60ITR112(SC) , in a five-Judge Bench by a majority of 3 : 2 has dissented with the view expressed by the Privy Council in Raleigh Investment Company's case, supra, and held that an assessment made on the basis of a provision which is ultra vires is not an assessment made under the Act. It was observed that the entire reasoning of the Judicial Committee was based upon the assumption that the question of ultra vires can be canvassed and finally decided through the machinery provided under the Income Tax Act. The majority observed that the hierarchy of authorities set up under the Act being creatures of statute were not concerned as to whether the provisions of the Act were intra vires or not. If an assessee raises such a question, according to the decision of the majority in Venkataraman's case, supra, the Appellate Tribunal can only reject it on the ground that it has no jurisdiction to entertain such objection or render any decision on it. As no such question can be raised or can even arise out of the order of the Appellate Tribunal, the High Court cannot possibly give any decision on the question of ultra vires because its jurisdiction under Section 66 is a special advisory jurisdiction and its scope is strictly

limited. It can only decide questions of law that arise out of the order of the Appellate Tribunal and that are referred to it. Further, an appeal to this Court under Section 66A(2) does not enlarge the scope of the jurisdiction of this Court as this Court can only do what the High Court can under Section 66. It would therefore appear that the majority decision in Venkataraman's case, supra, rests on the principle that (i) An ultra vires provision cannot be regarded as a part of the Act at all, and an assessment under such a provision is not "made under the Act" but is wholly without the jurisdiction and is not directed by Section 67 of the Act. And (ii) The question whether a provision is ultra vires or not cannot be decided by any of the authorities created by the Act and therefore cannot be the subject matter of a reference to the High Court or a subsequent appeal to this Court.



8. No such question arises in a case like the present where the impugned orders of assessment are not challenged on the ground that they are based on a provision which is ultra vires. We are dealing with a case in which the entrustment of power to assess is not in dispute, and the authority within the limits of his power is a Tribunal of exclusive jurisdiction. The challenge is only to the regularity of the proceeding before the learned Sales Tax Officer as also his authority to treat the gross turnover returned by the petitioners to be the taxable turnover. Investment of authority to tax involves authority to tax transactions which in exercise of his authority the Taxing Officer regards as taxable, and not merely authority to tax only those transactions which are, on a true view of the facts and the law, taxable.

63. In the case of **Thansingh Nathmal and Ors. vs. A.**

Mazid : (supra), the Supreme Court held thus:

7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed. The appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and

invoked the extraordinary jurisdiction of the High Court under Art. 226 and sought to reopen the decision of the taxing authorities on questions of fact.

The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort so that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Art. 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Art. 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up.



64. In the case of **State of H.P. and Ors. vs. Gujarat Ambuja Cement Ltd. and Ors.:** (supra), the Supreme Court observed thus:

"17. We shall first deal with the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42 Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a

rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction.



18. Constitution Benches of this Court in K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors. [1954]25ITR167(SC) ; Sangram Singh v. Election Tribunal, Kotah and Ors. [1955]2SCR1 ; Union of India v. T.R. Varma (1958)IILLJ259SC ; State of U.P. and Ors. v. Mohammad Nooh AIR 1958 SC 86; and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras [1966]60ITR112(SC) , held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

सत्यमेव जयते

19. Another Constitution Bench of this Court in State of Madhya Pradesh and Anr. v. Bhailal Bhai etc. , [1964]6SCR261 , held, that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been re-iterated in N.T. Veluswami Thevar v. G. Raja Nainar and Ors. AIR1959SC422 ; Municipal Council, Khurai and Anr. v. Kamal Kumar and Anr. [1965]2SCR653 ; Siliguri Municipality and Ors. v. Amalendu Das and Ors. [1984]146ITR624(SC) ; S.T.

Muthusami v. K. Natarajan and Ors. [1988]2SCR759 ; R.S.R.T.C. and Anr. v. Krishna Kant and Ors. : (1995)IILLJ728SC ; Kerala State Electricity Board and Anr. v. Kurjen E. Kalathil and Ors. AIR2000SC2573 ; A. Venkatasubbiah Naidu v. S. Chekkappan and Ors. : AIR2000SC3032 ; and L.L. Sudhakar Reddy and Ors. v. State of Andhra Pradesh and Ors. AIR2001SC3205 ; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and Ors. : AIR2001SC3982 ; Pratap Singh and Anr. v. State of Haryana AIR2002SC3385 and G.K.N. Driveshafts (India) Ltd. v. Income Tax Officer and Ors. (2003)179CTR(SC)11 .

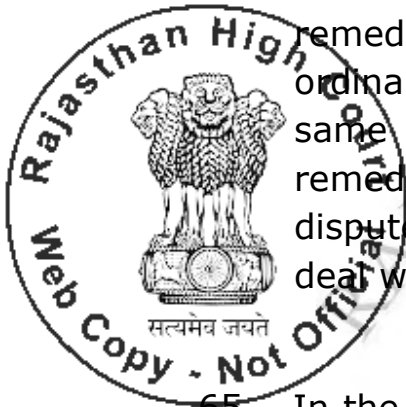


20. In Harbans Lal Sahnia v. Indian Oil Corporation Ltd. AIR2003SC2120 , this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

22. In G. Veerappa Pillai v. Raman & Raman Ltd. [1952]1SCR583 ; Assistant Collector of Central Excise v. Dunlop India Ltd. 1985ECR4(SC); Ramendra Kishore Biswas v. State of Tripura (1999)IILLJ192SC ; Shivgonda Anna Patil and Ors. v. State of Maharashtra and Ors. AIR1999SC2281; C.A. Abraham v. I.T.O. Kottayam and Ors. [1961]41ITR425(SC); Titaghur Paper Mills Co. Ltd. v. State of Orissa and Anr. [1983]142ITR663(SC); H.B. Gandhi v. Gopinath and Sons; Whirlpool Corporation v. Registrar of Trade Marks and Ors. AIR1999SC22; Tin Plate Co. of India Ltd. v. State of Bihar and Ors. AIR1999SC74; Sheela Devi v. Jaspal Singh AIR1999SC2859 and Punjab National Bank v. O.C. Krishnan and Ors. AIR2001SC3208 , this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

23. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess

can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in *L. Hirday Narain v. Income Tax Officer, Bareilly* [1970]78ITR26(SC) that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.



65. In the case of **Commissioner of Income Tax and Ors. vs.**

Chhabil Dass Agarwal: (supra), the Supreme Court observed thus:

13. In *Nivedita Sharma v. Cellular Operators Assn. of India* (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

"12. In *Thansingh Nathmal v. Supdt. of Taxes* AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved Petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not

permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

13. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa* (1983) 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11)



11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* 141 ER 486 in the following passage: (ER p. 495)

... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* 1919 AC 368 and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.* 1935 AC 532 (PC) and *Secy. of State v. Mask and Co.* AIR 1940 PC 105 It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.

14. In *Mafatlal Industries Ltd. v. Union of India* (1997) 5 SCC 536 B.P. Jeevan Reddy, J.

(speaking for the majority of the larger Bench)
observed: (SCC p. 607, para 77)

77. ... So far as the jurisdiction of the High Court under Article 226--or for that matter, the jurisdiction of this Court under Article 32--is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.

16. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the Assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. v. State of Haryana* (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility.

66. In the case of **Harbanslal Sahnia and Ors. vs. Indian Oil Corpn. Ltd. and Ors.** (supra), the Supreme Court held thus:

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks

enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., AIR1999SC22 . The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.



In the case of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors.:** (supra) , the Supreme Court held thus:

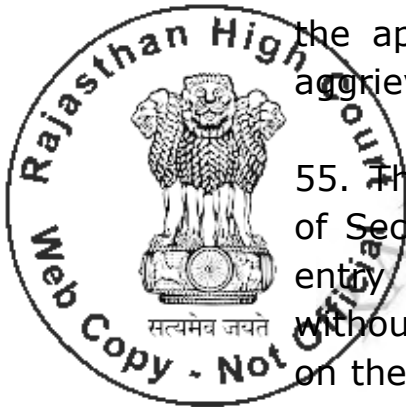
"51. It is in the background of the above provisions that the question relating to the jurisdiction of the "Registrar" and the "High Court", which individually and separately constitute "TRIBUNAL" within the meaning of Section 2(1)(x), has to be considered.

52. The functions and extent of jurisdiction of the registrar and that of the High Court which, incidentally, has also been constituted as the appellate authority of the Registrar, have been distinctly set out in different provisions of the Act. There are, however, certain matters for which jurisdiction has been given to the "TRIBUNAL" which, by its definition, includes the "High Court" and the "Registrar" and therefore, the question is "can both be said to have "concurrent" jurisdiction over matters as are set out for example, in Sections 9, 10, 26, 45, 46, 47 and 56".

53. If the proceeding is cognisable both by the Registrar and the High Court, which of the two will have jurisdiction to entertain such proceeding to the exclusion of the other or the jurisdiction being concurrent, can the proceeding go on simultaneously before the High Court and the Registrar, resulting, may be, in conflicting decisions at the end, is a question which seems to be answered by the words "before which the proceeding concerned is pending" occurring

in the definition of "TRIBUNAL" in Section 2(1)(x) of the Act. Let us test whether the answer is correct.

54. Section 56 contemplates proceedings of varying nature. The proceedings contemplated by Sub-section (1) relate to the cancellation of Trade Mark or varying the registration of Trade Mark, on the ground that the condition on which the registration was granted, was either violated or there was failure in observing the condition of registration. These proceedings may be entertained either by the High Court or the Registrar on the application, and, at the instance, of the "person aggrieved".



55. The proceedings contemplated by Sub-section (2) of Section 56 relate to the absence or omission of an entry in the Register or an entry having been made without sufficient cause or an entry wrongly remaining on the Register or there being any error or defect in an entry in the Register. Such proceedings may also be entertained either by the Registrar or the High Court on an application made in the prescribed manner by a "person aggrieved". The High Court or the registrar may, in these proceedings, pass an order either for making an entry, or expunging or varying the entry. In these proceedings which may be pending either before the High court or the Registrar, it would be open to either of them to decide any further question which may be necessary or expedient to decide in connection with the rectification of the Register. Obviously, this gives very wide jurisdiction to the High Court or the Registrar working as a Tribunal as the jurisdiction is not limited to the proceedings pending under Sub-section (1) or Sub-section (2) but extends also to decide, in the same proceedings, any other question which may legitimately arise in connection with the rectification proceedings.

56. The jurisdiction conferred on the High Court or the Registrar under Sub-section (1) or Sub-section (2) can also be exercised suo motu subject to the condition that a notice is issued to the parties concerned and an opportunity of hearing is given to them before passing any order contemplated by Subsection (1) or Sub-section (2).

57. The Registrar and the High Court have also been given the jurisdiction under this Section to order that a

Trade Mark registered in Part A shall be shifted to Part B of the Register.

58. An order of rectification, if passed by the High Court, is implemented by the Registrar by rectifying the Register in conformity with the order passed by the High Court.

59. The extent of jurisdiction conferred by Section 56 on the Registrar to rectify the Register, is, however curtailed by Section 107 which provides that an application for rectification shall, in certain situations, be made only to the High Court. These situations are mentioned in Sub-section (1) of Section 107, namely, where in a suit for infringement of the registered Trade Mark the validity of the registration is questioned by the defendant or the defendant, in that suit, raises the defence contemplated by Section 30(1)(d) in which the acts which do not constitute an infringement, have been specified, and the plaintiff in reply to this defence questions the validity of the defendant's Trade Mark. In these situations, the validity of the registration of the Trade Mark can be determined only by the High Court and not by the Registrar.

60. Section 107 thus impels the proceedings to be instituted only in the High Court. The jurisdiction of the Registrar in those cases which are covered by Section 107 is totally excluded. Significantly, Section 107(2) provides that if an application for rectification is made to the registrar Under Section 46 or Section 47(4) or Section 56, the Registrar may, if he thinks fit, refer that application, at any stage of the proceeding, to the High Court.

61. Similarly, Under Section 111 of the Act, in a pending suit relating to infringement of a Trade Mark, if it is brought to the notice of the Court that any rectification proceedings relating to plaintiffs or defendant's trade Mark are pending either before the Registrar or the High Court, the proceedings in the suit shall be stayed pending final decision of the High Court or the Registrar. Even if such proceedings are not pending either before the Registrar or the High Court, the trial court, if prima facie satisfied that the plea regarding invalidity of plaintiff's or defendant's Trade Mark is tenable, may frame an issue and adjourn the case for three months to enable the party concerned to

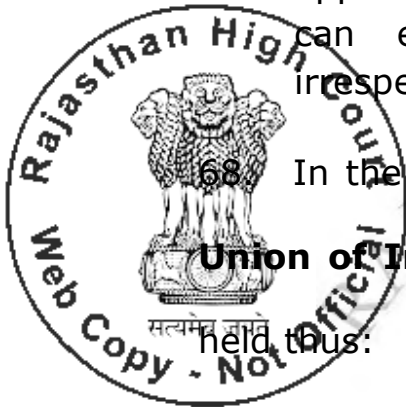
apply to the High Court for rectification of the Register. If within three months, the party concerned does not approach the High Court, the plea regarding invalidity of Trade Mark would be treated as abandoned but if such an application has been given hearing,, the suit would be stayed awaiting final decision of the High Court. The finding of the High Court would bind the parties and the issue relating to the invalidity of Trade Mark would be decided in terms of those findings.



62. In this background, the phrase "before which the proceeding concerned is pending" stands out prominently to convey the idea that if the proceeding is pending before the "Registrar", it becomes the "TRIBUNAL". Similarly, if the proceeding is pending before the "High Court", then the High Court has to be treated as "TRIBUNAL". Thus, the jurisdiction of the Registrar and the High Court, though apparently concurrent in certain matters, is mutually exclusive. That is to say, if a particular proceeding is pending before the registrar, any other proceeding, which may, in any way, relate to the pending proceeding, will have to be initiated before and taken up by the Registrar and the High Court will act as the Appellate Authority of the Registrar Under Section 109: It is obvious that if the proceedings are pending before the High Court, the registrar will keep his hands off and not touch those or any other proceedings which may, in any way, relate to those proceedings, as the High Court, which has to be the High Court having jurisdiction as set out in Section 3, besides being the Appellate Authority of the Registrar has primacy over the Registrar in all matters under the Act. Any other interpretation of the definition of "TRIBUNAL" would not be in consonance with the scheme of the Act or the contextual background set out therein and may lead to conflicting decision on the same question by the Registrar and the High Court besides generating multiplicity of proceedings.

63. Learned counsel for the respondent - Chinar Trust, at this stage, invoked the Rule of Punctuation in English Grammar and contended that the definition of "TRIBUNAL" is amply clear and requires no interpretative exercise as there is a distinction between the "Registrar" and the "High Court" inasmuch as the Registrar will have jurisdiction irrespective of the pendency of any proceeding, the High Court will have jurisdiction only when "proceeding concerned is

pending before it. This he tried to show by pointing out that the words "as the case may be" are placed between two commas, one at the beginning immediately after the word "Registrar" and the other at the end, with the result that the words "Tribunal means the Registrar" stand out distinctly, while the words "High Court before which the proceeding concerned is pending" stand out separately as an independent phrase. It is contended that the words "before which the proceeding concerned is pending" will not be applicable to the Registrar and, therefore, the Registrar can exercise the jurisdiction Under Section 56 irrespective of pendency of any "proceeding".



In the case of **Vodafone International Holdings B.V. vs. Union of India (UOI) and Ors.:** (supra) , the Supreme Court held thus:

3. In the facts and circumstances of this case, thus, we are of the opinion that the question in regard to the jurisdictional issue, may be determined, by the authority concerned as a preliminary issue, in terms of the decision of this Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Ors. (1962)IILLJ227SC , Wherein this Court has held as under:

(15) The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not disputed. But would it be proper for the High Court to adopt such a course unless the ends of justice seen to makes is necessary to do so? Normally, the questions of fact, though they may be jurisdictional facts the decision of which depends upon the appreciation of evidence, should, be left to be tried by the Special Tribunals constituted for that purpose. If and after the Special Tribunals try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue brought before a High Court in its writ

jurisdiction. We wish to point out that in making these observations, we do not propose to lay down any fixed or inflexible rule; whether or not even the preliminary facts should be tried by a High Court in a writ petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties. Having regard to the circumstances of the present dispute, we think the Court of Appeal was right in taking the view that the preliminary issue should more appropriately be dealt with by the Tribunal. The Appeal Court has made it clear that any party who feels aggrieved by the finding of the Tribunal on this preliminary issue may move the High Court in accordance with law. Therefore, we are not prepared to accept Mr. Shastri's argument that the appeal Court was wrong in reversing the conclusion of the Trial Judge in so far as the Trial Judge proceeded to deal with the question as to whether the action of the appellant was a closure or a lockout.

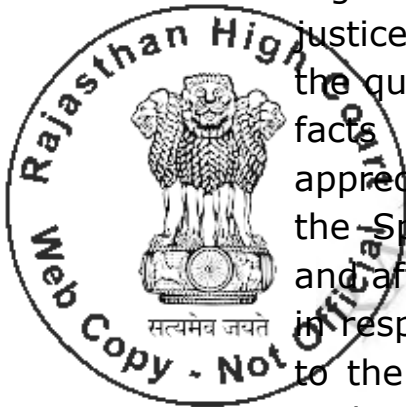


69. In the case of The Management of **Express Newspapers Ltd. vs. Workers and Staff Employed under it and Ors.**, the (supra) Supreme Court held thus:

"6.....In regard to the main point of controversy between the parties as to the validity of the reference itself, the Appeal Court took the view that the questions which had to be decided in dealing with the appellant's contention that the reference was invalid, were complex questions of fact and that it would be appropriate that the said questions should be fully investigated and tried in the first instance by the Industrial Tribunal itself. In other words, the Appeal Court held that though the High Court had jurisdiction to entertain an application for a writ of Prohibition even at the initial stage of the proceedings commenced before a Special Tribunal, it would not be proper that a writ of prohibition should be issued unless the disputed questions of fact were tried by the said Special Tribunal in the first instance. On this view, the order passed by the trial Judge has been modified and the disputes referred to the Industrial Tribunal for its adjudication have been remitted to the said Tribunal for its disposal in accordance with law. In making this Order, the Appeal Court has indicated the nature of the dispute and the questions of fact which the Industrial Tribunal may have to try and the limits of its jurisdiction. In the

result, the writ appeal No. 73/1959 succeeded whereas writ appeal No. 85/1959 failed. It is this decision of the Court of Appeal that is challenged before us by Mr. Viswanatha Sastri on behalf of the appellant.

15. The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not, disputed. But would it be proper for the High Court to adopt such a course unless the ends of justice seem to make it necessary to do so ? Normally, the questions of fact, though they may be jurisdictional facts, the decision of which depends upon the appreciation of evidence, should be left to be tried by the Special Tribunals constituted for that purpose. If and after the Special Tribunals try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue be brought before a High Court in its writ jurisdiction. We wish to point out that in making these observations, we do not propose to lay down any fixed or inflexible rule; whether or not even the preliminary fact should be tried by a High Court in a write petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties. Having regard to the circumstances of the present dispute, we think the Court of Appeal was right in taking the view that the preliminary issue should more appropriately dealt with by the Tribunal. The Appeal Court has made it clear that any party who feels aggrieved by the finding of the Tribunal on this preliminary issue may move the High Court in accordance with law. Therefore, we are not prepared to accept Mr. Sastri's argument that the Appeal Court was wrong in reversing the conclusion of the trial Judge in so far as the Trial Judge proceeded to deal with the question as to whether the action of the appellant was a closure or a lockout.



70. In **Raghuvinder Singh Vs Dy. Commissioner Of Income Tax, (Benami Transaction) And Initiating Officer** (supra)
Under The Prevention Of Benami Transaction Act 2016, this Court observed thus:

Grounds have been raised regarding non-compliance of principles of natural justice as well as non-compliance of the provisions contained under the Benami Transaction (Prohibition) Act, 1988, specially Section 24 with regard to service of notice and also with regard to application of mind relating to the order of approval.

Having noted the aforesaid, this Court finds that it would not be appropriate for this Court at this stage to examine the veracity and legality of the notice of attachment issued way back as on 22/12/2017 as of now as the matter is already pending before the adjudicating authority. However, all the objections, which the petitioner has raised before this Court, can be taken up by him before the adjudicating authority and it would be for the adjudicating authority to decide and examine all the objections and pass a reasoned order. It is expected from the adjudicating authority to give reasonable time to the petitioner to put up his objections in writing and examine the entire issue thread-bear after giving fair opportunity to all the parties.

71. In **Great Pacific General Trading Company (Limited Liability Partnership), Vs. Union of India, Through the Secretary, Ministry of Finance, Department of Revenue,** (supra), it has been observed thus:

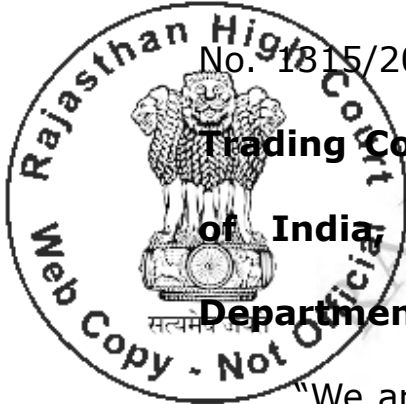
"It is contended that the transaction questioned by the respondent No.3 in the order dated 18.11.2017 does not fall in the category of benami transaction.

After hearing learned counsel for the petitioner and after perusing the material available on record and the order dated 18.11.2017 passed by the Initiating Officer under Section 24(4) of the PBPT Act, it cannot be said that the respondent No.3 has passed the order dated

18.11.2017 without there being any material on record. This Court at this stage cannot record a finding to the effect that Shri Aditya Lodha cannot be termed as benamidar or the property in question is not a benami property. It is for the adjudicating authority to adjudicate upon the matter, referred to it by the Initiating Officer, after providing opportunity of hearing to Shri Aditya Lodha as per the provisions of Section 26 of the PBPT Act.

72. The above judgement was challenged in D.B. Spl. Appl. Writ

No. 1815/2018, decided on 22/10/2018: **Great Pacific General Trading Company (Limited Liability Partnership) Vs. Union of India, through the Secretary, Ministry of Finance, Department of Revenue** holding thus:



"We are constraint to note that the averments made in para 5 of the Special Appeal are factual. As per the said reply to para 5, Shri Aditya Lodha and his son Shri Manan Lodha retired on 01.06.2015 and only Shri Tarachand Parakh and his son Shri Aditya Parakh remained the partners in the LLP till 10.07.2017. During this period, the transactions were carried out by Shri Aditya Lodha alone and Shri Tara Chand Parakh and his son Shri Aditya Parakh were not even aware of the said transactions, which has given rise to bonafide suspicion that the property is benami property. Hence, we agree with the learned Single Judge that in case, we go into the same at this stage, it would effect the finding with respect to the property as to whether the same was benami or not. Accordingly, no ground is made out to interfere in the order impugned."

73. In the case , **Dheeru Gond Vs. Union of India(supra)**,

High Court of Madhya Pradesh held thus:

"It is apparent that the learned Single Judge of this Court in WP No.10280/2017 filed by one Kailash Assudani challenging the show cause notice of similar nature has dismissed the petition holding that the provision of Section 26 of the Act, 1988 is a complete code in itself providing ample opportunities to the assessee concerned, and apart from that there is remedy of appeal available to the petitioner. The order passed by the learned Single a Judge of this Court in WP No.10280/2017 has been confirmed by the Division Bench of this Court in WA No.704/2017 with the ad following observations:-

We do not find any merit in the present M appeal. It is the Adjudicating Authority who is to decide the question of Benami nature of the property. The proceedings under Section 24 of the Act contemplates the issuance of show cause notice as to why the property specified in the notice should not be treated as Benami property. However, the substantive order of treating the property as Benami is required to be passed by Adjudicating Authority under Section 26 C of the Act only. Therefore, the appellant is at liberty to take all such plea of law and facts as may be available to the appellant before the Adjudicating Authority. The Adjudicating Authority shall decide the Benami nature of the property in accordance with law.



74. In the case of WA-704-2017, **Kailash Assudani vs Commissioner Of Income Tax**: decided on 16 August, 2017, it has been observed thus:

"We do not find any merit in the present appeal. It is the Adjudicating Authority who is to decide the question of Benami nature of the property. The proceedings under Section 24 of the Act contemplates the issuance of show cause notice as to why the property specified in the notice should not be treated as Benami property. However, the substantive order of treating the property as Benami is required to be passed by Adjudicating Authority under Section 26 of the Act only. Therefore, the appellant is at liberty to take all such plea of law and facts as may be available to the appellant before the Adjudicating Authority. The Adjudicating Authority shall decide the Benami nature of the property in accordance with law."

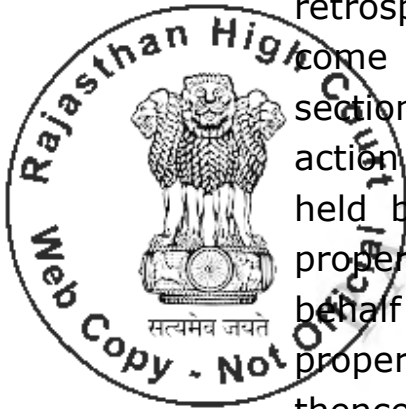
75. In the case of **R. Rajagopal Reddy (Dead) by L.Rs. and Ors. (supra)**, it has been held thus:

"11. Before we deal with these six considerations which weighed with the Division Bench for taking the view that Section 4 will apply retrospectively in the sense that it will get telescoped into all pending proceedings, howsoever earlier they might have been filed, if they

were pending at different stages in the hierarchy of the proceedings even upto this Court, when Section 4 came into operation, it would be apposite to recapitulate the salient feature of the Act. As seen earlier, the preamble of the Act itself states that it is an act to prohibit benami transactions and the right to recover property held benami, for matters connected therewith or incidental thereto. Thus it was enacted to efface the then existing rights of the real owners of properties held by others benami. Such an act was not given any retrospective effect by the legislature. Even when we come to Section 4, it is easy to visualise that Sub-section (1). of Section 4 states that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other shall lie by or on behalf of a person claiming to be the real owner of such property. As per Section 4(1) no such suit shall thenceforth lie to recover the possession of the property held benami by the defendant. Plaintiffs right to that effect is sought to be taken away and any suit to enforce such a right after coming into operation of Section 4(1) that is 19th May, 1988, shall not lie. The legislature in its wisdom has nowhere provided in Section 4(1) that no such suit, claim or action pending on the date when Section 4 came into force shall not be proceeded with and shall stand abated. On the contrary, clear legislative intention is seen from the words "no such claim, suit or action shall lie", meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any Court for seeking such a relief after coming into force of Section 4(1). In Collins English Dictionary, 1979 Edition as reprinted subsequently, the word 'lie' has been defined in connection with suits and proceedings. At page 848 of the Dictionary while dealing with topic No. 9 under the definition of term 'lie' it is stated as under :-

For an action, claim appeal ect. to subsist; be maintainable or admissible.

The word 'lie' in connection with the suit, claim or action is not defined by the Act. If we go by the aforesaid dictionary meaning it would mean that such suit, claim or action to get any property declared

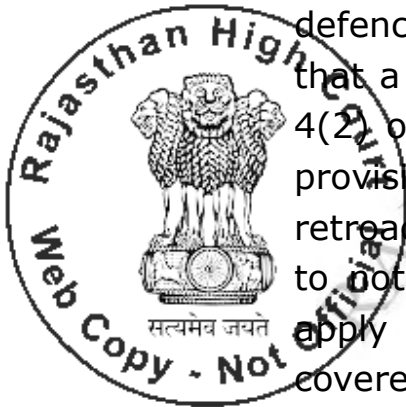


benami will not be admitted on behalf of such plaintiff or applicant against the concerned defendant in whose name the property is held on and from the date on which this prohibition against entertaining of such suits comes into force. With respect, the view taken by that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the Section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the Section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and hence-after Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the Section may be retroactive. To highlight this aspect we may take an illustration. If a benami transaction has taken place in 1980 and suit is filed in June 1988 by the plaintiff claiming that he is the real owner of the property and defendant is merely a benamidar and the consideration has flown from him then such a suit would not lie on account of the provisions of Section 4(1). Bar against filing, entertaining and admission of such suits would have become operative by June, 1988 and to that extent Section 4(1) would take in its sweep even past benami transactions which are sought to be litigated upon after coming into force of the prohibitory provision of Section 4(1); but that is the only effect of the retroactivity of Section 4(1) and nothing more than that. From the conclusion that Section 4(1) shall apply even to past benami transactions to the aforesaid extent, the next step taken by the Division Bench that therefore, the then existing rights got destroyed and

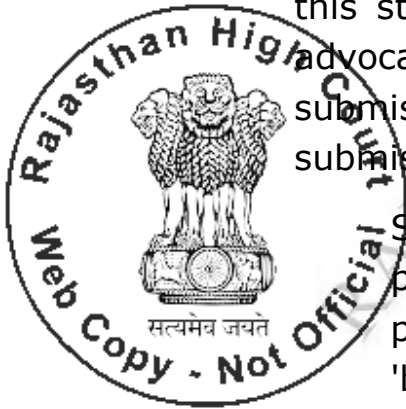


even though suits by real owners were filed prior to coming into operation of Section 4(1) they would not survive, does not logically follow.

12. So far as Section 4(2) is concerned, all that is provided is that if a suit is filed by a plaintiff who claims in his favour and holds the property in his name, once Section 4(2) applies, no defence will be permitted or allowed in any such suit, claim or action by or on behalf of a person claiming to be the real owner of such property held benami. The disallowing of such a defence which earlier was available, itself, suggests that a new liability or restriction is imposed by Section 4(2) on a pre-existing right of the defendant. Such a provision also cannot be said to be retrospective or retroactive by necessary implication. It is also pertinent to note that Section 4(2) does not expressly seek to apply retrospectively. So far as such a suit which is covered by the sweep of Section 4(2) is concerned, the prohibition of Section 4(1) cannot apply to it as it is not a claim or action filed by the plaintiff to enforce right in respect of any property held benami. On the contrary, it is a suit, claim or action flowing from the sale deed or title deed in the name of the plaintiff. Even though such a suit have been filed prior to 19.5.1988, if before the stage of filing of defence by the real owner is reached, Section 4(2) becomes operative from 19th May, 1988, then such a defence, as laid down by Section 4(2) will not be allowed to such a defendant. However, that would not mean that Section 4(1) and 4(2) only on that score can be treated to be impliedly retrospective so as to cover all the pending litigations in connection with enforcement of such rights of real owners who are parties to benami transactions entered into prior to the coming into operation of the Act and specially Section 4 thereof. It is also pertinent to note that Section 4(2) enjoins that no such defence 'shall be allowed' in any claim, suit or action by or on behalf of a person claiming to be the real owner of such property. That is to say no such defence shall be allowed for the first time after coming into operation of Section 4(2). If such a defence is already allowed in a pending suit prior to the coming into operation of Section 4(2), enabling an issue to be raised on such a defence, then the Court is bound to decide the issue arising from such an already allowed defence as at the relevant time



when such defence was allowed Section 4(2) was out of picture. Section 4(2) nowhere uses the words "No defence based on any right in respect of any property held benami whether against the person in whose name the property is held or against any other person, shall be allowed to be raised or continued to be raised in any suit." With respect, it was wrongly assumed by the Division Bench that such an already allowed defence in a pending suit would also get destroyed after coming into operation of Section 4(2). We may at this stage refer to one difficulty projected by learned advocate for the respondents in his written submissions, on the applicability of Section 4(2). These submissions read as under:-



Section 4(1) places a bar on a plaintiff pleading 'benami', while Section 4(2) places a bar on a defendant pleading 'benami', after the coming into force of the Act. In this context, it would be anomalous if the bar in Section 4 is not applicable if a suit pleading 'benami' is already filed prior to the prescribed date, and it is treated as applicable only to suit which he filed thereafter. It would have the effect of classifying the so-called 'real' owners into two classes - those who stand in the position of plaintiffs and those who stand in the position of defendants. This may be clarified by means of an illustration. A and B are 'real' owners who have both purchased properties in say 1970, in the names of C and D respectively who are ostensible owners viz. benamidars. A files a suit in February 1988 i.e. before the coming into force of the Act against C, for a declaration of his title saying that C is actually holding it as his benamidar. According to the petitioner's argument, such a plea would be open to A even after coming into force of the Act, since the suit has already been laid. On the other hand, if D files a suit against B at the same for declaration and injunction, claiming himself to be the owner but B's opportunity to file a written statement comes in say

November 1988 when the Act has already come into force, he in his written statement cannot plead that D is a benamidar and that he, B is the real owner. Thus A and B, both 'real' owners, would stand on a different footing, depending upon whether they would stand in the position of plaintiff or defendant. It is respectfully submitted that such a differential treatment would not be rational or logical.

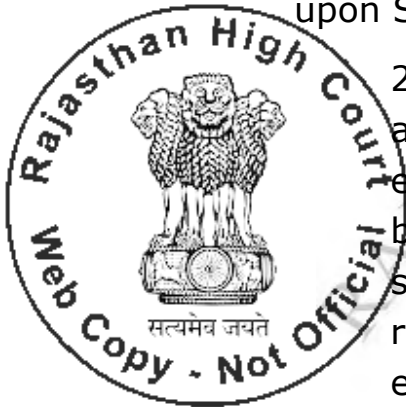


12. According to us this difficulty is inbuilt in Section 4(2) and does not provide the rationale to hold that this Section applies retrospectively. The legislature itself thought it fit to do so and there is no challenge to the vires on the ground of violation of Article 14 of the Constitution. It is not open to us to re-write the section also. Even otherwise, in the operation of Section 4(1) and (2), no discrimination can be said to have been made amongst different real owners of property, as tried to be pointed out in the written objections. In fact, those cases in which suits are filed by real owners or defences are allowed prior to coming into operation of Section 4(2), would form a separate class as compared to those cases where a stage for filing such suits or defences has still not reached by the time Section 4(1) and (2) starts operating. Consequently, latter type of cases would form a distinct category of cases. There is no question of discrimination being meted out while dealing with these two classes of cases differently. A real owner who has already been allowed defence on that ground prior to coming into operation of Section 4(2) cannot be said to have been given a better treatment as compared to the real owner who has still to take up such a defence and in the meantime he is hit by the prohibition of Section 4(2). Equally there cannot be any comparison between a real owner who has filed such suit earlier and one who does not file such suit till Section 4(1) comes into operation. All real owners who stake their claims regarding benami transactions after Section 4(1) and (2) came into operation are given uniform treatment by these provisions, whether they come as plaintiffs or as defendants. Consequently, the grievances raised in this connection cannot be sustained."

76. In the case of **State Bank of Travancore and another Vs.**

Mathew K.C. (supra) it has been held thus:

"13. In Ikbal (supra), it was observed that the action of the Bank Under Section 13(4) of the 'SARFAESI Act' available to challenge by the aggrieved Under Section 17 was an efficacious remedy and the institution directly Under Article 226 was not sustainable, relying upon Satyawati Tandon (Supra), observing:



27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction Under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition Under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented.

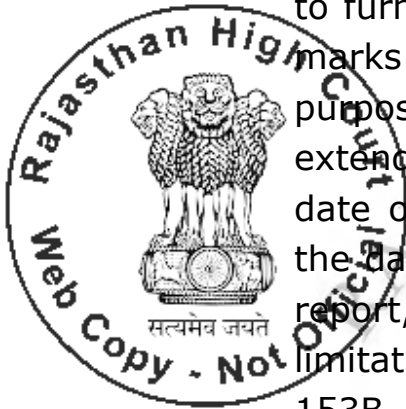
28.....In our view, there was no justification whatsoever for the learned Single Judge to allow the borrower to bypass the efficacious remedy provided to him Under Section 17 and invoke the extraordinary jurisdiction in his favour when he had disentitled himself for such relief by his conduct. The Single Judge was clearly in error in invoking his extraordinary jurisdiction Under Article 226 in light of the peculiar facts indicated above. The Division Bench also erred in affirming the erroneous order of the Single Judge.

77. In the case of **CIT, New Delhi Vs. Ram Kishan Dass** (supra), the Apex Court of the land held thus:

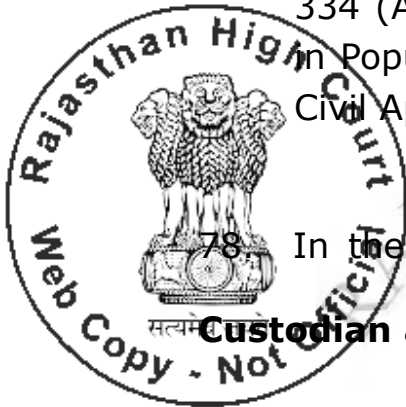
"24. We find no substance in the submission urged on behalf of the Assessee that to adopt an interpretation which we have placed on the provisions of Section

142(2C) would enable the assessing officer to extend the period of limitation for making an assessment Under Section 153B. Explanation (iii) to Section 153B(1), as it stood at the material time, provided for the exclusion of the period commencing from the date on which the assessing officer had directed the Assessee to get his accounts audited Under Sub-section (2A) of Section 142 and ending on the day on which the assessee is required to furnish a report under that Sub-section. The day on which the Assessee is required to furnish a report of the audit Under Sub-section (2A) marks the culmination of the period of exclusion for the purpose of limitation. Where the assessing officer had extended the time, the period, commencing from the date on which the audit was ordered and ending with the date on which the Assessee is required to furnish a report, would be excluded in computing the period of limitation for framing the assessment Under Section 153B. The principle governing the exclusion of time remains the same. The act on which the exclusion culminates is the date which the assessing officer fixes originally, or on extension for submission of the report.

25. The issue as to whether the amendment which has been brought about by the legislature is intended to be clarificatory or to remove an ambiguity in the law must depend upon the context. The Court would have due regard to (i) the general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what power that the legislature contemplated (See *Zile Singh v. State of Haryana* (2004) 8 SCC 1). The decision in *Sedco Forex International Drill Inc. v. Commissioner of Income Tax* [2005] 279 ITR 310 (SC); (2005) 12 SCC 717 on which learned Counsel for the assesses relied involved a substitution of the Explanation to Section 9(1)(ii) of the IT Act, 1961 with effect from 1 April 2000. A two Judge Bench of this Court held that given the legislative history of Section 9(1)(ii), it can only be assumed that it was deliberately introduced with effect from 1 April 2000 and was therefore intended to be prospective. This was also so construed by the CBDT, and in the explanatory notes to the provisions of the Finance Act, 1999. As we have indicated, interpretation is a matter of determining the path on the basis of statutory context and legislative history. In taking the view that



we have, we have also taken note of the fact that the same view was adopted by several High Courts. Among them are (i) the Punjab and Haryana High Court in Jagatjit Sugar Mills Co. Ltd. v. Commissioner of Income Tax (1994) 74 Taxman 8 (Pun. & Har.); [1994] 210 ITR 468; (ii) the Kerala High Court in Commissioner of Income Tax, Cochin v. Popular Automobiles (2011) 333 ITR 308; and (iii) the Allahabad High Court in Ghaziabad Development Authority v. Commissioner of Income Tax, Ghaziabad (UP) (2011) 12 Taxman.com 334 (Allahabad). The decision of the Kerala High Court in Popular Automobiles (supra) is the subject matter of Civil Appeal No. 2951 of 2012 in these proceedings.



78. In the case of **Canbank Financial Services Ltd. vs. The Custodian and Ors.** (supra), the Supreme Court observed thus:

"67. The evil of benami transaction was sought to be curbed by reason of the provisions of the Urban Land (Ceiling and Regulation) Act 1976, the State Ceiling Laws, Income Tax Act 1961 as amended by the Taxation Laws (Amendment) Act 1975 (See Sections 281 and 281A of the Income Tax Act), Section 5 of the Gift Tax Act 1958, Section 34B of the Wealth Tax Act and Section 5(1) of the Estate Duty Act (since repealed). It is only with that view the Benami Transactions (Prohibition) Act, 1988 prohibiting the right to recover benami transaction was enacted. Section 5(1) provided that all properties held benami shall be subject to acquisition as different from forfeiture provided for in the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. But even Section 5 had not been made workable as no rules under Section 8 of the Act for acquisition of property held benami were framed."

79. Applying the principles deducible from the opinions of the Apex Court of the land as referred to and relied upon by the learned counsel for the parties; it is evident that High Court could interfere in exercise of writ jurisdiction, if, the conditions precedent to the exercise of jurisdiction under the statutory

provisions did not exist even at the stage of notice issued. Thus, the High Courts have power in appropriate cases to prohibit executive authority from acting without jurisdiction. Moreover, if executive authority exercised the power without jurisdiction that would subject an individual to lengthy proceedings and unnecessary harassment. Hence, to prevent such lengthy proceedings and unnecessary harassment, recourse to jurisdiction under Article 226 and/or 227 of the Constitution is not prohibited. Further, the legislative drafting is more than an ordinary prose which differs in provenance, features and its import as to the meaning attached thereto and presumptions as to intendment of the legislation.

80. By now, it is well settled law that unless a contrary intention is reflected, a legislation is presumed and intended to be prospective. For in the normal course of human behavior, one is entitled to arrange his affairs keeping in view the laws for the time being in force and such arrangement of affairs should not be dislodged by retrospective application of law. The principle of law known as *lex prospicit non prospicit* (law looks forward not backward), is a well known and accepted principle. The retrospective legislation is contrary to general principle for legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried out in the faith of the then existing law (vide *Phillips Vs. Eyre* (1870) LR 6 QB 1). Thus, the principle against retrospectivity is the principle of 'fairplay' and unless there is a clear and unambiguous intendment for retrospective effect to the legislation which affects accrued

rights or imposes obligations or casts new duties or attaches a new disability is to be treated as prospective.

81. It is trite law that an explanatory or declaratory Act is intended to supply an obvious omission or is enacted to clear doubts as to the meaning of the previous Act. While retrospective operation is generally intended as to declaratory or curative provisions, which is supplied with the 'language' "shall be deemed always to have meant". Therefore, in absence of clarity amendment being declaratory or curative in the face of unambiguous or confusion in the pre-amended provisions; the same is not required to be treated as curative or declaratory amendment. Viewed in the light of the settled legal proposition, as aforesaid, Benami Amendment Act, 2016, neither appears to be clarificatory nor curative. Moreover, by way of amendment penal consequences have been introduced providing for **confiscation** of the benami property and **enhanced punishment**.

82. In the case of **Prakash and Ors.** (supra), the Apex Court of the land while dealing with the very Benami Amendment Act, 2016, held thus:

"17. The text of the amendment itself clearly provides that the right conferred on a 'daughter of a coparcener' is 'on and from the commencement of Hindu Succession (Amendment) Act, 2005'. Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective Shyam Sunder v. Ram Kumar (2001) 8 SCC 24, Paras 22 to 27. In the present case, there is neither any express provision for giving retrospective effect to the amended provision nor necessary

intendment to that effect. Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per unamended provision, having regard to nature of such partition which is by operation of law. The intent and effect of the Amendment will be considered a little later. On this finding, the view of the High Court cannot be sustained.

18. Contention of the Respondents that the Amendment should be read as retrospective being a piece of social legislation cannot be accepted. Even a social legislation cannot be given retrospective effect unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the Amendment applicable on and from its commencement and only if death of the coparcener in question is after the Amendment. Thus, no other interpretation is possible in view of express language of the statute. The proviso keeping dispositions or alienations or partitions prior to 20th December, 2004 unaffected can also not lead to the inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main provision is applicable. Similarly, Explanation has to be read harmoniously with the substantive provision of Section 6(5) by being limited to a transaction of partition effected after 20th December, 2004. Notional partition, by its very nature, is not covered either under proviso or under Sub-section 5 or under the Explanation."

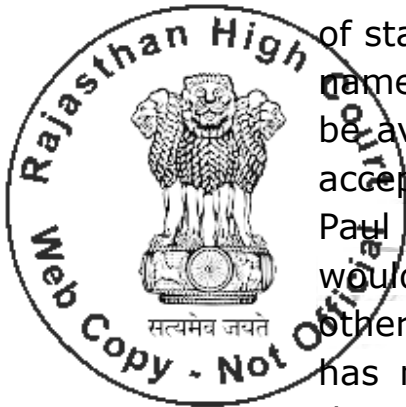
83. By now, it is well settled law that a substantive provision unless specifically made retrospective or otherwise intended by the Parliament should always be held to be prospective. The power to confiscate and consequent forfeiture of rights or interests are drastic being penal in nature, and therefore, such statutes are to be read very strictly. However, there can be no exercise of powers under such statutes by way of extension or implication (vide **O.Konavalov** (supra).

84. In the case of **D.L.F. Qutab Enclave Complex Educational Charitable Trust** (supra), the Apex Court of the land in no uncertain terms observed that extraordinary legislation must be strictly construed and a penal statute must receive strict construction. The Supreme Court further observed that the mischief of rule, if applied, in view of amendment made would be in infraction to the provisions of Article 20 of the Constitution of India, cannot be given retrospective effect. Similar is the position operating in the instant batch of cases at hand. The rights accrued in favour of any person owing to a transaction in the nature of contract protected under a statute, in that event transgression/violation of those rights could only be by a legislation with retrospective effect.

85. In view of the settled legal proposition that no authority, much less, a quasi judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly; is a question that is always open for scrutiny by the High Court in an application under Article 226/227 of the Constitution of India. The very question of correctness and legality of the issuance of notice can be examined in exercise of writ jurisdiction.

86. In the case of Mangathai Ammal (died) through L.Rs. & ors. (supra), the Apex Court of the land while dealing with issue of retrospective effect of the Benami Amendment Act, 2016, in unambiguous terms held that Benami Transaction Act would not be applicable retrospectively. At this juncture, it would be relevant to take note of the text of para 12 of the said judgment which reads thus:

"12. It is required to be noted that the benami transaction came to be amended in the year 2016. As per Section 3 of the Benami Transaction (Prohibition) Act 1988, there was a presumption that the transaction made in the name of the wife and children is for their benefit. By Benami Amendment Act, 2016, Section 3(2) of the Benami Transaction Act, 1988 the statutory presumption, which was rebuttable, has been omitted. It is the case on behalf of the Respondents that therefore in view of omission of Section 3(2) of the Benami Transaction Act, the plea of statutory transaction that the purchase made in the name of wife or children is for their benefit would not be available in the present case. Aforesaid cannot be accepted. As held by this Court in the case of Binapani Paul (Supra) the Benami Transaction (Prohibition) Act would not be applicable retrospectively. Even otherwise and as observed hereinabove, the Plaintiff has miserably failed to discharge his onus to prove that the Sale Deeds executed in favour of Defendant No. 1 were benami transactions and the same properties were purchased in the name of Defendant No. 1 by Narayanasamy Mudaliar from the amount received by him from the sale of other ancestral properties."

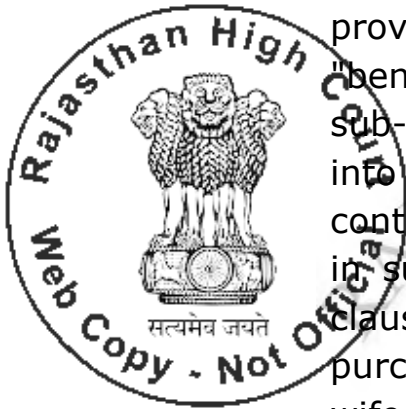


87. Article 20 of the Constitution of India is fundamental right guaranteed under Part-III of the Constitution and the penal consequences emanating from the Benami Amendment Act, 2016, in infraction to the mandate of fundamental rights guaranteed under Article 20 of the Constitution; cannot be given retrospective effect in absence of a clear stipulation by the Parliament on retrospectivity.

88. In the case of Joseph Isharat (supra), relying upon the opinion of the Apex Court of the land in the case of **R. Rajagopal Reddy (Dead) by L.Rs. and Ors.** (supra) while examining the provisions of amendment introduced by the Legislature through

Benami Amendment Act, 2016, made effective from 1st November, 2016, the Bombay High Court observed thus:

4. Under the Benami Act, as it stood on the date of the suit as well as on the date of filing of written statement and passing of the decree by the courts below, provided for the definition of a "benami transaction" under clause (a) of Section 2. Under that provision, any transaction in which property is transferred to one person for consideration paid or provided by another came within the definition of "benami transaction". Section 3 of the Benami Act, in sub-section (1), provided that no person shall enter into any benami transaction. Sub-section (2) contained two exceptions to the prohibition contained in sub-section (1). The first exception, contained in clause (a) of sub-section (2), was in respect of purchase of property by any person in the name of his wife or unmarried daughter. In the case of such purchase, it was to be presumed, unless the contrary was proved, that the property was purchased for the benefit of the wife or unmarried daughter, as the case may be. Simultaneously, Section 4 of the Benami Act contained a prohibition in respect of right to recover property held benami. Sub-section (1) provided that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held, or against any other person, shall lie by or on behalf of a person claiming to be the real owner of such property. Sub-section (2) made provisions likewise in respect of a defence based on a plea of benami transaction. Sub-section (2) provided that no defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. There was a twofold exception to this restriction. First was in respect of the person in whose name the property is held being a coparcener in a Hindu undivided family and the property being held for the benefit of the coparceners of the family. The second exception was in respect of the person, in whose name the property was held, being a trustee or other person standing in a fiduciary capacity and the property being held for the benefit of another person for whom he was such



trustee or towards whom he stood in such capacity. The present suit was filed when these provisions were in operation. These provisions continued to apply even when the written statement was filed by the Defendant and the suit was heard and decreed by both the courts below. The legal provisions continued to apply even when the second appeal was filed before this court. It is only now during the pendency of the second appeal, when it has come up for final hearing, that there is a change in law. The Benami Act has been amended by the Parliament in 2016 with the passing of the Benami Transactions (Prohibition) Amendment Act, 2016. This amendment has come into effect from 01 November 2016. In the Amended Act the definition of "benami transaction" has undergone a change. Under the Amended Act "benami transaction" means (under Section 2(9) of the Act) a transaction or an arrangement where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration. There are four exceptions to this rule. The first is in respect of a karta or a member of a Hindu undivided family holding the property for the benefit of the family. The second exception is in respect of a person standing in a fiduciary capacity holding the property for the benefit of another person towards whom he stands in such capacity. The third exception is in the case of an individual who purchases the property in the name of his spouse or child, the consideration being provided or paid out of the known sources of the individual. The fourth exception is in the case of purchase of property in the name of brother or sister or lineal ascendant or descendant where the names of such brother or sister or lineal ascendant or descendant, as the case may be, and the individual appear as joint owners in any document. Sub-section (1) of Section 3 contains the very same prohibition as under the unamended Act, in that it prohibits all benami transactions. Section 4 likewise prohibits suits, claims or actions or defences based on the plea of benami as in the case of the unamended Act. The submission is that under this scheme of law, step-daughter not having been defined under the Benami Act, but having been defined under the Income Tax Act, 1961, by virtue of sub-section (31) of Section 2 of the amended



Benami Act, the meaning of the expression will be the one assigned to it under the Income Tax Act. The definition of daughter under the Income Tax Act admits of a step-child within it. It is submitted that under the amended definition of "benami transaction", thus, there is a clear exception in respect of a purchase made in the name of a step-daughter by an individual provided, of course, the consideration has been provided or paid out of known sources of the individual.



7. What is crucial here is, in the first place, whether the change effected by the legislature in the Benami Act is a matter of procedure or is it a matter of substantial rights between the parties. If it is merely a procedural law, then, of course, procedure applicable as on the date of hearing may be relevant. If, on the other hand, it is a matter of substantive rights, then prima facie it will only have a prospective application unless the amended law speaks in a language "which expressly or by clear intention, takes in even pending matters.". Short of such intendment, the law shall be applied prospectively and not retrospectively.

8. As held by the Supreme Court in the case of R. Rajagopal Reddy v. Padmini Chandrasekharan (1995) 2 SCC 630, Section 4 of the Benami Act, or for that matter, the Benami Act as a whole, creates substantive rights in favour of benamidars and destroys substantive rights of real owners who are parties to such transaction and for whom new liabilities are created under the Act. Merely because it uses the word "it is declared", the Act is not a piece of declaratory or curative legislation. If one has regard to the substance of the law rather than to its form, it is quite clear, as noted by the Supreme Court in R. Rajagopal Reddy, that the Benami Act affects substantive rights and cannot be regarded as having a retrospective operation. The Supreme Court in R. Rajagopal Reddy also held that since the law nullifies the defences available to the real owners in recovering the properties held benami, the law must apply irrespective of the time of the benami transaction and that the expression "shall lie" in Section 4(1) or "shall be allowed" in Section 4(2) are prospective and apply to the present (future stages) as well as future suits, claims and actions only. These observations clearly hold the field even as regards the present amendment to the Benami Act. The

amendments introduced by the Legislature affect substantive rights of the parties and must be applied prospectively.”

89. It is also a fact that an SLP instituted against the opinion (supra), has also been declined by the Supreme Court on 28th April, 2017 in Special Leave to Appeal (C) No. 12328/2017.

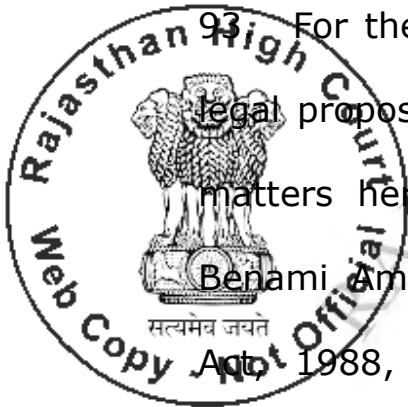
90. In the case of **Mohar Singh** (supra), the Apex Court of the land dealt with the consequences of repeal of the Act. The question in the case of **Zile Singh** (supra), was related to disqualification from being a member of Municipal Council (if children were more than two). Thus, there was no violation of any fundamental right or penal consequence contemplated. Hence, the principles cannot be applied to the controversy raised in the instant batch of writ applications. Similarly, in the case of **Yogendra Kumar Jaiswal** (supra), the observations made by the Apex Court of the land while dealing with the issue of confiscation or attachment of money/property that was acquired illegally and that too at an interim stage of prosecution.

91. In the case of **Titaghur Paper Mills Co. Ltd. and Ors.** (supra), the matter that fell for consideration of the Supreme Court, was with regard to ultra vires/jurisdiction of Sales Tax Officer and no question of law was involved therein.

92. In the case of **Gujarat Ambuja Cement Ltd. and Ors.** (supra), while dealing with scope and ambit of writ application under Article 226 of the Constitution of India, the Supreme Court observed that what is to be ensured before entertaining such an application is that a strong case is made out and there exists no ground to interfere in extra-ordinary jurisdiction. It was further



observed that where under a statute there is an allegation of infringement of fundamental right or when on the undisputed facts the Taxing Authorities are shown to have assumed jurisdiction which they do not possess, can be the grounds for entertaining writ application. To the same effect is opinion of the Supreme Court in the case of Harbanslal Sahnia and ors.(supra).



93. For the reason aforesaid and in the backdrop of the settled legal proposition so also in view of singular factual matrix of the matters herein; this Court has no hesitation to hold that the Benami Amendment Act, 2016, amending the Principal Benami Act, 1988, enacted w.e.f. 1st November, 2016, i.e. the date determined by the Central Government in its wisdom for its enforcement; cannot have retrospective effect.

94. It is made clear that this Court has neither examined nor commented upon merits of the writ applications but has considered only the larger question of retrospective applicability of the Benami Amendment Act, 2016 amending the original Benami Act of 1988. Thus, the authority concerned would examine each case on its own merits keeping in view the fact that amended provisions introduced and the amendments enacted and made enforceable w.e.f. 1st November, 2016; would be prospective and not retrospective.

95. The batch of writ applications stands disposed off, as indicated above.

96. A copy of this order be placed in each of the file.

(VEERENDR SINGH SIRADHANA) J.

Bmg/



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 7370 OF 2026
[Arising out of SLP (C) NO. 7924 of 2024]

MANJULA AND OTHERS

...APPELLANT(S)

VERSUS

D.A. SRINIVAS

...RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

1. Leave granted. For ease of reference, this judgment is divided into the following heads:

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I. RELIEF SOUGHT

2. The instant Civil Appeal is directed against the Judgment and Final Order dated 22.02.2024 passed by the High Court of Karnataka at Bengaluru¹ in Regular First Appeal No. 2216 of 2023 (DEC/INJ), whereby the High Court allowed the appeal filed by the Plaintiff / Respondent herein and set aside the order dated 30.10.2023 passed by the Principal Senior Civil Judge, Bengaluru Rural District, Bengaluru² in I.A. No. V and O.S. No. 246 of 2020.

2.1. By the aforesaid order, the trial Court had allowed the application filed by Defendant Nos. 1 to 3 / Appellants under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, 1908³, and rejected the plaint on the grounds that it did not disclose any cause of action and that the suit was barred under Sections 4 and 6 of the Prohibition of Benami Property Transactions Act, 1988⁴. However, by the impugned judgment, the High Court reversed the said findings and restored the suit for adjudication on merits.

3. By order dated 08.04.2024, this Court, while issuing notice to the Respondent, directed that the restored proceedings shall remain stayed until further orders.

¹ Hereinafter referred to as “the High Court”

² Hereinafter referred to as “the trial Court”

³ In short, “CPC”

⁴ In short, “Benami Act”

II. FACTUAL MATRIX

4. The Appellants herein were arrayed as Defendant Nos. 1 to 3 in O.S. No. 246 of 2020, instituted by the Respondent / Plaintiff, seeking a declaration that he is the owner of the suit schedule properties on the strength of a Will dated 20.04.2018, allegedly executed by the husband of Defendant No. 1 and father of Defendant Nos. 2 and 3, namely, K. Raghunath, who died on 04.05.2019. The Respondent also sought a declaration for rectification of certain alleged mistakes said to have crept into the schedule appended to the said Will, together with consequential relief of injunction.

4.1. According to the Appellants, the properties in question were the self-acquired properties of late K. Raghunath, who had earlier executed a registered Will dated 28.01.2016 bequeathing the same in favour of his wife, Appellant No. 1. On the basis of the said Will, the Appellants caused the revenue records to be mutated in their favour and have since been in peaceful possession and enjoyment of the properties. It is their further case that the Respondent, being aggrieved by the close relationship maintained by the deceased K. Raghunath with the Respondent's father, D.K. Adikesavalu, entered into a conspiracy with others and caused the murder of K. Raghunath. At the instance of Appellant Nos.1 and 3, two FIRs, namely Crime No.0089/2020 dated 05.03.2020 and Crime No.0148/2020 dated 15.09.2020, came to be registered against the Respondent and other accused persons.

4.2. During the pendency of the suit, the Appellants / Defendant Nos. 1 to 3 filed an Application under Order VII Rule 11 (a) and (d) CPC seeking rejection of the plaint on the grounds that it disclosed no cause of action and that the suit was barred by Sections 4 and 6 of the Benami Act. According to the Appellants, the averments contained in the plaint themselves rendered it liable to be rejected at the threshold.

4.3. The trial Court, after hearing the parties and upon a detailed consideration of the plaint averments as well as the legal principles governing benami transactions, allowed the application under Order VII Rule 11(a) and (d) CPC and by order dated 30.10.2023, rejected the plaint.

4.4. Aggrieved thereby, the Respondent / Plaintiff preferred Regular First Appeal No.2216 of 2023 before the High Court. By the impugned judgment dated 22.02.2024, the High Court allowed the appeal holding that the pleadings in the plaint did not attract the provisions of the Benami Act and that the plaint, therefore, could not have been rejected at the threshold. Consequently, the High Court set aside the order of the trial Court and restored the suit to file for adjudication on merits. Hence, the present Civil Appeal by the Appellants / Defendants before this Court.

III. CONTENTIONS OF THE PARTIES

5. The learned Senior Counsel appearing for the Appellants submitted that the impugned judgment of the High Court is wholly unsustainable in law, inasmuch as a plain, meaningful, and substantive reading of the plaint, read in conjunction with the recitals contained in the alleged Will dated 20.04.2018, unmistakably discloses that the Respondent / Plaintiff claims to be the real owner of the suit schedule properties, while the same stood in the name of late K. Raghunath only as an ostensible owner. According to the Plaintiff's own pleadings, the properties were purchased out of his funds in the name of the deceased K. Raghunath, who was merely a name-lender, and the subsequent Will was allegedly intended to restore or reconvey title in favour of the Plaintiff. It was contended that this crucial aspect has not been appreciated by the High Court, which erroneously proceeded on the footing that there was no reference to any benami arrangement in the plaint.

5.1. It was further contended that the High Court fell into grave error in reversing a well-reasoned order of the trial Court, which had, upon a comprehensive reading of the plaint, rightly concluded that the suit was barred by law. The trial Court correctly found that the substance of the relief sought was the enforcement of a benami transaction. The Plaintiff's own case was that he financed the purchase of agricultural lands, but caused them to be acquired in the name of the deceased, allegedly owing to statutory restrictions upon his own

eligibility to purchase such lands. The present suit, therefore, seeks a declaration of title founded upon an alleged Will dated 20.04.2018 said to have been executed by the deceased, who has since been murdered, and in respect whereof, criminal proceedings are pending, in which the plaintiff himself is stated to be the principal accused.

5.2. The learned Senior Counsel emphasised that while dealing with an application under Order VII Rule 11 CPC, the Court is not confined to a formal or superficial reading of the plaint, but is duty-bound to undertake a meaningful and substantive examination of the averments and the real nature of the relief claimed. Even if the plaint does not expressly use the expression “benami”, a holistic reading thereof clearly reveals that the Plaintiff asserts that the consideration flowed from him, the purchase was made at his instance, and the properties were held by the deceased merely as a name-lender. The High Court, by confining itself to the absence of express terminology, failed to discern the true character of the transaction pleaded by the Plaintiff.

5.3. It was further submitted that while considering an application under Order VII Rule 11 CPC, the Court is entitled to look not only into the plaint averments but also the documents annexed thereto. The sale deeds relied upon by the Plaintiff themselves show that the consideration was paid by late K. Raghunath, thereby reinforcing the statutory presumption against the Plaintiff’s claim. On a cumulative reading of the plaint and the accompanying documents, it becomes

evident that the suit is barred under the provisions of the Benami Act. The mere attempt to camouflage the claim as one arising under a Will cannot salvage the Plaintiff's case, particularly when the genuineness of the Will itself is under serious cloud and is the subject matter of criminal investigation.

5.4. The learned Senior Counsel submitted that the principal question arising for consideration is whether, on a reading of the plaint as a whole, the properties claimed by the Respondent / Plaintiff are admittedly benami properties within the meaning of Section 2(9) of the Benami Act, thereby attracting the statutory bar on civil court jurisdiction under Section 45 and rendering the plaint liable to rejection under Order VII Rule 11(d) CPC.

5.5. It was next contended that the relationship between the Plaintiff and the deceased, namely that of employer and employee, cannot by any stretch of legal reasoning be construed as a fiduciary relationship so as to attract the exception carved out under Section 2(9)(A)(ii) of the Benami Act. The Plaintiff has not even pleaded the existence of any fiduciary relationship in the plaint. In the absence of foundational pleadings, the Plaintiff cannot be permitted to invoke such statutory exception for the first time in argument. To treat an ordinary employer-employee relationship as “fiduciary” would defeat the very object and purpose of the Benami Act.

5.6. Developing this submission further, the learned Senior Counsel pointed out that the Benami Transactions (Prohibition) Amendment Act, 2016

introduced exceptions for certain fiduciary relationships, including trustees, executors, partners, directors, and other persons standing in fiduciary capacity. However, the present case does not satisfy the essential requirement of existence of such fiduciary relationship. The pleadings themselves reveal no entrustment, confidence, duty of loyalty, or legally recognised fiduciary obligation between the Plaintiff and the deceased K. Raghunath. Reliance was placed by way of illustration upon the concept of fiduciary obligations recognised under Section 166 of the Companies Act, 2013 in the context of directors and companies, to contend that no such analogous duty arises between employer and employee in the present facts.

5.7. It was also argued that in any event, the question of invoking Section 2(9) (A)(ii) does not arise since no such plea was ever raised in the plaint, nor did the High Court restore the suit on the basis of that exception. Consequently, the Plaintiff cannot now seek to sustain the plaint by raising an altogether new foundation dehors the pleadings.

5.8. The learned Senior Counsel further submitted that the 2016 Amendment, which introduced the fiduciary exception in its present form, came into effect on 01.11.2016, whereas the sale deeds in respect of the suit properties were executed during the years 2006 and 2011. Relying upon the decision of this Court in *Union of India and another v. Ganpati Dealcom Private Limited*⁵, it

⁵ (2023) 3 SCC 315

was contended that the 2016 Amendment is not retrospective in operation. Therefore, the subsequently introduced exception cannot govern transactions that had taken place much prior thereto.

5.9. It was then submitted that during the pendency of the present proceedings, the Respondent / Plaintiff caused mutation of revenue records in his favour and executed various sale deeds on the strength of the disputed Will. According to the learned Senior Counsel, the Will itself is under investigation by the CBI on allegations of forgery, including the use of fabricated stamp papers purportedly printed after the death of the testator. The Plaintiff is stated to have been arrested in connection therewith and to remain in custody since 22.12.2025. Despite these serious allegations, the Plaintiff is stated to have secured mutation entries and alienated portions of the properties, thereby aggravating the illegality.

5.10. In sum and substance, it was contended that the admitted position remains that the suit properties stood in the name of late K. Raghunath, husband of Appellant No. 1 and father of Appellant Nos. 2 and 3, who are presently in possession thereof. The Plaintiff's own case is that he supplied the funds and caused the properties to be purchased in the name of the deceased. If these pleadings are tested in light of Section 2(9) of the Benami Act, the transaction squarely falls within the statutory definition of benami property. Since none of

the statutory exceptions apply, the suit is clearly barred by law and the plaint is liable to be rejected under Order VII Rule 11(a) and (d) CPC.

5.11. In support of these submissions, reliance was placed on the decision in *T.Arivandandam v. T.V.Satyapal and another*⁶, wherein this Court held that if clever drafting creates an illusion of a cause of action, the Court must, upon a meaningful reading of the plaint, nip such litigation in the bud.

5.12. Reference was also made on *Valliammal (D) by LRs v. Subramaniam and others*⁷, wherein this Court exhaustively considered the concept of a benami transaction and held that no absolute formula can be laid down for determining whether a transaction is benami, the question being one of intention to be gathered from the surrounding circumstances. The Court identified certain well-recognised indicia, namely: (i) the source from which the purchase money came; (ii) the nature and possession of the property after purchase; (iii) the motive, if any, for giving the transaction a benami colour; (iv) the relationship between the parties; (v) the custody of title deeds; and (f) the conduct of the parties in dealing with the property after purchase. It was submitted that where the plaintiff himself pleads purchase in another's name with his own funds, the plaint prima facie attracts the mischief of benami law.

⁶ (1977) 4 SCC 467

⁷ (2004) 7 SCC 233

5.13. Reliance was next placed on *K. Akbar Ali v. K. Umar Khan and others*⁸, wherein this Court reiterated that while considering an application under Order VII Rule 11 CPC, the plaint must be read as a whole in a meaningful and not merely formal manner. The Court held that clever drafting or selective pleadings cannot obscure the real nature of the claim, and if upon a holistic reading the suit appears barred by any law, the plaint is liable to be rejected at the threshold. The substance of the pleadings, and not the form in which relief is couched, is determinative.

5.14. Further reliance was placed on *Sree Surya Developers & Promoters v. N.Sailesh Prasad and others*⁹, wherein, this Court held that a cause barred in law cannot be revived or rendered maintainable by astute or artful pleading. The Court emphasised that litigants cannot circumvent statutory prohibitions or limitations by merely drafting the plaint in a manner that conceals the true legal impediment. Where the foundational averments themselves disclose a legal bar, the court must exercise powers under Order VII Rule 11 CPC.

5.15. Reference was also made to *Ramisetty Venkatanna and another v. Nasyam Jamal Saheb and others*¹⁰, wherein this Court once again stressed that while deciding an application for rejection of plaint, the court must look beyond clear phraseology and superficial drafting. If a meaningful reading of the plaint reveals that the claim is illusory, vexatious, or barred by law, the court should

⁸ (2021) 14 SCC 51

⁹ (2022) 5 SCC 736

¹⁰ (2024) 18 SCC 426

not permit the suit to proceed to trial merely because the pleadings are skilfully structured. The judgment reiterates that Order VII Rule 11 CPC is intended to prevent abuse of process and needless trials where no legally sustainable cause survives.

5.16. In conclusion, it was submitted that the High Court failed to apply the settled principles governing rejection of complaints and overlooked the express statutory bar under the Benami Act. The impugned judgment, therefore, deserves to be set aside and the order of the trial Court rejecting the complaint restored.

6. *Per contra*, the learned Senior Counsel appearing for the Respondent/Plaintiff contended that the High Court was correct in law in setting aside the order of the trial Court rejecting the complaint under Order VII Rule 11 CPC. It was submitted that the Respondent/Plaintiff is the real owner in possession of the suit schedule properties, which were purchased in the name of the testator, K. Raghunath, owing to statutory restrictions under Sections 79A and 79B of the Karnataka Land Reforms Act that prohibited the Plaintiff from acquiring agricultural land in his own name. The entire sale consideration was provided by the Plaintiff, and in recognition thereof, the testator executed a registered Will dated 20.04.2018, bequeathing all rights, title, and interest in the suit properties in favour of the Plaintiff. Upon the death of the testator on

04.05.2019, the Plaintiff derived title by way of testamentary succession, which forms the basis of the present suit.

6.1. It was contended that the suit is not founded on any alleged benami transaction but is squarely based on a valid Will, which constitutes an independent and complete cause of action under the Indian Succession Act. The plaint seeks declaration of title, permanent injunction, and correction of clerical errors in the Will schedule, and therefore, the averments therein, taken at face value, unmistakably disclose a triable and enforceable cause of action. The trial Court's finding that the Will is "concocted" is wholly impermissible at the stage of Order VII Rule 11, as the genuineness or otherwise of the Will is a matter of evidence to be adjudicated during trial. A disputed cause of action cannot be equated with absence of cause of action.

6.2. It was further submitted that the scope of Order VII Rule 11 CPC is well settled and narrowly circumscribed. The Court is required to confine itself strictly to the averments made in the plaint and must assume them to be true in their entirety. The defence taken in the written statement or the allegations made by the Defendants are wholly irrelevant at this stage. This position stands authoritatively settled in the decisions in *Liverpool & London S.P. & I Association Ltd. v. M.V.Sea Success I and another*¹¹, *Popat and Kotecha Property v. State Bank of India Staff Association*¹², *P.V. Guru Raj Reddy v. P.*

¹¹ (2004) 9 SCC 512

¹² (2005) 7 SCC 510

*Neeradha Reddy and others*¹³, and *Vinod Infra Developers Ltd. v. Mahaveer Lunia and others*¹⁴. The test is whether, on a demurrer, the plaint discloses a cause of action or a right to sue. If, on a meaningful reading of the plaint, the answer is in the affirmative, the plaint cannot be rejected under Order VII Rule 11 CPC.

6.3. The learned Senior Counsel contended that the trial Court gravely erred in invoking Order VII Rule 11(d) CPC by inferring that the suit is barred under the Benami Act. A plain reading of the plaint does not disclose any admission of a prohibited benami transaction. On the contrary, the plaint sets out a transparent financial arrangement, supported by agreements and banking transactions, coupled with a fiduciary relationship between the plaintiff and the testator, culminating in a testamentary disposition. There is no statement in the plaint which, on its face, attracts the statutory bar under the Benami Act.

6.4. It was submitted that even assuming that the consideration for the purchase of the properties was provided by the Plaintiff, the case squarely falls within the statutory exception carved out under Section 2(9)(A)(ii) of the Benami Act, which excludes transactions where the property is held by a person in a fiduciary capacity for the benefit of another. The relationship between the Plaintiff and the deceased K. Raghunath was one of trust and confidence, akin to a principal, agent or employer, trusted employee relationship, and is therefore clearly fiduciary in nature. The scope and import of fiduciary capacity have

¹³ (2015) 8 SCC 331

¹⁴ 2025 INSC 772

been elaborately explained by this Court in *Marcel Martins v. M. Printer and others*¹⁵, wherein it was held that such relationships are founded on trust, good faith, and confidence, extending beyond formal legal relationships.

6.5. It was further contended that the question whether a transaction is benami or falls within the fiduciary exception is a mixed question of fact and law, which necessarily requires evidence. This position has been conclusively settled in *Pawan Kumar v. Babulal and others*¹⁶ and reaffirmed in *Shaifali Gupta v. Vidya Devi Gupta and others*¹⁷, wherein this Court held that such issues cannot be adjudicated at the stage of Order VII Rule 11 CPC and must be determined after a full-fledged trial. Therefore, the rejection of the plaint on the ground of a supposed statutory bar is premature and legally untenable.

6.6. The learned Senior Counsel submitted that trial Court has also failed to appreciate that the suit is fundamentally based on a Will and not on the underlying transaction of purchase. A Will does not operate as a transfer *inter vivos* but as an instrument of testamentary succession, taking effect only upon the death of the testator. As held by the Karnataka High Court in *N. Ramaiah v. Nagaraj S. and another*¹⁸, a Will does not constitute a transfer of property within the meaning of the Transfer of Property Act, 1882, and, therefore, the prohibitions contained in Sections 4 and 6 of the Benami Act, which deal with

¹⁵ (2012) 5 SCC 342

¹⁶ (2019) 4 SCC 367

¹⁷ 2025 INSC 739

¹⁸ 2001 SCC OnLine Kar 191

recovery or re-transfer of benami property, have no application to testamentary dispositions.

6.7. It was further submitted that the trial Court exceeded its jurisdiction by relying upon the written statement, the application filed by the defendants, and even pending criminal proceedings to draw adverse inferences against the Plaintiff. Such an approach is directly contrary to the settled law laid down in *P.V.Guru Raj Reddy (supra) and Hardesh Ores (P) Ltd v. Hede and Company*¹⁹ which categorically held that at the stage of Order VII Rule 11, the Court cannot travel beyond the plaint or undertake an evaluation of disputed facts or evidence.

6.8. The learned Senior Counsel submitted that the reliance placed by the trial Court on pending criminal proceedings to doubt the validity of the Will or to reject the plaint is equally misconceived. Civil and criminal proceedings operate in distinct spheres, and the pendency of a criminal investigation cannot extinguish civil rights or render a civil suit non-maintainable. The High Court has rightly held that criminal proceedings cannot be used as a ground to non-suit the plaintiff at the threshold.

6.9. Lastly, it was submitted that the reliance placed by the Appellants / Defendants on *Union of India v. Ganpati Dealcom Private Limited (supra)* is misplaced, as the said judgment has been recalled in *Union of India and another v. Ganpati Dealcom Private Limited*²⁰. In any event, the statutory

¹⁹ (2007) 5 SCC 614

²⁰ (2024) SCC OnLine SC 2981 : (2025) 474 ITR 354

exception relating to fiduciary relationships existed even under the unamended provisions of the Benami Act and continues to apply to the facts of the present case.

6.10. In view of the above, it was submitted that the plaint read as a whole, clearly discloses a cause of action and does not, on its face, attract any statutory bar. The issues raised are manifestly triable and require adjudication on evidence. The trial Court has exceeded the limited jurisdiction vested in it under Order VII Rule 11 CPC and erroneously rejected the plaint. On the other hand, the High Court rightly considered the same and set aside the order of the trial Court and restored the suit on file by the impugned judgment, which does not call for any interference at the hands of this Court.

IV. DISCUSSION AND ANALYSIS

7. We have heard the learned Senior Counsel appearing for the parties and perused the materials placed before us, including the decisions relied on in support thereof.

(A) LEGAL PRINCIPLES GOVERNING REJECTION OF PLAINT

8. Before venturing into the issue involved in the case at hand, it will be apposite to recapitulate the principles governing an application under Order VII Rule 11 CPC.

8.1. Rule 11 of Order VII deals with rejection of plaint, which reads as under:

“11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

8.2. Rules 12 and 13 of Order VII, deal respectively with the procedure and effect of rejection of plaint. They read as under:

"12. Procedure on rejecting plaint.—*Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.*

13. Where rejection of plaint does not preclude presentation of fresh plaint.—*The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."*

8.3. Rule 14 speaks about documents relied upon in the plaint, which reads as under:

"14. Production of document on which plaintiff sues or relies.—*(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) *A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.*

(4) *Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."*

8.4. The scope and applicability of Order VII Rule 11 CPC have been discussed in detail by this Court in *The Correspondence, RBANMS Educational Institution v. B. Gunashekar and Others*²¹, as under:

"14. Let us first examine the scope and purpose of Order VII Rule 11 CPC. This Court in Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representatives (MANU/SC/0508/2020 : 2020:INSC:450 : (2020) 7 SCC 366), explained in detail the applicable law for deciding the application for rejection of the plaint. The relevant paragraphs of the said decision are reproduced below:

...

23.2. The remedy Under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order VII Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation Under Rule 11(d), the Court would not permit the Plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi MANU/SC/0284/1986 : [1986] 2 SCR 782, this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words:

"12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the Respondent. The sword of Damocles need not be kept hanging

²¹ 2025 LiveLaw (SC) 429

over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.*

23.6. *Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

23.7. *Order VII Rule 14(1) provides for production of documents, on which the Plaintiff places reliance in his suit, which reads as under:*

....

23.8. *Having regard to Order VII Rule 14 Code of Civil Procedure, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application Under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.*

23.9. *In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the Defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.*

23.11. *The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I which reads as: (SCC p.562, para 139)*

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In *Hardesh Ores (P.) Ltd. v. Hede & Co.* (MANU/SC/7671/2007: 2007:INSC:576 : (2007) 5 SCC 614) the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman* (MANU/SC/0154/1999: 1999:INSC:97 : (1999) 3 SCC 267).

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power Under Order VII Rule 11 Code of Civil Procedure.

23.14. The power Under Order VII Rule 11 Code of Civil Procedure may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the Defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra* (MANU/SC/1185/2002 : 2002:INSC:554 : (2003) 1 SCC 557). The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain* (*supra*).

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in Clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

24. "Cause of action" means every fact which would be necessary for the Plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the Plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1. In *Swamy Atmanand v. Sri Ramakrishna Tapovanam* (MANU/SC/0287/2005 : 2005:INSC:205 : (2005) 10 SCC 51) this Court held:

"24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the Plaintiff a right to relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act, no cause of action can

possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."

(emphasis supplied)

24.2. In *T. Arivandandam v. T.V. Satyapal* MANU/SC/0034/1977: 1977:INSC:204 : (1977) 4 SCC 467 this Court held that while considering an application Under Order VII Rule 11 Code of Civil Procedure what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words: (SCC p. 470, para 5)

"5. ...The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power Under Order VII, Rule 11 Code of Civil Procedure taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing ..."

24.3. Subsequently, in *I.T.C. Ltd. v. Debt Recovery Appellate Tribunal* (MANU/SC/0968/1998 : (1998) 2 SCC 170) this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Ramachandra Murthy v. Syed Jalal* (MANU/SC/0485/2017 : 2017:INSC:366 : (2017) 13 SCC 174) held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

.....

28. A three-Judge Bench of this Court in *State of Punjab v. Gurdev Singh* (MANU/SC/0612/1991 : 1991:INSC:200 : (1991) 4 SCC 1: 1991 SCC (L&S) 1082) held that the Court must examine the plaint and determine when the right to sue first accrued to the Plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the Defendant against whom the suit is instituted. Order VII Rule 11 (d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.

14.1. *Thus, it is clear that the above provision viz., Order VII Rule 11 CPC serves as a crucial filter in civil litigation, enabling courts to terminate proceedings at the threshold where the Plaintiff's case, even if accepted in its entirety, fails to disclose any cause of action or is barred by law, either express or by implication. The scope of Order VII Rule 11 Code of Civil Procedure and the authority of the courts is well settled in law. There is a bounden duty on the Court to discern and identify fictitious suit, which on the face of it would be barred, but for the clever pleadings disclosing a cause of action, that is surreal. Generally, Sub-clauses (a) and (d) are stand alone grounds, that can be raised by the Defendant in a suit. However, it cannot be ruled out that under certain circumstances, Clauses (a) and (d) can be mutually inclusive. For instances, when clever drafting veils the implied bar to disclose the cause of action; it then becomes the duty of the Court to lift the veil and expose the bar to reject the suit at the threshold. The power to reject a plaint under this provision is not merely procedural but substantive, aimed at preventing abuse of the judicial process and ensuring that court time is not wasted on fictitious claims failing to disclose any cause of action to sustain the suit or barred by law. Therefore, the appeal before us requires careful consideration of the scope of rejection of the plaint Under Order VII Rule 11 Code of Civil Procedure, particularly, in the context of the suit filed based on an agreement to sell against third parties in possession.*

15. *Order VII Rule 11(a) Code of Civil Procedure mandates rejection of the plaint where it does not disclose a cause of action. In Om Prakash Srivastava v. Union of India and Anr. (MANU/SC/3240/2006 : 2006:INSC:463 : (2006) 6 SCC 207), this Court pointed out that cause of action means every fact which, if traversed, would be necessary for the Plaintiff to prove in order to support their right to judgment. It consists of bundle of facts which narrate the circumstances and the reasons for filing such suit. It is the foundation on which the entire suit would rest. Therefore, it goes without saying that merely including a paragraph on cause of action is not sufficient but rather, on a meaningful reading of the plaint and the documents, it must disclose a cause of action. The plaint should contain such cause of action that discloses all the necessary facts required in law to sustain the suit and not mere statements of fact which fail to disclose a legal right of the Plaintiff to sue and breach or violation by the Defendant(s). It is pertinent to note here that even if a right is found, unless there is a violation or breach of that right by the Defendant, the cause of action should be deemed to be unreal. This is where the substantive laws like Specific Relief Act, 1963, Contract Act, 1872, and Transfer of Property Act, 1882, come into operation. A pure question of law that can be decided at the early stage of litigation, ought to be decided at the earliest stage.....”*

8.5. A careful reading of the above provisions and decision makes it clear that rejection of a plaint under the grounds mentioned under Order VII Rule 11 is essentially determinable on the basis of the averments contained in the plaint. The plaint must disclose a cause of action; the relief claimed must be properly valued; requisite court fee must be paid; a duplicate copy must be filed; and as many copies of plaint as there are defendants must be filed after the order of the Court directing issuance of summons. Before rejecting the plaint for improper valuation or deficit court fee, the Court must grant an opportunity to the plaintiff to properly value the relief and pay the requisite court fee, failing which the plaint shall stand rejected. The time granted by the Court to value the relief and pay the court fee cannot be extended unless the plaintiff satisfies the Court that for extraordinary reasons, he was unable to do so.

8.6. In this context, it would be useful to refer to Section 148 CPC, which enables the Court to extend the time for complying with any period fixed or granted by the Court for doing any act prescribed or allowed by the Code. The Court may extend such period by a maximum of thirty days, notwithstanding the fact that the period originally fixed or granted has already expired. Section 149 enables the Court, in its discretion, to allow the person responsible for payment of court fee to make such payment, and upon such payment, it shall be deemed as if the same had been paid in the first instance. Then, there is also Section 151 CPC which deals with the inherent powers of the Court. It must not be forgotten at this juncture that the Code of Civil Procedure is generally a procedural law,

though some of its provisions are substantive in nature. When it comes to timelines fixed under the Code or granted by the Court, except where the plaintiff is required to institute the suit within the period of limitation or initiate execution of the decree within the prescribed period of limitation, in other words, where the Limitation Act comes into operation, the provisions are procedural and therefore cannot defeat the substantive right of a litigant to present or defend his case.

8.7. The jurisdiction to extend or enlarge time, once conferred, cannot be restricted merely by imposing a timeline, and the inherent power of the Court under Section 151 comes into operation to meet the requirements of justice. Such inherent power is to be exercised in appropriate cases where the party concerned is unable to comply with the direction of the Court within the time fixed or granted, for reasons beyond his control, and approaches the Court for further enlargement of time. Obviously, the totality of the circumstances and the prejudice likely to be caused to the other side are also to be considered. In matters relating to payment of court fee or filing of requisite copies, it is essentially a matter between the Court and the plaintiff, and ordinarily no prejudice would be caused to the opposite party.

8.8. In this regard, reference can be had to the decision in *D.V. Paul v. Manisha Lalwani*²², wherein after analysing the various earlier judgments of this Court, it was held as follows:

²² (2010) 8 SCC 546

"26. Insofar as the first aspect is concerned Section 148 CPC, in our opinion, clearly reserves in favour of the court the power to enlarge the time required for doing an act prescribed or allowed by the Code of Civil Procedure. Section 148 of the Code may at this stage be extracted:

"148. Enlargement of time.—Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period not exceeding thirty days in total, even though the period originally fixed or granted may have expired."

A plain reading of the above would show that when any period or time is granted by the court for doing any act, the court has the discretion from time to time to enlarge such period even if the time originally fixed or granted by the court has expired. It is evident from the language employed in the provision that the power given to the court is discretionary and intended to be exercised only to meet the ends of justice.

.....

32..... The power to fix the time for doing of an act must in our opinion carry with it the power to extend such period, depending upon whether the party in default makes out a case to the satisfaction of the court who has fixed the time. There is nothing in Section 148 CPC or in any other provision of the Code to suggest that such a power of extension of time cannot be exercised in a case like the one at hand. The argument that the power to extend time cannot be exercised where the act in question is stipulated in a conditional decree has not impressed us. We see no reason to draw a distinction depending on whether the prayer for extension is in regard to a conditional order or a conditional decree. The heart of the matter is that where the court has the power to fix time and that power is not regulated by any statutory limits, it has in appropriate cases the power to extend the time fixed by it. It is common ground that neither CPC nor the provisions of the M.P. Accommodation Control Act place any limitation on the power of the court in case like the one in hand."

8.9. However, when it comes to Clause (a) or (d), the Court has no option. The clauses under Rule 11 of Order VII, except Clause (d), do not use the word “suit”. If, upon perusal of the averments in the plaint, the suit is barred by law, then the plaint can be rejected. The bar can be express or by necessary implication. Therefore, while considering a claim that the suit is barred by law,

a thorough and meaningful reading of the plaint must be undertaken. A suit can be held to be barred by law if the right asserted is legally unavailable or, even if available, there exists a bar to seek the relief in view of any other substantive law which conditions enforcement of such right upon satisfaction of certain requirements or compliance with prescribed procedures. It is needless to state that while carefully analysing the plaint averments, the relief sought and all relevant laws must be considered. Clauses (a) and (d) are stand-alone provisions. Yet, depending upon the facts of each case, they may also overlap. Similarly, if by clever drafting a fictional cause of action is created to veil a bar under law, it is imperative for the Court to reject the plaint.

(B) ROLE OF THE COURT IN CONDUCTING SUITS AS CONTEMPLATED UNDER THE CPC

9. Let us now examine a few other provisions of the CPC to ascertain the role of the Court in dealing with suits. They are as follows:

SECTION 26. Institution of Suits—

(1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

(2) In every plaint, facts shall be proved by affidavit.

SECTION 27. Summons to Defendants—

Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed on such day not beyond thirty days from the date of the institution of the suit.

SECTION 35A. Compensatory costs in respect of false or vexatious claims or defences—

(1) If in any suit or other proceedings including an execution proceedings but excluding an appeal or a revision any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court if it so thinks fit, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of cost by way of compensation.

...

ORDER IV – INSTITUTION OF SUITS

Rule 1: *Suit to be commenced by plaintiff—*

(1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).

Rule 2: *Register of suits— The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.*

ORDER V – ISSUE AND SERVICE OF SUMMONS

Rule 1 : Summons.— *(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:*

....

Rule 3 : *Court may order defendant or plaintiff to appear in person.—*

(1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

Rule 5 : *Summons to be either to settle issues or for final disposal—*

The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

By the Karnataka Amendment, with effect from 30.03.1967, Rule 5 of Order V was substituted with the following rule:

5. The Court shall determine, at the time of issuing the summons, whether it shall be –

(1) for the settlement of issues only, or

(2) for the defendant to appear and state whether he contests to or does not contest the claim and directing him if he contests to receive directions as to the date on which he has to file his written statement, the date of trial and other matters, and if he does not contest for final disposal of the suit at once; or

(3) for the final disposal of the suit;

and the summons shall contain a direction accordingly:

Provided that in every suit heard by the Court of Small Causes, the summons shall be for final disposal of the suit.

ORDER VI – PLEADINGS

Rule 2 : *Pleading to state material facts and not evidence—*

(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Rule 4 : *Particulars to be given where necessary*

In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms

aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

Rule 6 : Condition precedent

Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Rule 9 : Effect of document to be stated

Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

ORDER VII – PLAINT

Rule 9 : Procedure on admitting plaint.—

Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.

ORDER IX – APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

Rule 1 : Parties to appear on day fixed in summons for defendant to appear and answer—

On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

ORDER XIV – SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

Rule 2 : *Court to pronounce judgment on all issues.—*

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force;

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

9.1. A careful reading of the above provisions would exemplify the following:

Section 26 CPC stipulates that a suit shall be instituted by presenting a plaint.

As per Section 27, where a suit has been duly instituted, summons may be issued to the defendants. Section 35A empowers the Court to impose costs for filing frivolous suits. A reading of Order IV would indicate that a suit shall not stand instituted unless the requirements of Orders VI and VII are satisfied. Rule 11 of Order VII, as we have already discussed, which deals with rejection of plaint, states that the plaint shall be rejected if it fails to disclose a cause of action or if the suit is barred by any law. A conjoint reading of Order IV Rule 2 and Order VII Rule 9 would disclose that admission of the plaint is necessary before entering the particulars of the suit in the Register and issuance of summons.

9.2. *As a fortiori*, Rule 1 of Order V states that summons may be issued after the suit has been duly instituted. Rule 3 of Order V empowers the Court to summon the plaintiff. Rule 5 of Order V, including the Karnataka High Court amendment, empowers the Court to state the purpose for which summons may be issued, which can also be for the final disposal of the suit. Rule 2 of Order VI states that material facts have to be pleaded. Rule 4 of Order VI requires that necessary particulars are to be given. Rule 6 of Order VI requires that compliance with condition precedent has to be stated. Rule 9 of Order VI requires that the averments in the plaint must state the effect of the document relied upon in the pleading. Rule 9 of Order VII states that upon admitting the plaint, the Court, after ordering that summons shall be served on the defendants, shall direct the plaintiff to present as many copies of the plaint as there are defendants within seven days from the date of such order, along with the requisite fee. Rule 14 of Order VII states that the plaintiff has to produce the document on which his claim is based.

9.3. Once the plaint is presented for institution, and before it is admitted, it is the duty of the trial Court to verify the contents of the plaint and ensure that all legal requirements are satisfied before admitting the plaint. A trial Court cannot mechanically admit the plaint and register the suit. Admission of the plaint cannot be a mechanical process by which the note of the Registry is merely endorsed by the Court. If, at the stage of admission of the plaint, the trial Court, upon a meaningful reading of the plaint, comes to the conclusion that the plaint

is liable to be rejected, it shall reject the plaint. It is not necessary for the trial Court to wait for the defendant to enter appearance and seek rejection of the plaint. Once the Court finds that the suit is frivolous, without jurisdiction, instituted without compliance with prerequisites, fails to disclose a real cause of action, suppresses material facts, or is barred by law but couched in clever drafting to create an illusion of a cause of action, it must reject the plaint with costs. [See *T.Arivandandam v. T.V. Satyapal* (supra)]. In this context, it would be useful to refer to the following judgments of this Court and the observations made therein:

(i) ***Samar Singh v. Kedar Nath @ K.N. Singh and Others***²³

“7. ...Normally, when a suit is instituted, the Court is to satisfy itself that the suit is maintainable and it disclosed cause of action and only thereafter the Court may issue summons to the defendants but merely because the summons are issued, the defendants right to raise preliminary objection for rejection of the plaint on the ground that it disclosed no cause of action is not affected. If a plaint or an election petition does not disclose any cause of action, it does not stand to reason as to why the defendant or the respondent should incur costs and waste public time in producing evidence when the proceedings can be disposed of on the preliminary objection. ...”

(ii) ***Odisha State Financial Corporation v. Vigyan Chemical Industries and others***²⁴

“20. A decree passed without jurisdiction is null and void. A court is said to lack jurisdiction if it has no territorial jurisdiction, or if it has no pecuniary jurisdiction, or if its jurisdiction over the subject matter is circumscribed by any law. Such laws may be either substantive or procedural and may, by express provision or necessary implication, take away the jurisdiction of a court to deal with a matter, leaving no room for any judicial discretion. These provisions may either impose a total bar on the court from dealing with certain subject matters or impose any pre-conditions, non-compliance with which may prevent the court

²³ 1987 SCC OnLine SC 638

²⁴ 2025 INSC 928

from entertaining the suit, even if it otherwise has jurisdiction over the subject matter. A plea questioning the jurisdiction of the court can be raised at any stage, including before the High Court or this Court, particularly when it involves a pure question of law.”

9.4. Every plaint must be presented along with the documents relied upon in the plaint as per Rule 14 of Order VII. A document is ordinarily relied upon in the plaint, and the narration in the bundle of facts contribute to the cause of action. Therefore, it is imperative upon the plaintiff to produce such document. It is trite law that the plaint can be rejected for failure to produce documents relied upon or referred to in the plaint. There can be no quarrel with the well settled position that while considering an application for rejection of plaint, only the averments in the plaint and the documents filed along with the plaint can be looked into. Though we agree with the learned Senior Counsel for the Respondent / Plaintiff on this proposition, the plaint cannot be read in an incomprehensive manner. What is implied in Order VII is a meaningful reading of the plaint, because the bar under law may be either express or by necessary implication. [See *T.Arivandandam v. T.V. Satyapal* (*supra*), *Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others*²⁵ and *Madanuri Sri Rama Chandra Murthy v. Syed Jalal*²⁶].

9.5. Similarly, all material facts have to be stated in the plaint. Material facts are those facts which create a complete cause of action; those facts which

²⁵ (2004) 3 SCC 137

²⁶ (2017) 13 SCC 174

directly bear upon the maintainability or sustainability of the suit; and those facts upon adjudication of which may bring an end to the *lis*. Any suppression of a material fact, which has the effect of creating an illusory cause of action and eclipsing the legal bar, ought to be dealt with firmly, and the plaint would be liable to be summarily rejected. It is also settled law that a person who has suppressed a material fact is not entitled to any relief. Suppression of a material fact within the knowledge of the party amounts to fraud upon the Court. The relevancy or otherwise of a fact is to be decided by the Court, and parties cannot contend that they omitted a material fact on the assumption that it was not relevant. It is not only the duty of the Court to summarily reject the claim of a party suppressing a material fact, but also to ensure that any benefit obtained by such party is undone and *status quo ante* restored in its fairness and equity. The consistent view of this Court, irrespective of whether it is a petition under Article 136 of the Constitution, a writ petition under Article 226 of the Constitution, or in any proceedings before a civil, criminal, judicial or quasi-judicial forum is that the parties must disclose all material facts in their pleadings, and that a party, who suppresses any material fact is not entitled to any relief.

9.6. It would be useful to refer to the following judgments of this Court and the observations made therein, on the above aspects:

(i) ***Sopan Sukhdeo Sable v. Assistant Charity Commissioner*** (supra)

“20. There is distinction between “material facts” and “particulars”. The words “material facts” show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between “material facts” and “particulars” was brought by Scott, L.J. in Bruce v. Odhams Press Ltd. [(1936) 1 KB 697: (1936) 1 All ER 287 (CA)] in the following passage : (All ER p. 294)

“The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word ‘material’ means necessary for the purpose of formulating a complete cause of action; and if any one ‘material’ statement is omitted, the statement of claim is bad; it is ‘demurrable’ in the old phraseology, and in the new is liable to be ‘struck out’ under R.S.C. Order 25 Rule 4 (see Philipps v. Philipps [(1878) 4 QBD 127]); or ‘a further and better statement of claim’ may be ordered under Rule 7.

The function of ‘particulars’ under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim — gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff’s cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff’s cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial.”

The dictum of Scott, L.J. in Bruce case [(1936) 1 KB 697 : (1936) 1 All ER 287 (CA)] has been quoted with approval by this Court in Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238] and the distinction between “material facts” and “particulars” was brought out in the following terms: (SCC p. 250, para 29)

“The word ‘material’ shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.”

Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used,

clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.”

(ii) ***K.D. Sharma v. Steel Authority of India Limited and others***²⁷

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commrs.* [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] in the following words: (KB p. 514)

“... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an *ex parte* statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.”

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “We will not listen to your application because of what you have done.” The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

....

²⁷ (2008) 12 SCC 481

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.

39. If the primary object as highlighted in Kensington Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

....

45. In Agricultural & Processed Food Products v. Oswal Agro Furane [(1996) 4 SCC 297] the petitioner filed a petition in the High Court of Punjab and Haryana which was pending. Suppressing that fact, it filed another petition in the High Court of Delhi and obtained an order in its favour. Observing that the petitioner was guilty of suppression of “very important fact”, this Court set aside the order of the High Court.

...

49. “Strongly disapproving” the explanation put forth by the petitioner and describing the tactics adopted by the Federation as “abuse of process of court”, this Court observed: (All India State Bank Officers Federation case [1990 Supp SCC 336 : 1991 SCC (L&S) 429 : (1991) 16 ATC 454] , SCC pp. 340-41, paras 9 & 11)

“9. ... There is no doubt left in our minds that the petitioner has not only suppressed material facts in the petition but has also tried to abuse judicial process. ...

11. Apart from misstatements in the affidavits filed before this Court, the petitioner Federation has clearly resorted to tactics which can only be described as abuse of the process of court. The simultaneous filing of writ petitions in various High Courts on the same issue though purportedly on behalf of different associations of the officers of the Bank, is a practice which has to be discouraged. Sri Sachar and Sri Ramamurthi wished to pinpoint the necessity and importance of petitions being filed by different associations in order to discharge satisfactorily their responsibilities towards their respective members. We are not quite able to appreciate such necessity where there is no diversity but only a commonness of interest. All that they had to do was to join forces and demonstrate their unity by filing a petition in a single court. It seems the object here in filing different petitions in different courts was a totally different and not very laudable one.”

(emphasis supplied)

51. Yet in another case in *Vijay Syal v. State of Punjab* [(2003) 9 SCC 401 : 2003 SCC (L&S) 1112] this Court stated: (SCC p. 420, para 24)

“24. In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice.”

(iii) ***Dalip Singh v. State of Uttar Pradesh and others***²⁸

“1. For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahimsa” (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so

²⁸ (2010) 2 SCC 114

intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

....

3. In *Hari Narain v. Badri Das* [AIR 1963 SC 1558] this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: (AIR p. 1558)

“It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked.”

.....

5. In *G. Narayanaswamy Reddy v. Govt. of Karnataka* [(1991) 3 SCC 261 : AIR 1991 SC 1726] the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed: (SCC p. 263, para 2)

“2. ... Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions.”

6. In *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1 : JT (1993) 6 SC 331] the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In *Prestige Lights Ltd. v. SBI* [(2007) 8 SCC 449] it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R. v. Kensington Income Tax Commissioners* [(1917) 1 KB 486 (CA)], and observed: (*Prestige Lights Ltd. Case* [(2007) 8 SCC 449], SCC p. 462, para 35)

“In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.”

8. In *A.V. Papayya Sastry v. Govt. of A.P.* [(2007) 4 SCC 221 : AIR 2007 SC 1546] the Court held that Article 136 does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In other words, the Constitution has not made the Supreme Court a regular court of appeal or a court of error. This Court only intervenes where justice, equity and good conscience require such intervention.

....

10. In *K.D. Sharma v. SAIL* [(2008) 12 SCC 481] the Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the

merits of the claim. The same rule was reiterated in G. Jayashree v. Bhagwandas S. Patel [(2009) 3 SCC 141].”

(iv) *Ram Kumar v. State of Uttar Pradesh and others*²⁹

“28. This Court, in S.P. Chengalvaraya Naidu (Dead) By LRs. v. Jagannath (Dead) by LRs and others [(1994) 1 SCC 1 : JT (1993) 6 SC 331] has held that non-disclosure of the relevant and material documents with a view to obtain an undue advantage would amount to fraud. It has been held that the judgment or decree obtained by fraud is to be treated as a nullity. We find that respondent No.9 has not only suppressed a material fact but has also tried to mislead the High Court. On this ground also, the present appeal deserves to be allowed.”

9.7. Rule 13 of Order VII lays down that rejection of the plaint does not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Rule 13 can ordinarily be invoked only when the plaint has been rejected for non-disclosure of cause of action or curable defects. There is a distinction between “having” a cause of action and “disclosing” a cause of action. As noticed above, a plaint can be rejected if it fails to disclose a cause of action upon a meaningful reading. All that Rule 13 permits is, where the right to sue survives after rejection of the plaint on the ground of non-disclosure of cause of action, a fresh plaint may be presented. However, when the suit itself is barred by law, Rule 13 cannot come to the rescue of the plaintiff. Similarly, what is enabled is only presentation of a fresh plaint; it does not mandate automatic admission of the plaint or registration of the suit. The plaintiff must

²⁹ (2023) 16 SCC 691

still establish compliance with all legal requirements, including the law of limitation.

(C) INTERPLAY BETWEEN ORDER VII RULE 11 AND ORDER XIV
RULE 2 CPC

10. An application under Order VII Rule 11 can be filed at any stage of the suit. The Court is bound to look into the averments in the plaint, the documents filed therewith, and the law under which the bar is claimed. Once an application under Order VII Rule 11 CPC is filed, the trial Court is first bound to decide the same before proceeding with the suit. In this regard, reference may be made to the judgment of this Court in ***R.K. Roja v. U.S. Rayudu and another***³⁰, wherein it was held as follows:

“4. We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order 7 Rule 11 CPC can be filed at any stage, as held by this Court in Sopan Sukhdeo Sable v. Charity Commr [(2004) 3 SCC 137] : (SCC p. 146, para 10)

“10... The trial court can exercise the power at any stage of the suit – before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.”

The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order 7 Rules 11(a) to (f) CPC, the same has to be rejected.

5. *Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement.*

³⁰ (2016) 14 SCC 275

In case the application is rejected, the defendant is entitled to file his written statement thereafter (see Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557]). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote the relevant portion from para 20 of Sopan Sukhdeo Sable case [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137] : (SCC pp. 148-49)

“20. ... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant.”

6. *In Saleem Bhai case, this Court has also held that: (SCC p. 560, para 9)*

“9. a direction to file the written statement without deciding the application under Order 7 Rule 11 cannot but be a procedural irregularity touching the exercise of jurisdiction by the trial Court,”

However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement.

7. *Apparently, in the present case, it is seen that Annexure P-4, affidavit dated 15-3-2015 with a prayer ... “to dismiss the present election petition under Order 7 Rule 11 CPC...”, was filed within thirty days of the receipt of the summons in the election petition. However, the court was not inclined to consider the same in the absence of a formal application, and thus, Annexure P-5, Application No. EA No. 222 of 2016 was filed on 22-2-2016 leading to the impugned order, posting the application for consideration at the time of final hearing.*

8. *The procedure adopted by the court is not warranted under law. Without disposing of an application under Order 7 Rule 11 CPC, the court cannot proceed with the trial. In that view of the matter, the impugned order is only to be set aside. Ordered accordingly.”*

10.1. Therefore, an application for rejection of the plaint can be filed at any stage of the suit and once the same is filed, it has to be taken up first before

proceeding with the suit, presupposing the legal position that the grounds raised therein are to be treated as preliminary objections. However, as held in *R.K. Roja*'s case (supra), an application to reject the plaint cannot be used as a ruse to retrieve the lost opportunity to file the written statement, implying thereby that the right to seek rejection of the plaint must be exercised at the earliest stage, when the right to file the written statement subsists. The filing of an application to reject the plaint does not stop the clock for filing the written statement. If the defendant is set *ex parte*, he cannot, as of right, participate further in the proceedings, unless he exercises his option to file a written statement along with an application to set aside the *ex parte* order under Order IX Rule 7 CPC. It may be noted, that even when set *ex parte*, the defendant does not forfeit his right to contest the plaintiff's case through cross-examination. The plaintiff must still prove his case in order to obtain a decree, even in the absence of the defendant.

10.2. On the other hand, a preliminary objection as to the jurisdiction of the trial Court or the maintainability of the suit on the ground that it is barred by law can be raised in the written statement. The trial Court may then take up the issues relating to jurisdiction or statutory bar as preliminary issues under Order XIV Rule 2, leaving the remaining issues framed under Order XIV Rule 1 to be decided at a later stage, if necessary. The object behind the provision is to ensure that judicial time is not wasted and that the suit is disposed of at the earliest possible stage, so as to prevent abuse of process of law and dismiss frivolous suits. Rule 2 of Order XIV, which enables the Court to decide a

question of law on undisputed facts, is an exception to Rule 1, which contemplates pronouncement of judgment on all issues. Therefore, where a pure question of law can be decided without entering into disputed facts requiring evidence, the Court may decide the same at the earliest stage.

10.3. In *Nusli Neville Wadia v. Ivory Properties and others*³¹, this Court explained the scope of Order XIV Rule 2 CPC, as follows:

“51. ... As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and if the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2. In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act. “

10.4. Referring to the aforesaid judgment, this Court in *Sukhbiri Devi and Others v. Union of India and Others*³², reiterated that although limitation is generally a mixed question of law and fact, it may, in an appropriate case, be decided as a preliminary issue where the foundational facts determining the starting point of limitation are specifically pleaded and are either admitted or indisputable. In such circumstances, the court may postpone settlement of other issues and dispose of the suit in accordance with the decision on limitation. The following paragraphs are relevant:

³¹ (2020) 6 SCC 557

³² 2022 SCC Online SC 1322

“16. Now, we will consider the first question: ‘whether the issue of limitation can be determined as a preliminary issue under Order XIV, Rule 2, CPC’. It is no longer res integra. In the decision in Mongin Realty and Build Well Private Limited v. Manik Sethi [2022 SCC OnLine SC 156], even while holding that the course of action followed by the learned Trial Judge of directing the parties to address arguments on the issue of limitation as irregular since it being a case where adduction of evidence was required, a two-Judge Bench of this Court referred to a three-Judge Bench decision of this Court in Nusli Neville Wadia v. Ivory Properties observing that the issue therein was whether the issue of limitation could be determined as a preliminary issue under Order XIV, Rule 2, CPC. After taking note of the fact that going by the decision in Nusli Neville Wadia's case, in a case where question of limitation could be decided based on admitted facts it could be decided as a preliminary issue under Order XIV, Rule 2(2)(b), CPC., the two-Judge Bench held that in the case before their Lordships the question of limitation could not have been decided as a preliminary issue under Order XIV, Rule 2 of CPC as determination of the issue of limitation in that case was not a pure question of law. In the said contextual situation it is worthy and appropriate to refer to paragraphs 51, in so far as it is relevant, and 52 of the decision in Nusli Neville Wadia's case and they read thus:—

...

19. We referred to the said provisions and decisions only to stress upon the point that the appellants cannot legally have any dispute or grievance in taking their statements in the plaint capable of determining the starting point of limitation for the purpose of application of Order XIV, Rule 2(2)(b) of the CPC. Though, limitation is a mixed question of law and facts it will shed the said character and would get confined to one of question of law when the foundational fact (s), determining the starting point of limitation is vividly and specifically made in the plaint averments. In such a circumstance, if the Court concerned is of the opinion that limitation could be framed as a preliminary point and it warrants postponement of settlement of other issues till determination of that issue, it may frame the same as a preliminary issue and may deal with the suit only in accordance with the decision on that issue. It cannot be said that such an approach is impermissible in law and in fact, it is perfectly permissible under Order XIV, Rule 2(2)(b), CPC and legal in such circumstances. In short, in view of the decisions and the provisions, referred above, it is clear that the issue limitation can be framed and determined as a preliminary issue under Order XIV, Rule 2(2)(b), CPC in a case where it can be decided on admitted facts.

.....

27. The relief sought for, in suit No. 410/2000 would reveal that the first prayer, which is the main prayer, is declaratory in nature. Even according to the

plaintiffs, as revealed from the plaint the second prayer (extracted hereinbefore) is only consequential relief. A perusal of the same would undoubtedly show that it is consequential and not an independent one and therefore the courts below are right in holding that the said prayer is grantable only if the first prayer is granted. In this case based on the determination on the preliminary issue of limitation and in accordance with the decision on that preliminary issue the suit was dismissed. As held by the three-judge Bench in the decision in Nusli Neville Wadia's case (supra) the provisions under Order XIV Rule 2(1) and Rule 2(2)(b) permit to deal with and dispose of a suit in accordance with the decision on the preliminary issue. In the case on hand in view of the nature of the finding on the preliminary issue and the consequential consideration of the suit in terms of Order XIV Rule 2(2)(b) and taking note of the fact that the suit do not survive after such consideration we find no reason to consider the contention of the appellants with reference to Order VII Rule 11 based on the decisions relied on by them and referred hereinbefore. So also, the contentions of the appellants based on Articles 17 and 65 also would pale into insignificance and warrant no consideration at all, in the circumstances."

10.5. A conjoint reading of Order VII Rule 11 and Order XIV Rule 2 CPC would show that both provisions enable the Court to examine the maintainability of a suit at the earliest possible stage, though they operate in distinct procedural spheres. Order VII Rule 11 is confined to the averments contained in the plaint and the documents relied upon by the plaintiff. Order XIV Rule 2, on the other hand, comes into operation after pleadings are complete and issues arise for adjudication. If the statutory bar is apparent upon a meaningful reading of the plaint, the plaint may be rejected under Order VII Rule 11. If, however, the objection requires consideration of admitted or foundational facts emerging from the pleadings, the Court may frame and decide a preliminary issue under Order XIV Rule 2, where permissible in law. The distinction is one of procedure and evidentiary scope. Under Order VII Rule 11, the Court does not embark upon disputed questions of fact, nor can it rely

upon the defence in the written statement to reject the plaint. Under Order XIV Rule 2, however, the Court may examine whether a pure question of law arises on admitted facts so as to obviate a full-fledged trial. Thus, while the former tests the sustainability of the plaint on its face, the latter concerns the mode of adjudication after issues are framed.

10.6. In this context, reference may also be made to the judgment in *Abdul Rahman v. Prasony Bai & another*³³, wherein this Court held as follows:

“21. For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order 14 Rule 1 of the Code of Civil Procedure, a civil court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues.”

10.7. In *Srihari Hanumandas Totala v. Hemant Vithal Kamat and others*³⁴, this Court considered a plea of *res judicata* raised through an application under Order VII Rule 11(d) CPC. In that case, the property in question had been mortgaged in favour of Karnataka State Finance Corporation, which auctioned the property upon default in repayment of the loan. The legal heirs of the borrower instituted O.S. No. 138 of 2008 challenging the sale deed dated 08.08.2006 executed by the Corporation and seeking partition of the suit property. A separate suit in O.S No. 103 of 2007 had already been filed by the auction purchaser, which was decreed on 26.02.2009 and affirmed by the High

³³ (2003) 1 SCC 488

³⁴ (2021) 9 SCC 99

Court thereafter on 11.08.2017. The purchaser from the Corporation filed an application under Order VII Rule 11 seeking rejection of the plaint. The said application was dismissed by the trial Court. The order was affirmed in revision by the High Court on the ground that the plea of *res judicata* could not be decided merely by looking at the averments in the plaint. This Court held that a plea of *res judicata* ordinarily requires examination of the pleadings, issues, and decision in the previous suit, and would therefore, generally travel beyond the scope of Order VII Rule 11 CPC. Nevertheless, liberty was granted to raise the question of maintainability before the trial Court, which was directed to consider whether a preliminary issue under Order XIV Rule 2 CPC should be framed and decided expeditiously. The operative portion is extracted below for better appreciation:

“28. For the above reasons, we hold that the plaint was not liable to be rejected under Order 7 Rule 11(d) and affirm the findings of the trial court and the High Court. We clarify however, that we have expressed no opinion on whether the subsequent suit is barred by the principles of res judicata. We grant liberty to the appellant, who claims as an assignee of the bona fide purchaser of the suit property in an auction conducted by KSFC, to raise an issue of the maintainability of the suit before the Additional Civil Judge, Belgaum in OS No. 138 of 2008. The Additional Civil Judge, Belgaum shall consider whether a preliminary issue should be framed under Order 14, and if so, decide it within a period of 3 months of raising the preliminary issue. In any event, the suit shall be finally adjudicated upon within the outer limit of 31-3-2022.”

Thus, while Order VII Rule 11 and Order XIV Rule 2 are distinct procedural mechanisms, both are designed to prevent unnecessary trials in cases where the suit is barred in law. The former operates where the defect is evident on the

face of the plaint; the latter applies where a pure question of law arises upon admitted or undisputed foundational facts after pleadings are complete. Proper invocation of either provision advances procedural economy, curbs abuse of process, and would promote timely administration of justice as it is the duty of the Courts to weed out frivolous suits. It would be useful to refer to the judgment of this Court in *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Others*³⁵, this Court observed as under:

“39. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.”

(D) WHETHER SUIT IS BARRED BY LAW

11. Having discussed and settled the scope of Order VII Rule 11 and Order XIV Rule 2 CPC, we now move to the question of the bar under law raised by the Appellants / Defendants.

11.1. The Appellants in their application averred that the transaction between the Plaintiff and K. Raghunath is a benami transaction barred under the provisions of the Benami Act; that the Will dated 20.04.2018 is a forged document; and further that there is a bar under Section 25 of the Hindu

³⁵ (2012) 6 SCC 430

Succession Act, 1956 since K.Raghunath was allegedly murdered by the Plaintiff, who has been arrayed as an accused in the criminal case.

11.2. On the other hand, the Respondent / Plaintiff contended that the suit is founded solely on the Will; that while considering an application for rejection of plaint, only the averments in the plaint are to be examined; that there existed a fiduciary relationship between him and K. Raghunath who was employed in the company of the Plaintiff's father, and therefore the transaction cannot be termed benami; that no transfer of property takes place under a Will; and that each of the grounds raised cannot be summarily decided, but can be adjudicated only at trial.

(D1) THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988

12. Before proceeding to analyse the facts of the case and juxtapose them with the legal position, we deem it necessary to ascertain the history, object, provisions and applicability of the Benami Act.

Origin

13. Prior to the enactment of the 1988 legislation, there was no specific statute dealing comprehensively with benami transactions. However, such transactions which were prevalent in the country, had received legal recognition through judicial decisions, notwithstanding the existence of certain enactments

touching upon the subject. In ***Musammat Bilas Kunwar v. Desraj Ranjit Singh and others***³⁶, the Privy Council observed as under:

“Down to the taluqdar’s death the natural inference is that the purchase was a benami transaction; a dealing common to Hindus and Muhammadans alike, and much in use in India; it is quite unobjectionable and has a curious resemblance to the doctrine of our English law that the trust of the legal estate results to the man who pays the purchase money, and this again follows the analogy of our common law, that where a feoffment is made without consideration the use results to the feoffor.”

13.1. Reference may also be made to the judgment in ***Punjab Province v. Daulat Singh***³⁷, wherein the Federal Court, while considering the propriety of such transactions, observed as under:

“A notion has sometimes prevailed in this country that all benami transactions must be regarded as reprehensible and improper if not illegal; but, as late as in 1915, Sir George Farwell, delivering the judgment of the Judicial Committee in 37 ALL. 557 spoke of them as ‘quite unobjectionable’ and as having their analogues in the English law; and Mr. Amreer Ali, delivering the judgment of the Committee in 46 Cal. 566, observed that “there is nothing inherently wrong in it, and it accords, within its legitimate scope, with the ideas and habits of the people”. As indicated by the qualifying words “within its legitimate scope”, their Lordships’ observations were clearly not meant to countenance transactions entered into for fraudulent or illegal purposes.”

The Court, however, clarified that such observations were never intended to countenance transactions entered into for fraudulent or illegal purposes.

13.2. Though such transactions were regulated to some extent by Sections 81, 82 and 84 of the Indian Trusts Act, 1882, Section 53 of the Transfer of Property Act, 1882, Section 66 of the Code of Civil Procedure, 1908, and Section 281A

³⁶ AIR 1915 PC 96

³⁷ AIR (29) 1942 FC 38

of the Income Tax Act, 1961, none of those provisions expressly employed the term “benami”, nor were they sufficiently deterrent to prevent such transactions.

13.3. The 57th Report of the Law Commission of India dated August 1973 also did not treat benami transactions as inherently illegal. Instead, it recognised that such transactions were generally legal, except in specified situations, and considered several alternatives for reform. Ultimately, the Commission preferred the second alternative, namely, refusal of the law to recognise the benami character of transactions rather than criminalising them. It recommended that where property is transferred benami, the benamidar should be treated as the real owner, thereby abolishing judicial recognition of benami claims. The Commission further observed that this would be the simplest and most effective course and that the doctrine of benami would, under such reform, cease to form part of Indian law. The relevant paragraphs of the Report of the Law Commission are usefully extracted below:

*“5.2. **Summary of present position - in general** - A few basis points concerning benami transactions may be stated, as follows:*

- (a) Benami transfer or transaction means the transfer by or to a person who acts only as the ostensible owner in place of the real owner whose name is not disclosed;*
- (b) The question whether such transfer or transaction was real or benami depends upon the intention of the beneficiary;*
- (c) The real owner in such cases may be called the beneficiary, and the ostensible owner the benamidar.*

...

5.3. Effect of benami transfer.- *The effect of a benami transfer is as follows:-*

- (a) A person does not acquire any interest in property by merely leading his name;*
- (b) The benamidar has no beneficial interest though he may represent the legal owner as to third persons.*
- (c) A benami transaction is legal, except in certain specified situations.*

.....

6.3. Possible alternative for regulating benami transaction.- *Several possible alternatives could be thought of, with reference to prohibiting or regulating benami transactions for avoiding prejudice to private individuals or minimising litigation:-*

- (i) Entering into a Benami transactions could be made an offence;*
- (ii) A provision may be enacted to the effect that in a civil suit a right shall not be enforced against the benamidar or against a third person, by or on behalf of the person claiming to be the real owner of the property on the ground of benami; a similar provision could be made to bar defences on the ground of benami.*

(This provision would be based on the principle on which the existing provisions in the Civil Procedure Code and the new provision in the Income-tax Act are based, but could be wider in scope and more radical).

- (iii) The present presumption of a resulting trust in favour of the person who provided the consideration may be displaced (as in England) by the presumption of advancement, in cases where the person to whom property is transferred is a near relative of the person who provided the consideration. (This would bring in the doctrine of advancement, so as to rebut the presumption of resulting trust under section 82 of the Trusts Act).*

Whichever alternative is adopted, it may be desirable to make an exception for an acquisition made by the manager of a joint Hindu family in the name of one of the co-parceners, and similar cases.

....

6.24. First alternative not likely to be effective- *The first alternative referred to above, namely, the imposition of a criminal prohibition against benami transactions, is the most drastic alternative, but it is not likely to be more effective than the others. A prohibition backed by criminal sanctions would not, moreover, be desirable, unless the mens rea is also included in the provision to be enacted.*

If this alternative is to be adopted, a provision could be enacted on the following lines:-

"Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such person did not intend to pay or provide such consideration for the benefit of the transferee, the person paying or providing the consideration shall be guilty of an offence punishable with imprisonment upto three years, or with fine, or both.

Provided that this section shall not apply where the transferee is a co-parcener in a Hindu undivided family in which such other person is also a co-parcener, and it is proved that such other person intended to pay or provide such consideration for the benefit of the co-parceners in the family.

Exception-Nothing in this section shall be deemed to affect section 66 of the Code of Civil Procedure, 1908 or any provision similar thereto."

Yet another device for giving effect to the first alternative, with a requirement of mens rea, would be to have a law on the following lines:

"Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such person did not intend to pay or provide such consideration for the benefit of the transferee, the person paying or providing the consideration shall, if he has caused the transfer to be entered into with the intention of facilitating the evasion of any law, or defeating the claims of his creditors, or the creditors of any other person be guilty of an offence punishable with imprisonment upto three years, or with fine, or with both."

Yet another device to give effect to the first alternative would be to add a section in the Indian Penal Code as follows:-

"421A. Whoever, dishonestly or fraudulently causes to be transferred to any person, any property, for which transfer he has paid or provided the consideration, intending thereby to prevent, or knowing to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, or intending thereby to facilitate, or knowing it to be likely that he will thereby facilitate, the evasion of any law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both."

6.25. Second alternative- *The second alternative is less drastic than the first. In form, it could follow the existing statutory provision limiting the judicial recognition of benami transactions, such as, section 66, Code of Civil Procedure, 1908. But its scope would be much wider. The provision could be to*

the effect that no suit shall lie to enforce a right in respect of any property held benami, either against the person in whose name the property is held or against any other person, by or on behalf of a person who claims to be the real owner of the property on the ground that the person in whose name the property is held is a benamidar of the claimant. (If necessary, a defence can also be barred).

...

6.27. Second alternative refusal to recognise Benami preferred- *In our opinion, the simplest alternative would be the second alternative. The law should refuse to recognise the Benami character of transactions, without making them an offence. The law should, in effect, provide that where property is transferred benami, the benamidar will become the real owner. The result of such a provision will be that the fact that the benamidar did not provide the consideration, or that the consideration was provided by a third person, will not be a ground for recognising a person other than the benamidar as owner. To put the matter in broad terms, the doctrine of benami will, under the proposed amendment, cease to be a part of the Indian law.*

It may be observed that in enacting the proposed provision, the legislature will carry, to its logical conclusion, the trend illustrated by provisions, such as, section 66 of the Code of Civil Procedure. The section in the Code is applicable to involuntary alienations, while the proposed provision will extend the same principle to voluntary transfers as well.

We think that this will be the simplest and most effective course, and is, therefore, preferable to others.

The amendment will bring out a change in the legal position in some of the situations where, at present, the benami character is recognised.

6.27A. *We are also of the view that it is not necessary to enact a prohibition attracting criminal penalties – which is the course suggested in the first alternative. Such a prohibition will have to be accompanied by a requirement of mens rea, thus narrowing down its scope and limiting its practical utility.”*

13.4. After the 44th Constitutional Amendment in 1978, the Government, for the first time, considered that the time was ripe to curb such transactions by prohibiting the right to recover property held benami. Accordingly, an Ordinance to that effect was promulgated by the President of India on 19th May

1988 bringing into force the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988. The Ordinance prohibited any person from instituting a suit or raising any defence claiming to be the real owner of the property held benami. Two exceptions were carved out to this prohibition: first, where the property stood in the name of a coparcener in a Hindu Undivided Family and was held for the benefit of the coparceners in the family; and secondly, where the property stood in the name of a trustee or any other person standing in a fiduciary capacity, and was held for the benefit of another person for whom he was a trustee or in whose favour he stood in such capacity. The Ordinance however, suffered from several shortcomings and did not appear to be a comprehensive scheme capable of effectively preventing such transactions. Consequently, a further report was sought from the Law Commission of India, which culminated in its 130th Report. The Report contained five chapters dealing with the introduction, legislative approach, coverage of the proposed statute, benami transactions and the motivations behind them, and the suggested future course of action. Ultimately, the Report recommended enactment of a suitable legislation, which paved the way for the Benami Transactions (Prohibition) Act, 1988.

Legislative intent

14. Before delving into the provisions of the Benami Act, it would be apposite to extract the relevant portions of the parliamentary debates preceding

the passing of the Bill, together with the Statement of Objects and Reasons for the enactment, for the purpose of understanding the legislative intent underlying the statute. They are as follows:

Statement and reply of the Minister of Law and Justice and the Minister of Water Resources on 1 September, 1988

“That the Bill to prohibit benami transactions and the right to recover property held benami and for matters connected therewith or incidental thereto, be taken into consideration.

As the House is aware, the President promulgated the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988, on 19th May 1988. The Bill seeks to implement the recommendations of the Law Commission contained in its 57th report. Although the Government has taken some time to implement the recommendations of the Law Commission, the Government felt that this was the most opportune time for bringing out such a legislation. The Ordinance evoked mixed response from the press, public and the Bar. While some sections congratulated the Government on making a beginning in the law of benami transactions, there was some criticism that the Ordinance had not gone very far to achieve the object, that is to say, prevention of proliferation of black money. There was also criticism that the Ordinance was not and touched many of the important aspects of benami transactions. It was also criticised that the Ordinance did not specifically provide for those cases where properties were transferred in the name of inanimate persons or in the name of tenants or deceased persons. In view of all these criticisms, it was felt that the Bill to replace the Ordinance should be drafted as comprehensively as possible, and if necessary, after obtaining the recommendations of the Law Commission. Accordingly, our Ministry had referred it to the Law Commission and the Law Commission was good enough to send its recommendations so that we might bring the Bill after considering its recommendations, before the expiry of the period of six weeks from the commencement of the session when the Ordinance will expire. The report of the Law Commission has already been placed on the Table of the House.

Before dwelling upon the provisions of the Bill, I would like to take the indulgence of the House for bringing this Bill at such short notice. As I mentioned earlier, in view of the peculiar circumstances in which we had to refer the Bill to the Law Commission for advice, there had been some delay in bringing forward the legislation. The Ordinance has to be replaced by a Bill

within six weeks, that is to say by 5th September. As the House is aware, the Ordinance prohibited the right of the true owners to file a suit in respect of any property held benami and no defence based on any right in respect of any property to be held would also be allowed in any suit, claim or action. It provided exceptions only to properties held by coparceners and by trustees on behalf of the beneficiaries. The Law Commission while justifying the provisions of the Ordinance had recommended that in order to be effective the entering into of benami transactions should be made an offence. It also felt that most of the benami transactions were entered into for the purpose of defeating tax laws, ceiling laws, etc. Both the parties to the transaction are equally guilty and as such the Ordinance should not allow one of the parties to obtain an undue advantage, that is to say, to retain the property. It has, therefore, suggested that in addition to making the entering into of benami transactions an offence, it should also provide for acquisition of the property from the benamidar. This would also provide a check against the benamidar retransferring the property back to the true owner after the commencement of the Ordinance for no consideration thus resulting in circumventing the provisions of the law. The Law Commission has, however, made two more recommendations, to check the entering into of benami transactions by authorising voluntary agencies to file complaints before tribunals designated for the purpose and to appoint an authority like the Charity Commissioner for supervising private trusts. It is proposed to accept all the recommendations of the Law Commission. The Bill, apart from including the provisions of the Ordinance, includes the recommendations of the Law Commission for prohibiting the benami transactions and for providing for acquisition of properties held benami. The only exception to the entering into of benami transactions is the purchase of a property by the father or the husband for the benefit of an unmarried daughter or wife. And a presumption has also been included that in respect of such transactions, it should be presumed that the transactions had been entered into for the benefit of the unmarried daughter or wife. As mentioned by the Law Commission and in the Statement of Objects and Reasons attached to the Bill, the doctrine of acquisition as prevailing in the English law has been incorporated in the Indian law. The specific provisions for authorising private agencies and creating an authority like the Charity Commissioner for private trusts have not been included in the Bill as we feel that by the prohibition of benami transactions and for the acquisition of properties held benami, the concerned authorities will come to know of the existence of the benami transactions and voluntary agencies would automatically be sending their complaints even without their being specifically authorised. The objects would be amply achieved by these provisions.

As the House is aware, this Bill is relatable to a matter in the Concurrent List and both the Central and the State Governments are competent to pass legislation. In fact, Parliament will come in only for the purpose of legislation

and it is the State Governments who have to administer the provisions of such law. As such we are not in a position to immediately specify the authority for acquisition of properties in the legislation itself. This will be taken care of by the rules which will be made after consultation with the State Governments.

A point may be raised that this provision may amount to excessive delegation. But the House can see that the procedure for acquisition alone is included in the rules. It will not suffer from the vice of excessive delegation. Further as no step has been taken to assess the quantum entered of benami transactions entered into in the country, we are not in a position to estimate the properties that would be taken up for acquisition. As and when occasion arises, it is proposed to designate either an officer of the Central Government or a State Government to be the competent authority for the purpose of acquisition in accordance with the procedure that would be specified in the rules. As the entire proceedings for acquisition will be taken up by the existing officers, it is not proposed to create any additional staff for the purpose and no expenditure will be incurred on account of the provisions of the Bill being passed and brought into operation. This has been brought out clearly in the Financial Memorandum attached to the Bill. As no expenditure is involved, the re commendation of the President for the consideration of this Bill in this behalf has not been obtained.

As the Members of the House will agree, this Bill attempts to provide for a comprehensive law on Benami and it has touched all aspects. We also feel that this will be very effective in achieving the objective of preventing benami transactions. Much of the criticisms levelled against the ordinance will be met by the provisions of the Bill and the intention of the Government cannot be doubted. Further, we have brought forward this Bill after a detailed examination by an expert authority like the Law Commission and I am sure that the Bill will go a long way in achieving the objective and will have the unanimous approval of all sections of the House.

....

Mr. Vice-Chairman, I need not tell the House as to who indulge in these benami transactions, why they indulge in benami transactions and how they indulge in benami transactions. I need not the Honorable House that it is the man who earns and enriches himself to such an extent with all the black deeds and black deals which are reprehensible in the society and it is he who tries to invest such money at the cost of the nation and the entire society loses, the entire country loses. He defeats the various laws that control property dealings in this country. He defeats the tax laws, he defeats the land ceiling laws and how he does it is by surreptitiously transferring his ill-gotten money to purchase properties in somebody's name, living or dead, animate or inanimate and as observed by you, in the name of gods also.....

Sir, we have heard that properties are transferred in the name of cats, dogs, cows and, as he said, maybe carts and God knows in how many names they are transferred. It is these people who are putting the economy of the country in jeopardy. People who want to evade the tax laws are the people here and very large money is involved in this. Perhaps I will not be able to say it but I think the Finance Minister will be able to say about the findings of the various committees about the amount of black money in circulation in this country. But it is these people who do it.

Sir, a question was raised whether some time will be given to people to adjust their benami transactions. How can we give any time to adjust benami, illegal, transfers?

...

The implementation of the provisions of the Bill will have to be done very carefully because the purpose of the Bill is that not a single benami transaction is left out. The question is, who will bring this to the notice of the Government? I have already clarified in my speech when I introduced the Bill that those organisations themselves are competent to inform the Government and the Government will definitely take action. Not only both the parties would not be spared, but both will be held guilty and the property will be procured by the Government.

...

It is gone for the man who transfers it and it is also gone for the transferee according to this Bill. He also loses. The Government can procure the property. Sir, I need not dwell upon clause 8 which gives the authority to the Government to make the rules under the provisions and under certain circumstances enumerated in the clause.

I can only say, Sir, that I must thank the honorable Members who have supported the Bill and I can assure the House that this will not be the last act by the Government. We will do everything that is under our command which we can do for the welfare of the poor people of this country and to reduce the gap between the rich and the poor. Thank you."

Statement of Objects and Reasons for the Benami Act

- (1) To implement the recommendations of the Fifty-seventh Report of the Law Commission on Benami Transactions, the President promulgated the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988, on the 19th May, 1988.*

- (2) *The Ordinance provided that no suit, claim or action to enforce any right in respect of any property held benami shall lie and no defence based on any right in respect of any property held benami shall be allowed in any suit, claim or action. It, however, made two exceptions regarding property held by a coparcener in a Hindu undivided family for the benefit of the Coparceners and property held by a trustee or other person standing in a fiduciary capacity for the benefit of another person. It also repealed section 82 of the Indian Trusts Act, 1882, section 66 of the Code of Civil Procedure and section 281A of the Income-tax Act, 1961.*
- (3) *The provisions of the Ordinance received a mixed response from the press and the public. There had been criticism also that the Ordinance was a half-hearted measure and had not tackled the problem effectively and completely. It was, therefore, felt that the Bill to replace the Ordinance may be brought out as a comprehensive law on benami transactions touching all aspects and accordingly, the Law Commission was requested to examine the subject in all its ramifications. The Law Commission has submitted its 130th Report titled "Benami Transactions-a Continuum" and has made certain recommendations.*
- (4) *The Law Commission has, inter alia, recommended the inclusion of the following provisions in the Bill to replace the Ordinance, namely:*
- (i) *benami transactions should cover all kinds of property,*
 - (ii) *entering into a benami transaction after the commencement of the new law should be declared as an offence. However, an exception should be made for transactions entered into by the husband or father for the transfer of properties in the name of the wife or unmarried daughter for their benefit. By this, the doctrine of advancement as obtaining in the English law will be incorporated into the Indian Statute Book;*
 - (iii) *voluntary organisations should be authorised to file complaints about the entering into of benami transactions and the District Judges should be designated as Tribunals. Even Gram Nayaylayas recommended by the Law Commission may also be utilised for this purpose;*
 - (iv) *as both the benamidars and the true owner are equal participants to a criminal transaction, by prohibiting the true owner's right to recover property held benami as provided in the Ordinance will be provided for an undue enrichment to the benamidar. As such, the Commission has suggested that the properties should be acquired from him by resorting to a procedure analogous to Chapter XXA of the Income-tax Act, 1961. It has been suggested that the same action has to be taken when a benamidar retransfers the property back to the true owner for an apparent or no consideration to circumvent the provisions of the Ordinance,*

- (v) *in addition to section 82 of the Indian Trusts Act, 1882, as provided in the Ordinance, sections 81 and 94 of that Act should also be omitted;*
- (vi) *appointment of an authority, like the Charity Commissioner, for supervising private trusts should be provided for.*

(5) The recommendations of the Law Commission have been examined. It is felt that all the recommendations of the Law Commission, except the recommendation regarding authorising voluntary organisations to file complaints before Tribunals and the appointment of an authority, like the Charity Commissioner, for supervising private trusts, may be specifically provided in the Bill, and the other two recommendations would, it is felt, come into effect automatically as a result of the prohibition of benami transactions and the provision for acquisition of all properties held benami. The Bill accordingly provides for the following, among other things. namely-

- (a) entering into benami transactions after the commencement of the new law will be an offence, with an exception for the transfer of properties by the husband or father for the benefit of the wife or unmarried daughters;*
- (b) all the properties held benami will be subject to acquisition by such authority, in such manner and after following such procedure, as may be prescribed by rules under the proposed legislation. As a result of the provisions of the Ordinance and the prohibition of entering into benami transactions, the benamidar would be acquiring the rights to the property by the mere lending of his name and without investing any money for the purchase of such property. Accordingly, it is provided that no amount shall be payable for the acquisition of any property held benami,*
- (c) Sections 81 and 94 of the Indian Trusts Act, 1882, shall also be repealed.*

(6) The Bill seeks to achieve the above object.”

14.1. The debates surrounding the enactment of the Benami Act reveals the legislative anxiety to curb the widespread misuse of benami arrangements as a vehicle for concealing illicit wealth, defeating tax laws, evading land ceiling laws, and frustrating regulatory measures. While moving the Bill, the Minister for Law and Justice stated that the earlier Ordinance of 19.05.1988 had received

mixed reactions and had been criticised as inadequate and incomplete. It was therefore considered necessary to enact a comprehensive legislation covering all aspects of benami transactions.

14.2. The Minister further explained that the Government had considered the recommendations of the Law Commission, which had opined that mere denial of the true owner's right to recover benami property would unjustly enrich the benamidar. Accordingly, the proposed legislation not only prohibited benami transactions, but also contemplated acquisition of properties held benami, so that neither the ostensible holder nor the real owner could derive any benefit therefrom. It was also emphasized in Parliament that benami transactions were often funded through black money and properties were purchased in the names of living persons, deceased persons, fictitious entities, and even inanimate objects, thereby undermining the national economy and legal order.

14.3. The Statement of Objects and Reasons accompanying the Bill also records that the Ordinance had been viewed as a half-hearted measure and that a more effective and complete law was necessary. It further clarifies that no compensation was to be payable upon acquisition, since the benamidar acquired rights merely by lending his name without investing consideration, and the real owner was equally a participant in the illegality.

14.4. It is therefore manifest from the parliamentary debates and the Statement of Objects and Reasons that the dominant object of the enactment was two-fold:

first, to prohibit benami transactions; and second, to deprive all parties of any benefit arising therefrom by enabling acquisition / confiscation of the property involved. The legislative intent was to strike at transactions entered into for concealing ownership, laundering unaccounted wealth, and defeating fiscal or social welfare laws.

14.5. The Bill was thereafter passed, and the Benami Transactions (Prohibition) Act, 1988 came into force on 19.05.1988, except Sections 3, 5 and 8, which came into force on 05.09.1988. As already stated, the object of the Act as discernible from its Preamble, was to prohibit benami transactions and the right to recover the property held in benami.

Provisions of the Benami Act, 1988

15. The Act originally contained nine sections. Section 2(a) defined a “benami transaction” to mean any transaction in which property is transferred to one person for a consideration paid or provided by another person. Section 2(c) defined “property” to mean property of any kind, whether movable or immovable, tangible or intangible, and included any right or interest in such property.

15.1. Section 3(1) provided that no person shall enter into any benami transaction. Sub-section (2) carved out exceptions by excluding purchases made by a person in the name of his wife or unmarried daughter, in which case it would be presumed that the property had been purchased for their benefit. It

also excluded securities held by a depository as registered owner and by a participant as an agent of a depository. Sub-section (3) prescribed punishment for entering into a benami transaction, extendable upto three years, while Sub-section (4) declared the offence to be non-cognizable and bailable. Section 4 consisted of three sub-sections. Sub-section (1) prohibited institution of any suit, claim or action to enforce any right in respect of property held benami against the person in whose name the property stood. Sub-section (2) prohibited any defence based on a claim of real ownership. Sub-Section (3) carved out exceptions in respect of property standing in the name of a coparcener in a Hindu Undivided Family for the benefit of other coparceners, and property held by a trustee or a person standing in a fiduciary capacity for the benefit of another. Section 5 provided for acquisition of benami property without payment of compensation. Section 6 clarified that the Act would not affect Section 53 of the Transfer of Property Act, 1882 dealing with fraudulent transfers or any law relating to transfers for illegal purposes. Section 7 repealed the relevant provisions of the Trusts Act, the Code of Civil Procedure, and the Income Tax Act. Section 8 empowered the Central Government to make rules, and Section 9 repealed the earlier Ordinance.

15.2. In consonance with its object, Sections 3 and 4 introduced two distinct forms of prohibition. Section 3 prohibited the entering into a benami transaction, whereas Section 4 prohibited enforcement of rights in respect of benami property or raising such claim as a defence. The exceptions contained in

Sections 3 and 4 were different and operated in distinct spheres and at different stages. The exception under Section 4 could arise only when a suit or claim was instituted or defended in respect of property already held benami. In contrast, the prohibition under Section 3 related to the original acquisition of the property. Put differently, invocation of Section 4 would not arise unless there had already been a transaction falling within the ambit of Section 3. It is apposite to recall the definition under Section 2(a) which characterised a benami transaction as one where the consideration was paid or provided by another person. The test for determining whether a transaction was benami depended upon the intention and conduct of the purchaser, namely, whether the property was intended to be held for himself or to be conveyed to the person who funded the consideration, or to another nominated person at a later stage. The Act, in effect, extinguished the right of the real owner to recover the property from the person in whose name it stood.

Scope of the Benami Act

16. Reference may be made to the judgment in *Mithilesh Kumari and another v. Prem Behari Khare*³⁸, wherein this Court considered the scope of the provisions of the Benami Act. The following paragraphs are pertinent:

“22. As defined in Section 2(a) of the Act “‘benami transaction’ means any transaction in which property is transferred to one person for a consideration paid or provided by another person”. A transaction must, therefore, be benami irrespective of its date or duration. Section 3, subject to the exceptions, states

³⁸ (1989) 2 SCC 95

that no person shall enter into any benami transaction. This section obviously cannot have retrospective operation. However, Section 4 clearly provides that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie, by or on behalf of a person claiming to be real owner of such property. This naturally relates to past transactions as well. The expression “any property held benami” is not limited to any particular time, date or duration. Once the property is found to have been held benami, no suit, claim or action to enforce any right in respect thereof shall lie. Similarly, subsection (2) of Section 4 nullifies the defences based on any right in respect of any property held benami whether against the person in whose name the property is held or against any other person in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. It means that once a property is found to have been held benami, the real owner is bereft of any defence against the person in whose name the property is held or any other person. In other words in its sweep Section 4 envisages past benami transactions also within its retroactivity. In this sense the Act is both a penal and a disqualifying statute. In case of a qualifying or disqualifying statute it may be necessarily retroactive. For example when a Law of Representation declares that all who have attained 18 years shall be eligible to vote, those who attained 18 years in the past would be as much eligible as those who attained that age at the moment of the law coming into force. When an Act is declaratory in nature the presumption against retrospectivity is not applicable. Acts of this kind only declare. A statute in effect declaring the benami transactions to be unenforceable belongs to this type. The presumption against taking away vested right will not apply in this case inasmuch as under law it is the benamidar in whose name the property stands, and law only enabled the real owner to recover the property from him which right has now been ceased by the Act. In one sense there was a right to recover or resist in the real owner against the benamidar. Ubi jus ibi remedium. Where there is a right, there is a remedy. Where the remedy is barred, the right is rendered unenforceable. In this sense it is a disabling statute. All the real owners are equally affected by the disability provision irrespective of the time of creation of the right. A right is a legally protected interest. The real owner's right was hitherto protected and the Act has resulted in removal of that protection.

23. *When the law nullifies the defences available to the real owner in recovering the benami property from the benamidar the law must apply irrespective of the time of the benami transactions. The expression “shall lie” in Section 4(1) and “shall be allowed” in Section 4(2) are prospective and shall apply to present (future stages) and future suits, claims or actions only. ..”*

16.1. The above judgment was partially overruled by this Court in ***R. Rajagopal Reddy (Dead) by LRs and others v. Padmini Chandrasekharan (Dead) by LRs***³⁹ with respect to retrospective applicability of the provision and it was held as under:

“11. ... Thus it was enacted to efface the then existing right of the real owners of properties held by others benami. Such an Act was not given any retrospective effect by the legislature. Even when we come to Section 4, it is easy to visualise that sub-section (1) of Section 4 states that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other shall lie by or on behalf of a person claiming to be the real owner of such property. As per Section 4(1) no such suit shall thenceforth lie to recover the possession of the property held benami by the defendant. Plaintiff's right to that effect is sought to be taken away and any suit to enforce such a right after coming into operation of Section 4(1) that is 19-5-1988, shall not lie. The legislature in its wisdom has nowhere provided in Section 4(1) that no such suit, claim or action pending on the date when Section 4 came into force shall not be proceeded with and shall stand abated. On the contrary, clear legislative intention is seen from the words “no such claim, suit or action shall lie”, meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any court for seeking such a relief after coming into force of Section 4(1). ...

The word ‘lie’ in connection with the suit, claim or action is not defined by the Act. If we go by the aforesaid dictionary meaning it would mean that such suit, claim or action to get any property declared benami will not be admitted on behalf of such plaintiff or applicant against the defendant concerned in whose name the property is held on and from the date on which this prohibition against entertaining of such suits comes into force. With respect, the view taken that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of then section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however,

³⁹ (1995) 2 SCC 630

true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and henceafter Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the section may be retroactive. To highlight this aspect we may take an illustration. If a benami transaction has taken place in 1980 and a suit is filed in June 1988 by the plaintiff claiming that he is the real owner of the property and defendant is merely a benamidar and the consideration has flown from him, then such a suit would not lie on account of the provisions of Section 4(1). Bar against filing, entertaining and admission of such suits would have become operative by June 1988 and to that extent Section 4(1) would take in its sweep even past benami transactions which are sought to be litigated upon after coming into force of the prohibitory provision of Section 4(1); but that is the only effect of the retroactivity of Section 4(1) and nothing more than that. From the conclusion that Section 4(1) shall apply even to past benami transactions to the aforesaid extent, the next step taken by the Division Bench that therefore, the then existing rights got destroyed and even though suits by real owners were filed prior to coming into operation of Section 4(1) they would not survive, does not logically follow.

12. *So far as Section 4(2) is concerned, all that is provided is that if a suit is filed by a plaintiff who claims to be the owner of the property under the document in his favour and holds the property in his name, once Section 4(2) applies, no defence will be permitted or allowed in any such suit, claim or action by or on behalf of a person claiming to be the real owner of such property held benami. The disallowing of such a defence which earlier was available, itself suggests that a new liability or restriction is imposed by Section 4(2) on a pre-existing right of the defendant. Such a provision also cannot be said to be retrospective or retroactive by necessary implication. It is also pertinent to note that Section 4(2) does not expressly seek to apply retrospectively. So far as such a suit which is covered by the sweep of Section 4(2) is concerned, the prohibition of Section 4(1) cannot apply to it as it is not a claim or action filed by the plaintiff to enforce right in respect of any property held benami. On the contrary, it is a suit, claim or action flowing from the sale deed or title deed in the name of the plaintiff. Even though such a suit might have been filed prior to 19-5-1988, if before the stage of filing of defence by the real owner is reached, Section 4(2) becomes operative from 19-5-1988, then such a defence, as laid down by Section 4(2) will not be allowed to such a defendant. However, that would not mean that Section 4(1) and Section 4(2) only on that score can be treated to be impliedly retrospective so as to cover all the pending litigations in connection with enforcement of such rights of real owners who are parties to benami transactions entered into prior to the coming into operation of the Act and specially Section 4 thereof. It is also pertinent to*

note that Section 4(2) enjoins that no such defence “shall be allowed” in any claim, suit or action by or on behalf of a person claiming to be the real owner of such property. That is to say no such defence shall be allowed for the first time after coming into operation of Section 4(2). If such a defence is already allowed in a pending suit prior to the coming into operation of Section 4(2), enabling an issue to be raised on such a defence, then the Court is bound to decide the issue arising from such an already allowed defence as at the relevant time when such defence was allowed Section 4(2) was out of the picture. Section 4(2) nowhere uses the words: “No defence based on any right in respect of any property held benami whether against the person in whose name the property is held or against any other person, shall be allowed to be raised or continued to be raised in any suit.” With respect, it was wrongly assumed by the Division Bench that such an already allowed defence in a pending suit would also get destroyed after coming into operation of Section 4(2)...

13. According to us this difficulty is inbuilt in Section 4(2) and does not provide the rationale to hold that this section applies retrospectively. The legislature itself thought it fit to do so and there is no challenge to the vires on the ground of violation of Article 14 of the Constitution. It is not open to us to rewrite the section also. Even otherwise, in the operation of Section 4(1) and (2), no discrimination can be said to have been made amongst different real owners of property, as tried to be pointed out in the written objections. In fact, those cases in which suits are filed by real owners or defences are allowed prior to coming into operation of Section 4(2), would form a separate class as compared to those cases where a stage for filing such suits or defences has still not reached by the time Section 4(1) and (2) starts operating. Consequently, latter type of cases would form a distinct category of cases. There is no question of discrimination being meted out while dealing with these two classes of cases differently. A real owner who has already been allowed defence on that ground prior to coming into operation of Section 4(2) cannot be said to have been given a better treatment as compared to the real owner who has still to take up such a defence and in the meantime he is hit by the prohibition of Section 4(2). Equally there cannot be any comparison between a real owner who has filed such suit earlier and one who does not file such suit till Section 4(1) comes into operation. All real owners who stake their claims regarding benami transactions after Section 4(1) and (2) came into operation are given uniform treatment by these provisions, whether they come as plaintiffs or as defendants. Consequently, the grievances raised in this connection cannot be sustained.”

16.2. It is to be noted that the judgments referred to above arose out of transactions prior to 1988 or immediately thereafter, with litigations having

commenced before 1988. Those judgments principally dealt with the applicability of the 1988 Act, without substantial discussion on the effect of Section 66 of the Code of Civil Procedure, 1908. In the present case, however, we are concerned with transactions entered into after the Act came into force in 1988 and before the amendments introduced in 2016.

(D2) THE BENAMI TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2016

17. Coming now to the subsequent developments, although the provision relating to confiscation existed in the 1988 Act, no rules were framed, and the provisions of the Act could not be effectively implemented for want of additional provisions prescribing a comprehensive procedure. There was, therefore, a necessity to fill the lacunae and bring about amendments, which ultimately materialised in 2016.

17.1. At this juncture, it would be apposite to refer to the Statement and Reply of the then Minister of Finance and Minister of Corporate Affairs on 2 August, 2016, when the Amendment Bill of 2016 was introduced. The same clearly indicates not only the object of Parliament in bringing about the amendment, but also the clear intent to cure the existing deficiencies by enabling action in respect of benami transactions undertaken prior to the amendment. The relevant paragraphs are extracted below for ready reference:

“Sir, I would like to say just a few words of introduction to explain the Bill. The original Act was passed in the year 1988, and when it was passed in the year

1988, in substance, the Act was that if a person pays for a particular property, and the property is held in some other person's name, it shall be deemed to be a benami property. There is a prohibition. The property can get confiscated by the State Government, and further, there would be a penal provision for that.

Now, this Bill comprises nine Sections. Under this Bill, rules have to be framed as to the manner to the confiscation, for confiscation, compensation was payable or not payable, how it had to be operated, the competent authority that would undertake these functions, the appeal provisions under the Act, so that the power could be exercised in a reasonable manner. Now, when the matter went to the Law Ministry, the Law Ministry was of the opinion that all these are essential to a legislation, and these should have been a part of the principal legislation itself. If the entire functioning of the law is to be done through subordinate legislation, that would be a case of excessive delegation. So, the Law Ministry advised that the Bill would require some form of an amendment, and therefore, the rules under this were not framed. There are judgments of the Supreme Court, at least, in two cases, where what constitutes a benami property, this Act was interpreted. But actually, no acquisition took place under this Act for the reasons that the rules in order to operationalise the Act themselves were not framed. And those amendments were to be fitted into the main Act. Now the Act has only nine Sections and the amendments were over 74 or so; so new clauses were to be added. One of the reasons why it was felt necessary that you can't have a new Act altogether—there was one proposal to have a new Act—is that if you have a new Act then the penal provisions on the new Act would not be able to apply retrospectively because of Article 20 of the Constitution. And, because they could not apply retrospectively, all those who have violated the 1988 law would go scot free. As a result of which, these amendments were proposed. The matter went to the Standing Committee, which considered it, and finally, the Lok Sabha dissolved and the Bill lapsed with the Lok Sabha. The present Government again reintroduced this Bill. It has been considered by the Standing Committee and some recommendations have been made.

I have accepted most of those recommendations. There are two key recommendations which we have accepted, and these two key recommendations are: One, with regard to exceptions in the principles of benami principle. Now, there could be a property owned by a family member in the name of any other family member. That's an exception which was there in the 1988 Bill or in the case of such organizations like trust etc., where you hold property in one name but it is held as a fiduciary capacity by the principal owner. Now, these were the two exceptions. There was a third valid exception which Members of the Standing Committee pointed out that a large number of properties are technically registered in the name of some other person but under some

arrangement like, an agreement to sell; power of attorney; in Delhi, for instance, this practice is prevalent.

These properties are effectively transferred to some other persons and possession also is given and the possession is protected under Section 53(A) of the Transfer of Property Act. Therefore, it should not apply to these transactions because there would be lakhs and lakhs of transactions of this kind. The Government has accepted that suggestion. There is one more suggestion, that the Standing Committee had made, which is related to known sources of income. That is the phrase used in the original Act itself; in the Amendments that we have proposed, whatever you buy must be from your known sources of income.

Now, the Standing Committee felt that the words 'of income' itself are superfluous because there could be cases where somebody has purchased a property not from his income but by taking a loan from a bank or by some other family member contributing to it. And, therefore, the words itself should be, 'known sources' and not 'known sources of income'.

We have accepted those suggestions and with these amendments, the Bill has already been approved by the Lok Sabha. I commend its acceptance to this hon. House."

2016 Amendment: Structural transformation of the Act

18. The 2016 Amendment introduced sweeping and comprehensive changes by insertion of new provisions and re-arrangement of the existing scheme of the statute. Even the name of the enactment itself was changed to the Prohibition of Benami Property Transactions Act, 1988. A structured mechanism for attachment, adjudication and confiscation of benami property was also introduced.

18.1. The amended Act consists of seventy-two sections divided into eight Chapters. Some of the relevant provisions are extracted hereunder:

“2. Definitions.— *In this Act, unless the context otherwise requires,—*

(8) *“benami property” means any property which is the subject matter of a benami transaction and also includes the proceeds from such property:*

(9) *“benami transaction” means,—*

(A) *a transaction or an arrangement—*

(a) *where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and*

(b) *the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,*

except when the property is held by—

(i) *a karta, ...*

(ii) *a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity, and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996, (22 of 1996) and any other person as may be notified by the Central Government for this purpose;*

(iii) *any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration of such property has been provided or paid out of the known sources of the individual;*

(iv) *any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or*

(B) *a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or*

(C) *a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;*

(D) *a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious.”*

(10) “benamidar” means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name;”

(12) “beneficial owner” means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar;”

(26) “property” means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property;

(29) “transfer” includes sale, purchase or any other form of transfer of right, title, possession or lien;

3. Prohibition of benami transactions.—(1) No person shall enter into any benami transaction.

(2) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016 shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.

4. Prohibition of the right to recover property held benami.—(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

5. Property held benami liable to confiscation. —Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government.

6. Prohibition on re-transfer of property by benamidar.— (1) No person, being a benamidar shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf.

(2) Where any property is re-transferred in contravention of the provisions of sub-section (1), the transaction of such property shall be deemed to be null and void.

(3) The provisions of sub-sections (1) and (2) shall not apply to a transfer made in accordance with the provisions of section 190 of the Finance Act, 2016 (28 of 2016).

45. Bar of jurisdiction of civil courts.—*No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any of the authorities, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other forum in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”*

18.2. The amended Act significantly expanded the scope of the prohibition. It no longer confined itself merely to the property directly involved in a benami transaction, but also extended to assets or properties derived from the income or proceeds of such property. Section 3 categorises consequences based on the date of transaction. Benami transactions entered into during the period from 05.09.1988 to 31.10.2016 fell under Section 3(2), whereas transactions entered into after commencement of the 2016 amendment are governed by Section 3(3) read with Chapter VII.

18.3. Section 4 substantially continued in force, though the earlier exceptions under Section 4(3) were relocated into the definitional structure under Section 2(9). Thus, the bar against asserting claims or defences based on benami ownership continued even after the amendment. Section 5 reaffirmed that any property forming the subject matter of a benami transaction is liable to

confiscation by the Central Government. Section 6 introduced a fresh prohibition against re-transfer of property by the benamidar.

18.4. Most significantly, Chapter IV introduced a complete machinery for attachment, adjudication and confiscation, while Chapter VII created a separate code dealing with offences and penalties. The amended statute also established an administrative hierarchy. Section 2(1) defines the Adjudicating Authority referred to in Section 7. Section 2(2) defines Administrator with reference to officers under the Income-tax Act, 1961. Section 2(4) defines Approving Authority as an Additional Commissioner or Joint Commissioner under the Income-tax Act. Section 2(6) refers to authorities under Section 18. Section 2(19) defines Initiating Officer as an Assistant Commissioner or Deputy Commissioner under the Income-tax Act. It must be noted that where a statute adopts definitions by reference from another enactment, subsequent amendments to the parent enactment may, depending on the nature of incorporation or reference, have to be read into the adopting provision in accordance with settled principles relating to legislation by reference.

18.5. Chapter II of the Act consists of Sections 3 to 6 and deals respectively with prohibition of benami transactions, bar to recovery of benami property, confiscation, and prohibition on re-transfer. Section 3, apart from declaring the prohibition, also renders the prohibited transaction punishable under sub-sections (2) and (3).

Statutory framework under the Act

19. Let us now traverse the provisions of the Act in some detail before examining the effective date of the amendment. Chapter III deals with the authorities under the Act. Section 7 provides for the Adjudicating Authority. Sections 8 to 17 stood omitted by Act 13 of 2021. Section 18 designates the Initiating Officer, Approving Authority, Administrator and Adjudicating Authority as the authorities for the purposes of the Act. Section 19 provides that such authorities shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit. Sub-section (3) of Section 19 declares that proceedings under sub-sections (1) and (2) shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code. Sub-section (4) authorizes any authority under the Act to requisition the assistance of any police officer or officer of the Central or State Government for the purposes specified in sub-section (1).

19.1. Section 20 enumerates the authorities under various enactments who are bound to assist the authorities in enforcement of the Act. Section 21 empowers the authorities specified in Section 18 to call for information from any person responsible for maintaining books of account or records relating to transactions concerning any property, or from any other person whose information may be useful or relevant for the purposes of the Act. Such person is under a statutory obligation to furnish the information sought.

19.2. Section 22 authorises the authority to impound documents where it has reason to believe that such documents are required for inquiry under the Act. The documents may be retained for a period not exceeding three months from the date of the order of attachment made by the Adjudicating Authority under Section 26(3). The proviso permits further retention for reasons to be recorded in writing. The succeeding sub-sections require approval of the Approving Authority for extension of retention, prescribe that retention shall not exceed thirty days from conclusion of all proceedings, entitle the person concerned to obtain copies, and mandate return of the retained material upon expiry of the prescribed period unless release to another person is permitted by the competent authority.

19.3. Though Section 23 empowers the Initiating Officer, with prior approval of the Approving Authority, to conduct or cause investigation or inquiry in respect of any person, place, property, assets, documents, books of account, or other relevant matters, the Explanation clarifies that nothing in Section 23 applies, or shall be deemed ever to have applied, once notice under Section 24(1) has been issued. The Explanation clearly demarcates the proceedings under Chapter III from those under Chapter IV and delineates their respective scope. Chapter III, particularly Sections 19(3) and 19(4), makes it evident that proceedings under the Act are judicial in character and that the authorities under the Act are not police officers. The position is further fortified by Section 61, which declares offences under the Act to be non-cognizable.

19.4. Chapter IV deals with attachment, adjudication and confiscation. Section 24(1) empowers the Initiating Officer to issue notice calling upon the person concerned to show cause why the property should not be treated as benami property. Such notice must be founded on material in possession of the officer and on his satisfaction, i.e., reason to believe, that a person is a benamidar in respect of the property. Under sub-section (2), notice must also be issued to the beneficial owner if his identity is known. Sub-section (2A) permits reply within three months from the end of the month in which notice was issued. Sub-section (3) enables provisional attachment of the property for a period of four months from the last day of the month in which notice under sub-section (1) was issued. Under Section 24(4)(a), after making inquiries, calling for reports, and considering the material, the Initiating Officer may, within the said period, continue the provisional attachment with prior approval of the Approving Authority until an order is passed under Section 26(3) or revoke the provisional attachment. Under clause (b), where no prior provisional attachment had been made, the officer may provisionally attach the property with approval, pending decision of the Adjudicating Authority, or decide not to attach it. Sub-section (5) requires the Initiating officer to draw up a statement of the case and refer the matter to the Adjudicating Authority within one month from the end of the month in which an order under Section 24(4) is passed. Section 25 prescribes the mode of service of notice and provides that notice under Section 24(1) may

be served by post or in the same manner as summons issued under the Code of Civil Procedure, 1908.

19.5. Section 26 concerns adjudication of benami property. Notice is to be issued to the beneficial owner, interested parties, and any person claiming rights in the property. The Adjudicating Authority, after considering replies, relevant materials, and after granting personal hearing to the parties as well as the Initiating Officer, shall pass an order either holding the property to be benami or otherwise, thereby confirming or revoking the attachment under Section 26(3). Sub-section (5) empowers the Adjudicating Authority to provisionally attach another property if, during proceedings, it has reason to believe that such property is also benami, and such action is deemed part of the original reference. The order under Section 26(3) is required to be passed within one year from the end of the month in which the reference under Section 24(5) was made.

19.6. Once an order under Section 26(3) declares the property to be benami, the Adjudicating Authority may, after affording opportunity of hearing, order confiscation of the property under Section 27. Such confiscation remains subject to the result of appeal under Section 46. Section 27(2) protects a bona fide purchaser who acquired the property before issuance of notice under Section 24(1). Section 27(3) provides that upon confiscation, all rights, title and interest in the property vest absolutely in the Central Government free from all encumbrances, and no compensation is payable.

19.7. Under section 28, management of confiscated properties vests in the Administrator, who acts under directions of the Central Government. Section 29 mandates that the Administrator shall take possession after confiscation. Written notice may be issued directing the person in possession to surrender the property within one week, failing which forcible possession may be taken. For such purpose, assistance of the police may be requisitioned, and it is the duty of the officer concerned to render such assistance.

19.8. Chapter V concerns establishment and composition of the Appellate Tribunal, qualifications of its Chairperson and Members, their service conditions, and incidental matters. Sections 40, 46 and 49 are significant. Section 40, dealing with procedure and powers of the Tribunal, states that it shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 and may regulate its own procedure. Sub-section (2) nevertheless confers upon it the same powers as a civil court while trying a suit. Sub-section (3) provides that orders of the Tribunal shall be executable as decrees of a civil court. Sub-section (5) declares that proceedings before the Tribunal shall be deemed judicial proceedings within the meaning of Sections 193 and 228 IPC, and that the Tribunal shall be deemed a civil court for purposes of Sections 345 and 346 Cr.P.C. These provisions unmistakably establish that adjudication and confiscation proceedings cannot, by any stretch of imagination, be treated as prosecution. Confiscation is intended to ensure that a person who has violated

the law is not permitted to enjoy the fruits of such violation. It is remedial and preventive, not penal.

19.9. Section 46 enables filing of an appeal against an order of the Adjudicating Authority. Any person, including the Initiating Officer, may prefer an appeal within forty-five days from receipt of the order passed under Section 26(3). Under sub-section (2), the Tribunal may condone delay on sufficient cause being shown. Sub-section (1A) permits an aggrieved person to appeal against an order under Section 54A as well. Sub-section (4) vests the Tribunal with all powers of the Adjudicating Authority.

19.10. Section 49 provides for appeal to the High Court against an order of the Appellate Tribunal on any question of law arising therefrom within sixty days. Sub-section (8) states that provisions of the Code of Civil Procedure, 1908 relating to appeals to the High Court shall, as far as may be, apply. This indicates that the High Court exercises civil appellate jurisdiction in such matters. These provisions once again demonstrate that proceedings relating to attachment, adjudication and confiscation are civil in nature and cannot be equated with prosecution so as to attract Article 20(2) of the Constitution of India. The entire process from issuance of notice, provisional attachment, adjudication, confiscation, appeal to the Tribunal, and further appeal to the High Court, is a statutory civil action addressing a civil wrong, the proof of which is to be tested on the principle of preponderance of probabilities.

Offences and Prosecution under the Act

20. Let us now examine the provisions of the Act dealing with offences and prosecution. Chapter VI of the Act deals with Special Courts. Such Courts are to be established by the Central Government, in consultation with the Chief Justice of the High Court, by designating one or more Courts of Session as Special Courts for trial of offences punishable under the Act. Section 50(3) provides that the Special Court shall not take cognizance of any offence punishable under the Act except upon a complaint in writing made by the Authority or by any officer of the Central or State Government authorised in writing for that purpose. Under Section 51, unless otherwise provided, the provisions of the Code of Criminal Procedure, 1973 (now the Bharatiya Nagarik Suraksha Sanhita, 2023) apply to proceedings before a Special Court. Section 52 provides for appeal and revision, empowering the High Court to exercise, so far as may be applicable, powers under the relevant appellate and revisional chapters of the Code as if the Special Court were a Court of Session within its territorial jurisdiction.

20.1. The provisions of this Chapter also demonstrate that the Authority under the Act is only empowered to file a complaint before the Special Court and is not competent to submit a police report under Section 173 Cr.P.C. Consequently, such Authority cannot be equated with a police officer. It is also significant that the authorities under the Act have no power to detain a person

involved in a benami transaction. In this regard, the following judgments are instructive.

20.2. In *Ramesh Chandra Mehta v. State of West Bengal*⁴⁰, this Court held that a Customs Officer, though vested with powers of search, seizure, arrest, and grant of bail, does not become a police officer within the meaning of Section 25 of the Evidence Act, since he cannot submit a report under Section 173 Cr.P.C. Proceedings before him are for inquiry and adjudication under the statute, and a person examined therein does not become an accused unless and until a formal complaint is filed before the Magistrate. The following paragraphs are pertinent:

“24.... Under Section 105 of the Customs Act, 1962, it is open to the Assistant Collector of Customs himself to issue a search warrant. A proper officer is also entitled under that Act to stop and search conveyances : he is entitled to release a person on bail, and for that purpose has the same powers and is subject to the same provisions as the officer-in-charge of a police station is. But these additional powers with which the Customs Officer is invested under the Act of 1962 do not, in our judgment, make him a police officer within the meaning of Section 25 of the Evidence Act. He is, it is true, invested with the powers of an officer-in-charge of a police station for the purpose of releasing any person on bail or otherwise. The expression "or otherwise" does not confer upon him the power to lodge a report before a Magistrate under Section 173 of the Code of Criminal Procedure. Power to grant bail, power to collect evidence, and power to search premises or conveyances without recourse to a Magistrate, do not make him an officer-in-charge of a police station, Proceedings taken by him are for the purpose of holding an enquiry into suspected cases of smuggling. His orders are appeal able and are subject also to the revisional jurisdiction of the Central Board of Revenue and may be carried to the Central Government. Powers are conferred upon him primarily for collection of duty and prevention of smuggling. He is for all purposes an officer of the revenue.

25. For reasons set out in the judgment in Criminal Appeal No. 27 of 1967 and the judgment of this Court in Badku Joti Savant's case, we are of the view that a Customs Officer is under the Act of 1962 not a police officer within the meaning of Section 25 of the Evidence Act and the statements made before him by a

⁴⁰ 1968 SCC OnLine SC 62 : AIR 1970 SC 940

person who is arrested or against whom an inquiry is made are not covered by Section 25 of the Indian Evidence Act.

26. It was strenuously urged that under Section 104 of the Customs Act, 1962, the Customs Officer may arrest a person only if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under Section 135 and not otherwise and he is bound to inform such person of the grounds of his arrest. Arrest of the person who is guilty of the offence punishable under Section 135 and information to be given to him amount, it was contended, to a formal accusation of an offence and in any case the person who has been arrested and who has been informed of the nature of the infraction committed by him stands in the character of an accused person. We are unable to agree with that contention. Section 104(1) only prescribes the conditions in which the power of arrest may be exercised. The officer must have reason to believe that a person has been guilty of an offence punishable under Section 135, otherwise he cannot arrest such person. But by informing such person of the grounds of his arrest the Customs Officer does not formally accuse him with the commission of an offence. Arrest and detention are only for the purpose of holding effectively an inquiry under Sections 107 and 108 of the Act with a view to adjudging confiscation of dutiable or prohibited goods and imposing penalties. At that stage there is no question of the offender against the Customs Act being charged before a Magistrate. Ordinarily after adjudging penalty and confiscation of goods or without doing so, if the Customs Officer forms an opinion that the offender should be prosecuted he may prefer a complaint in the manner provided under Section 137 with the sanction of the Collector of Customs and until a complaint is so filed the person against whom an inquiry is commenced under the Customs Act does not stand in the character of a person accused of an offence under Section 135.”

20.3. Likewise, in *Illias v. Collector of Customs, Madras*⁴¹, it was reiterated that even if an officer under a special statute possesses several powers analogous to those of the police, he is not a police officer for purposes of Section 25 of the Evidence Act unless empowered to file a charge-sheet under Section 173 Cr.P.C. The following observation is pertinent:

“12. Adverting to Raja Ram Jaiswal's case [Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752] it is significant that by virtue of Section 77(2) read with Section 78(3) of the Bihar & Orissa Excise Act, 1915, an Inspector or Sub

⁴¹ 1968 SCC OnLine SC 117 : AIR 1970 SC 1065

Inspector was deemed to be an officer-in-charge of a police station and was entitled to investigate any offence under the Excise Act. He could exercise all the powers which an officer-in-charge of a police station could exercise under Chapter XIV of the Code. It was, therefore, held by the majority that a confession recorded by an Excise Officer during an investigation into an excise offence could not reasonably be regarded as anything different from a confession to a police officer. Barkat Ram's case was distinguished on a number of grounds. One was that the excise officer did not exercise any judicial power just as the customs officer did under the Sea Customs Act 1878; secondly the customs officer was not deemed to be an officer-in-charge of a police station and, therefore, he could not exercise powers of such an officer under the Code of Criminal Procedure. Further, the customs officer could make an enquiry but he had no power to investigate into an offence under Section 156 of the Code. Even though some of the powers set out in Chapter XVII of the Sea Customs Act were analogous to those of the police officer under the Code, they were not identical with those of a police officer and were not derived from or by reference to the Code. It was pertinently observed that the customs officer was not entitled to submit a report to a magistrate under Section 190 of the Code with a view that cognizance of the offence be taken by a magistrate. It was then said at p. 766 :

"The test for determining whether such a person is a 'police officer' for the purpose of Section 25 of the Evidence Act would, in our judgment, be whether the powers of a police officer which are conferred on him or which are exercisable by him because he is deemed to be an officer in charge of a police station establish a direct or substantial relationship with the prohibition enacted by Section 25, that is, the recording of a confession. In other words, the test would be whether the powers are such as would tend to facilitate the obtaining by him of a confession from a suspect or a delinquent. If they do, then it is unnecessary to consider the dominant purpose for which he is appointed or the question as to what other powers he enjoys."

13. *Emphasis was laid on the police officers having such powers which enable them to exercise a kind of authority over the persons arrested which facilitate the obtaining from them statements which may be of incriminating nature. The case of Raja Ram Jaiswal came up for discussion in the third of series of these cases, namely, Badku Joti Savant v. State of Mysore. The appellant there had been found in possession of contraband gold. He was prosecuted under Section 167(81) of the Sea Customs Act read with Section 9 of the Land Customs Act. A question arose whether the statement made by the appellant to the Deputy Superintendent of Customs and Excise was admissible in evidence. The contention raised was that the Central Excise Officer under the Central Excises & Salt Act (Act 1 of 1944), hereinafter called the "Central Excise Act", was a police officer within the meaning of those words in Section 25 of the Evidence*

Act. Therefore even though the Deputy Superintendent of Customs and Central Excise had acted under the power conferred on him by the Sea Customs Act, he was still a police officer and the statement made to him which was in the nature of a confession was inadmissible in evidence. This Court referred to the difference of opinion among the High Courts as to the meaning of the words "police officer" used in Section 25 of the Evidence Act. One view was that those words must be construed in a broad way and all officers would be police officers within the meaning of those words if they had powers of the police officer with respect to investigating of offences with which they were concerned even if they were police officers properly so called or not. The narrow view was that these words in Section 25 meant a police officer properly so called and did not include officers of other departments of Government who might be charged with the duty to investigate, under special Acts, special crimes like the excise or customs offences etc. The Court proceeded on the assumption that the broad view was correct. After examining the various provisions of the Central Excise Act and in particular Section 21 it was observed that a police officer for the purpose of Clause (b) of Section 190 of the Code of Criminal Procedure could only be one properly so called. A Central Excise Officer had to make a complaint under Clause (a) of Section 190 of the Code to a magistrate to enable him to take cognizance of an offence committed under the special statute. The argument that a Central Excise Officer under Section 21(2) of the Central Excise Act had all the powers of an officer-in-charge of a police station under Chapter XIV of the Code and, therefore, he must be considered to be a police officer within the meaning of those words in Section 25 of the Evidence Act was repelled for the reason that though such officer had the power of an officer-in-charge of a police station he did not have the power to submit a charge sheet under Section 173 of the Code. Raja Ram Jaiswal's case was distinguished on the ground that Section 21 of the Central Excise Act was in terms different from Section 78(3) of the Bihar & Orissa Excise Act, 1915 which provided that for the purpose of Section 156 of the Code of Criminal Procedure the Excise Officer empowered under Section 77(2) of that Act shall be deemed to be the officer-in-charge of a police station. The following observations at page 704 are indeed important:

"All that Section 21 provides is that for the purpose of his enquiry, a Central Excise Officer shall have the powers of an officer-in-charge of a police station when investigating a cognizable case. But even so it appears that these powers do not include the power to submit a charge-sheet under Section 173 of the Code of Criminal Procedure, for unlike the Bihar & Orissa Excise Act, the Central Excise Officer is not deemed to be an officer-in-charge of a police station."

14. *It was reiterated that the appellant could not take advantage of the decision in Raja Ram Jaiswal's case and that Barkat Ram's case was more apposite. The ratio of the decision in Badku Joti Savant is that even if an officer under the*

special Act has been invested with most of the powers which an officer-in-charge of a police station exercises when investigating a cognizable offence he does not thereby become a police officer within the meaning of Section 25 of the Evidence Act unless he is empowered to file a charge sheet under Section 173 of the Code of Criminal Procedure.

15. Learned counsel for the appellant when faced with the above difficulty has gone to the extent of suggesting that by necessary implication the power to file a charge sheet flows from some of the powers which have already been discussed under the new Act and that a customs officer is entitled to exercise even this power. It is difficult and indeed it would be contrary to all rules of interpretation to spell out any such special power from any of the provisions contained in the new Act. In this view of the matter even though under the new Act a customs officer has been invested with many powers which were not to be found in the provisions of the old Act, he cannot be regarded as a police officer within the meaning of Section 25 of the Evidence Act. In two recent decisions of this Court in which the judgments were delivered only on October 18, 1968 i.e. Ramesh Chandra Mehta v. State of West Bengal and Dady Adarji Fatakia v. K. K. Ganguly, Asstt. Collector of Customs and Anr., the view expressed in Barkat Ram's case with reference to the old Act has been reaffirmed on the question under consideration and it has been held that under the new Act also the position remains the same. This is what has been said in Dady Adarji Fatakia's case :

"For reasons set out in the judgment in Cr. A. 27/67 (Romesch Chand Mehta v. State of West Bengal) and the judgment of this Court in Badku Joti Savant's case, we are of the view that a Customs Officer is under the Act of 1962 not a police officer within the meaning of Section 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by Section 25 of the Indian Evidence Act." "

The provisions of the Act, 1988, though undoubtedly vesting the authorities with powers to search, seize, and prosecute offenders under the Act, do not render them police officers, nor can they exercise all the powers vested in a police officer.

20.4. Chapter VII of the Act, which deals with offences and prosecution, contains seven sections, but only two substantive provisions concern punishment, namely Sections 53 and 54. Orders under Section 54A, as already noticed, are appealable under Section 46, since they arise in the course of proceedings under Chapters III and IV. Section 53 prescribes punishment for benami transactions. Sub-section (1) provides that where any person enters into a benami transaction in order to defeat the provisions of any law, evade payment of statutory dues, or defeat claims of creditors, the beneficial owner, benamidar, and any person who abets, induces, or facilitates such transaction shall be guilty of the offence. Sub-section (2) prescribes punishment of rigorous imprisonment for a term not less than one year and which may extend to seven years, along with fine which may extend to twenty-five per cent of the fair market value of the property. The provision, in our considered view, extends beyond merely identifying the transaction and proceeds to criminalise the underlying motive behind it. This is consistent with the object of both the original enactment and the subsequent amendment introduced to remedy defects and omissions in the earlier law.

20.5. Section 54 prescribes punishment of imprisonment for a term not less than six months, extendable up to five years, along with fine which may extend to ten per cent of the fair market value of the property, against any person who knowingly furnishes false information or false documents in any proceeding under the Act. Section 55 mandates previous sanction of the competent

authority before prosecution can be instituted under Sections 3, 53 or 54. The competent authorities are specified in the Explanation thereto. Section 55A grants immunity from prosecution to persons referred to in Section 53, other than the beneficial owner, in appropriate circumstances. Thus, under the Scheme of the Act, only three provisions namely, Sections 3, 53, and 54, deal with prosecution. Section 3, as already noticed, imposes a general prohibition and also renders the prohibited transaction punishable. The statutory design is such that the effect of a benami transaction is nullified through confiscation of the property by civil action, while criminal punishment follows only where the requisite mental element is established.

20.6. The grounds for prosecution are materially wider and qualitatively distinct from the standard required to determine whether a transaction is benami for purposes of confiscation. To adjudge a transaction as benami, the standard of preponderance of probabilities may suffice. However, to convict a person under Section 53, the prosecution must establish the motive and ingredients of the offence in accordance with criminal law standards.

20.7. Accordingly, we have no hesitation in holding that the actions contemplated under Chapter IV and Chapter VII pursue different objects are governed by different procedures, and entail different consequences. They may therefore proceed simultaneously or successively. If action is taken under both Chapters, such course does not amount to double jeopardy under Article 20(2) of the Constitution.

20.8. Chapter VIII contains miscellaneous provisions. Section 60 states that application of other laws is not barred. This must be understood in harmony with the object of the enactment. Other statutes dealing with the same transaction or related misconduct may continue to operate concurrently. Section 62 deals with offences by companies and renders every person in charge of, and responsible to, the company for conduct of its business liable, including directors, managers, secretaries, or other officers, where contravention is established. Such officers may also incur personal liability where the violation occurred with their consent, connivance, or neglect. Section 65 provides that all pending cases before any court or judicial forum, other than the High Court, shall stand transferred to the Adjudicating Authority or Appellate Tribunal. This provision must be read harmoniously with Section 45, introduced in 2016. The bar under Sections 45 or 65 does not apply to matters already pending before the High Court or the Supreme Court of India. Section 66 provides that proceedings may be continued against, or initiated against, the legal representatives of a deceased person, except proceedings under Section 3(2) or Chapter VII. This clearly indicate that confiscatory proceedings may survive or be commenced against legal representatives, whereas penal proceedings cannot. This once again underscores the twin yet independent remedies contemplated under the Act. Section 67 gives the Act overriding effect over inconsistent laws, and Section 68 empowers the Central Government to frame rules for carrying out the purposes of the Act. Before any transfer is effected, there must be at least a *prima facie*

determination that the dispute concerns a benami transaction. It is at this stage that the principles underlying Order VII Rule 11 and Order XIV Rule 2 CPC may assume relevance.

Independent nature of Confiscation and Prosecution under the Benami Law

21. Further, both before and after the amendment, the Act contemplates two distinct deterrent measures to prohibit benami transactions, namely, confiscation and punishment. Confiscation is a civil action directed against the property itself and not against the individuals participating in the benami transaction. Personal action against such individuals is by way of prosecution contemplated under Chapter VII. The consequence of adjudication and confiscation is that the property vests in the Central Government, as the rights of both the benamidar and the beneficial owner stand extinguished. Such action is in the nature of forfeiture of property, which is a civil consequence flowing from violation of the statute with recovery as its object. Penal action imposing punishment stands on a different footing. The burden of proof and presumptions applicable to the two proceedings are independent, and one does not depend upon the outcome of the other. Unless prosecution is launched under Sections 53 or 54 of the Act, the person proceeded against in adjudicatory proceedings, cannot be termed an accused. Similar provisions are found in several other enactments.

21.1. In *Assistant Collector of Customs, Bombay and another v. L.R. Melwani*

*and another*⁴² a Constitutional Bench of this Court considered whether confiscation proceedings under the Sea Customs Act amount to prosecution.

Accordingly, it was held as under:

"7. Reliance on Article 20(2) is placed under the following circumstances. In the enquiry held by the Collector of Customs, he gave the benefit of doubt to accused Nos. 1 and 2. This is what he stated therein :

"As regards M/s. Larmel Enterprises (of which accused No. 1 is the proprietor and accused No. 2 is the Manager) although it is apparent that they have directly assisted the importers in their illegal activities and are morally guilty. Since there is no conclusive evidence against them to hold them as persons concerned in the act of unauthorised importation, they escape on a benefit of doubt."

*8. Despite this finding the Assistant Collector in his complaint referred to earlier seeks to prosecute these accused persons. Hence the question is whether that prosecution is barred under Article 20(2) of the Constitution which says that no person shall be prosecuted and punished for the same offence more than once. This Article has no direct bearing on the question at issue. Evidently those accused persons want to spell out from this Article, the rule of *autrefois acquit* embodied in Section 403, Criminal Procedure Code. Assuming we can do that still it is not possible to hold that a proceeding before the Collector of Customs is a prosecution for an offence. In order to get the benefit of Section 403, Criminal Procedure Code or Article 20(2), it is necessary for an accused person to establish that he had been tried by a "court of competent jurisdiction" for an offence and he is convicted or acquitted of that offence and the said conviction or acquittal is in force. If that much is established, it can be contended that he is not liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236 or for which he might have been convicted under Section 237. It has been repeatedly held by this Court that adjudication before a Collector of Customs is not a "prosecution" nor the Collector of Customs a "Court". In *Maqbool Hussain v. The State of Bombay*, MANU/SC/0062/1953 : 1983ECR1598D(SC) this Court held that the wording of Article 20 of the Constitution and the words used therein show that the proceedings therein contemplated are proceedings of the nature of criminal proceedings before a court of law or a judicial tribunal and "prosecution" in this context would mean an initiation or starting of proceedings of a criminal*

⁴² 1968 SCC OnLine SC 161 : AIR 1970 SC 962

*nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. This Court further held that where a person against whom proceedings had been taken by the Sea Customs authorities under Section 167 of the Sea Customs Act and an order for confiscation of goods had been passed, was subsequently prosecuted before a criminal court for an offence under Section 23 of the Foreign Exchange Regulation Act in respect of the same act, the proceeding before the Sea Customs authorities was not a "prosecution" and the order for confiscation was not a "punishment" inflicted by a Court or judicial tribunal within the meaning of Article 20(2) of the Constitution and hence his subsequent prosecution was not barred. The said rule was reiterated in *Thomas Dana v. State of Punjab*, MANU/SC/0140/1958 : [1959] S.C.R. 274. and in several other cases."*

21.2. In *Divisional Forest Officer and another v. G.V. Sudhakar Rao and Others*⁴³, while dealing with confiscation under the Forest Act and prosecution for fresh offences, this Court held that acquittal of the accused in the criminal trial, whether the paucity of evidence or otherwise, does not necessarily nullify the confiscation order based on the authorised officer's independent satisfaction that a forest offence had been committed; and that, proceedings for confiscation were held to be capable of continuing simultaneously and independently of the criminal case. The following paragraphs are pertinent:

"13. As to the scope and effect of Sub-section (2A) of Section 44 of the Act, different views appear to have prevailed in the High Court. In State of Andhra Pradesh v. P.K. Mohamad and Ors. (1978) 1 A.P.L.J. 391, Jeewan Reddy, J. held that the general power of the Court under Section 452 of the Code or that of the Magistrate under Section 457 to direct disposal of seized property, had to be read along with and in the context of the special procedure prescribed by the Amendment Act 17 of 1976. In that case, the Forest Officer produced the seized forest produce and the vehicle used for the commission of a forest offence under Sub-section (1) of Section 44 before the Authorized Officer along with a report as contemplated by Sub-section (2) thereof for purposes of confiscation, and thereafter he produced the accused before a Magistrate for trial for the commission of such offence. In those circumstances, the learned Judge held that

⁴³ (1985) 4 SCC 573

the Amending Act by Sub-section (2A) of Section 44 created the Authorized Officer to be the competent authority to direct confiscation of any timber or forest produce on his being satisfied that a forest offence has been committed in respect thereof, and the seized property having been produced by the Forest Officer before the Authorized Officer along with a report for confiscation under Sub-section (2A) of Section 44 of the Act, the Magistrate could not have any jurisdiction to pass an order under Section 457 of the Code for the disposal of such property. A discordant note was, however, struck by a Division Bench consisting of Sambasiva Rao, C.J. and Raghuvir, J. in Smt. Haji Begum v. State of Andhra Pradesh and Ors. (1978) 2 A.P.L.J. 191. The learned Judges held that the power of the Authorized officer to direct confiscation under Sub-section (2A) of Section 44 of the Act and that of the Magistrate under Section 45 were mutually exclusive and, therefore, there could not be simultaneous proceedings for confiscation before the Authorized Officer under Sub-section (2A) of Section 44 and also the trial of the accused for commission of a forest offence under Section 20 or 29 of the Act. Their conclusion was based on the use of the words 'either' and 'or' in Sub-section (2) of Section 44 of the Act and they held that the Forest Department had an option to adopt either of the two courses. The judgment of the High Court in Sot. Haji Begum's case was clearly wrong and was reversed by this Court in State of Andhra Pradesh v. Smt. Haji Began (supra), where it was observed:

“In our opinion, on the facts and circumstances of the case, the order of the High Court is not fit to be sustained. The High Court has taken an erroneous view of the report of the Forest Ranger to the Magistrate while forwarding the accused to him. The proceeding as to the confiscation of the property seized as also the car has got to go on before the Divisional Forest Officer.”

14. *We find that a later Division Bench consisting of Kondaiah, C.J. and Punneya, J. in Mohd. Yaseen and Ors. v. the Forest Range Officer, Flying Squad, Rayachoti and Ors (1980) 1 A.L.T. 8, approved of the view expressed by Jeewan Reddy, J. in P.K. Mohammad's case (supra), and held that the Act contemplates two procedures, one for confiscation of goods forming the subject-matter of the offence by the Authorized Officer under Sub-section (2A) of Section 44 of the Act, and the other for trial of the person accused of the offence so committed under Section 20 or 29 of the Act. The learned Judges held that the Act provides for a special machinery for confiscation of illicitly felled timber or forest produce by the Authorized Officer under Sub-section (2A) of Section 44 enacted in the general public interest to suppress the mischief of ruthless exploitation of Government forests by illicit felling and removal of teak and other valuable forest produce. They further held that merely because there was an acquittal of the accused in the trial before the Magistrate due to paucity of evidence or otherwise did not a necessarily entail in nullifying the order of*

confiscation of the seized timber or forest produce by the Authorized Officer under Sub-section (2A) of Section 44 of the Act based on his satisfaction that a forest offence had been committed in respect thereof. We affirm the view expressed by Jeewan Reddy, J. in P.K. Mohamad's case and by Kondaiah, C.J. and Punnayya, J. in Mohd. Yaseen's case.

15. The result therefore is that the appeal succeeds and is allowed. The judgment and order of the High Court passed under Section 482 of the CrPC, 1973 for stay of the proceedings before the Authorized Officer under Sub-section (2A) of Section 44 of the Andhra Pradesh Forest Act, 1967 are set aside and the Authorized Officer is directed to proceed with the inquiry for confiscation of the seized timber in accordance with law."

21.3. Similarly, in *State of Madhya Pradesh and Others v. Kallo Bai*⁴⁴, while construing confiscation provisions under the M.P Van Upaj (Vyapar Viniyaman) Adhiniyam, this Court held as follows:

"22. In view of the foregoing discussions, it is apparent that Section 15 gives independent power to the concerned authority to confiscate the articles, as mentioned there under, even before the guilt is completely established. This power can be exercised by the concerned officer if he is satisfied that the said objects were utilized during the commission of a forest offence. A protection is provided for the owners of the vehicles/articles, if they are able to prove that they took all reasonable care and precautions as envisaged under Sub-section (5) of Section 15 of the Adhiniyam and the said offence was committed without their knowledge or connivance.

23. Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle.

24. At the cost of repetition we clarify that confiscatory proceedings are independent of the main criminal proceedings. In view of our detailed discussion in the preceding paragraph we are of opinion that High Court as well as the revisional court erred in coming to a conclusion that the confiscation

⁴⁴ (2017) 14 SCC 502

under the law was not permissible unless the guilt of the Accused is completely established.

25. Consequently the appeal is allowed and the judgment of the High Court is set aside.”

21.4. This Court in *Radhika Aggarwal v. Union of India and Others*⁴⁵, while considering whether prosecution is maintainable prior to adjudication and the relationship between adjudication and prosecution, held as under:

“61. However, relying upon the judgment in the case of Makemytrip (supra), it has been submitted on behalf of the petitioners, that the power under sub-section (5) to Section 132 cannot be exercised unless the procedure under Section 73 of the GST Act is completed and an assessment order is passed quantifying the tax evaded or erroneously refunded or input tax credit wrongly availed. According to us, this contention should not be accepted as a general or broad proposition. We would accept that normally the assessment proceedings would quantify the amount of tax evaded, etc. and go on to show whether there is any violation in terms of clauses (a) to (d) to sub-section (1) of Section 132 of the GST Acts and that clause (i) to sub-section (1) is attracted. But there could be cases where even without a formal order of assessment, the department/Revenue is certain that it is a case of offence under clauses (a) to (d) to sub-section (1) of Section 132 and the amount of tax evaded, etc. falls within clause (i) of sub-section (1) to Section 132 of the GST Acts with sufficient degree of certainty.. .”

Therefore, adjudication undertaken for the purpose of confiscation of benami property stands on a distinct and independent footing from criminal proceedings initiated for prosecution of offences under the Act.

21.5. Much reliance has been placed on the judgment of this Court in *Union of India v. Ganpati Dealcom Private Limited*⁴⁶ to contend that the erstwhile provisions under Sections 3(2) and 5 of the Benami Act, stood struck down, and that the 2016 amendment must therefore operate prospectively. However, the

⁴⁵ (2025) 6 SCC 545

⁴⁶ (2023) 3 SCC 315

judgment dated 23.08.2022 was subsequently recalled in Review Petition (Civil) No 359 of 2023 in Civil Appeal No. 5783 of 2022 *vide* order dated 18.10.2024, on the ground that the constitutional validity of those provisions had never been specifically challenged. The Court held that no declaration of invalidity could have been made in the absence of a proper *lis* and contest on constitutionality. Consequently, the earlier judgment was recalled and the appeal restored for adjudication. The relevant passage of the order dated 18.10.2024 is extracted below for ready reference:

“4. The Court has declared Section 3(2) of the unamended provisions of the Prohibition of Benami Property Transactions Act, 1988 as unconstitutional for being manifestly arbitrary and as violative of Article 20(1) of the Constitution. The provisions of Section 5 of the unamended Act, prior to the Amendment of 2016, have been declared to be unconstitutional on the ground that they are manifestly arbitrary.

5. It is not disputed that there was no challenge to the constitutional validity of the unamended provisions. This is also clear from the formulation of the question which arose for consideration before the Bench in paragraph 3 of the judgment, which has been extracted above. In the submissions of parties which have been recorded in the judgment, the issue of constitutional validity was not squarely addressed.

6. A challenge to the constitutional validity of a statutory provision cannot be adjudicated upon in the absence of a lis and contest between the parties. We accordingly allow the review petition and recall the judgment dated 23 August 2022. Civil Appeal No 5783 of 2022 shall stand restored to file for fresh adjudication before a Bench to be nominated by the Chief Justice of India on the administrative side.”

21.6. Therefore, we have no hesitation in holding that the prohibition contained in Section 3 as well as the power of confiscation vested in the Central Government, continued to remain operative during the period when the property in question was allegedly purchased by K. Raghunath with funds said to have

been provided by the plaintiff, the legal effect whereof shall be considered later in this judgment.

21.7. Reverting now to the statutory scheme, Chapter IV deals with the mechanism for attachment, adjudication, and confiscation, while Chapter VII deals with offences and penalties. In the adjudication process, confiscation is the eventual consequence. The substantive power to confiscate property involved in benami transactions existed even under the unamended law; what the 2016 amendment introduced was a detailed procedural framework which was earlier absent. It must be reiterated that Chapters IV and VII are self-contained codes, inasmuch as they provide independent mechanisms governed by separate procedures and remedies under law.

(E) PROSPECTIVE OR RETROSPECTIVE OPERATION OF THE 2016 AMENDMENT

22. The next question that falls for consideration is, whether the amended provisions operate prospectively or retrospectively. In this regard, it is necessary to recall the object and reasons underlying the amendment, which can be gathered from the statements made when the amendments were proposed in Parliament. The amendments as is evident, were introduced to cure the mischiefs and omissions in the original enactment, which had failed to curb benami transactions in the manner expected, and effective steps could not be taken for want of adequate procedural provisions.

22.1. It is also noteworthy that certain provisions under the unamended Act were omitted and substituted by new provisions, while several fresh provisions were inserted prescribing the procedure to be followed before confiscation of property and establishing mechanisms of appeal against orders declaring property as benami. At the same time, the foundational provisions prohibiting benami transactions, rendering them offences, extinguishing the right to enforce or defend claims based on benami arrangements, enabling confiscation of benami property, and prohibiting re-transfer, continued substantially in force.

22.2. Ordinarily, every statute is presumed to be prospective unless the statute itself expressly or by necessary implication provides otherwise. Equally, it is well settled that the mere fact that a law is brought into force from a particular date does not necessarily mean that it operates only prospectively. To determine the true temporal operation of a statute, the object of the enactment must be considered. If the purpose of the amendment is to cure a defect, remove an omission, substitute appropriate provisions earlier lacking, effectively implement the original legislative intent, or if the amendment is clarificatory, declaratory or validating in nature, it may legitimately receive retrospective operation.

22.3. It is also apposite to observe that protection against retrospectivity generally extends only to vested or accrued rights. The Act of 1988 had already prohibited benami transactions. Even prior thereto, provisions under the Indian

Trusts Act, the Code of Civil Procedure and the Income-tax Act imposed restrictions on such arrangements. Further, after the Forty-Fourth Constitutional Amendment, the right to property ceased to be a fundamental right and remained only a constitutional right. A person, therefore, cannot claim a vested right to enter into transactions designed to defeat or circumvent the law. It is a settled principle that what cannot be done directly cannot be permitted to be done indirectly.

22.4. In this context, it would be useful to refer to the settled principles laid down in *Bengal Immunity Company Limited v. State of Bihar and others*⁴⁷ wherein the rule in *Heydon case*⁴⁸ was approved, namely, that the Court must adopt such construction as suppresses the mischief and advances the remedy.

The relevant paragraph reads as follows:

“27. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon case [Heydon case, MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637] was decided that—

“...for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered—

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and

⁴⁷ (1955) 1 SCC 763

⁴⁸ MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637

advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.”

22.5. The Constitution Bench in *Shyam Sunder and others v. Ram Kumar and another*⁴⁹ held that where an enactment declares or explains the previous law, such declaratory legislation ordinarily operates retrospectively, since its purpose is to remove omissions or clarify the earlier statute. The following paragraph is apposite: (SCC p. 49, para 39)

“39.... Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word "declaration" in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective...”

22.6. In *Zile Singh v. State of Haryana and others*⁵⁰ it was reiterated that while statutes are generally prospective, the presumption against retrospectivity does not apply to declaratory or clarificatory enactments. If an amendment is introduced to cure an acknowledged evil, explain the prior law, or supply an obvious omission, retrospective operation may be inferred from legislative intent. The following paragraphs are pertinent: (SCC pp. 8-9, paras 13-15)

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair

⁴⁹ (2001) 8 SCC 24

⁵⁰ (2004) 8 SCC 1

existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only--'nova constitutio futuris formam imponere debet non praeteritis'--a new law ought to regulate what is to follow, not the past. (See *Principles of Statutory Interpretation* by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (*ibid.*, p. 440).

14. The presumption against retrospective operation is not applicable to declaratory statutes... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (*ibid.*, pp. 468-69).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (*Statute Law*, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

16. Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to "explain" a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is the case of *Attorney General v. Pougett* [*Attorney General v. Pougett*, MANU/ENRP/0454/1816 : (1816) 2

Price 381 : 146 ER 130] (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said: (ER p. 134)

'The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act: but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act;' (Price at p. 392)

17. Maxwell states in his work on *Interpretation of Statutes* (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it 'may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it' (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary secundum materiam" (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p. 231).

18. In a recent decision of this Court in *National Agricultural Coop. Mktg. Federation of India Ltd. v. Union of India* [MANU/SC/0243/2003 : (2003) 5 SCC 23] it has been held that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."

22.7. In *Commissioner of Income Tax I, Ahmedabad v. Gold Coin Health Food Private Limited*⁵¹, this Court held that the Court must analyse the true nature of the amendment. The date from which it is brought into force is not conclusive; what is material is whether the amendment is clarificatory or substantive. The following paragraphs are pertinent:

"8. It would be of some relevance to take note of what this Court said in Virtual case [MANU/SC/0879/2007 : (2007) 9 SCC 665]. Pointing out one of the important tests at para 51 it was observed that even if the statute does contain a statement to the effect that the amendment is clarificatory or declaratory, that is not the end of the matter. The court has to analyse the nature of the amendment to come to a conclusion whether it is in reality a clarificatory or declaratory provision. Therefore, the date from which the amendment is made operative does not conclusively decide the question. The court has to examine the scheme of the statute prior to the amendment and subsequent to the amendment to determine whether amendment is clarificatory or substantive."

"18. As noted by this Court in CIT v. Podar Cement (P) Ltd. [MANU/SC/0649/1997 : (1997) 5 SCC 482] the circumstances under which the amendment was brought in existence and the consequences of the amendment will have to be taken care of while deciding the issue as to whether the amendment was clarificatory or substantive in nature and, whether it will have retrospective effect or it was not so."

22.8. In *Commissioner of Income Tax (Central) -I, New Delhi v. Vatika Township Private Limited*⁵² this Court recognised that declaratory or clarificatory statutes may operate retrospectively, particularly when introduced to explain the meaning of an earlier enactment or remove doubts as to its effect. The following paragraph is pertinent: **(SCC p. 23, para 32)**

"32. The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh [Principles of Statutory Interpretation, (13th Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:

⁵¹ (2008) 9 SCC 622

⁵² (2015) 1 SCC 1

'Declaratory statutes

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies [W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court (in Central Bank of India v. Workmen [Central Bank of India v. Workmen, MANU/SC/0142/1959 : AIR 1960 SC 12, p. 27, para 29]): "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted". But the use of the words "it is declared" is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language "shall be deemed always to have meant" is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the preamended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law.'

The above summing up is factually based on the judgments of this Court as well as English decisions."

22.9. In *Indian Performing Rights Society Limited v. Sanjay Dalia and another*⁵³, this Court reaffirmed the mischief rule of interpretation, namely, that

⁵³ (2015) 10 SCC 161 : (2016) 1 SCC (Civ) 55

statutory construction must suppress the mischief sought to be remedied and advance the legislative object. The following paragraph is pertinent:

"24. ... It is settled proposition of law that the interpretation of the provisions has to be such which prevents mischief. The said principle was explained in Heydon's case [MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637]. According to the mischief rule, four points are required to be taken into consideration. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. Heydon's [MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637], mischief rule has been referred to in Interpretation of Statutes by Justice G.P. Singh, 12th Edn., at pp. 124-25 thus:

"(b) Rule in Heydon's case [MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637]; purposive construction: mischief rule

When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words 'of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)' is the rule laid down in Heydon's case [MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637] which has now attained the status of a classic (Kanai Lal Sur v. Paramnidhi Sadhukhan [MANU/SC/0097/1957 : AIR 1957 SC 907]). The rule which is also known as "purposive construction" or "mischief rule" (Anderton v. Ryan [MANU/UKHL/0021/1985 : 1985 AC 560: (1985) 2 WLR 968: (1985) 2 All ER 355 (HL)]), enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act; (ii) What was the mischief or defect for which the law did not provide; (iii) What is the remedy that the Act has provided; and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy". The rule was explained in Bengal Immunity Co. Ltd. v. State of Bihar [MANU/SC/0083/1955 :AIR 1955 SC 661] by S.R. Das, C.J...."

22.10. In *State Bank of India v. V. Ramakrishnan and another*⁵⁴, this court held that where an amendment is intended to clarify and set at rest an overbroad interpretation of an earlier provision, such amendment is clarificatory and therefore retrospective in nature.

⁵⁴ (2018) 17 SCC 394: (2019) 2 SCC (Civ) 458

22.11. In *Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited and others*⁵⁵, this Court reiterated that if the legislature supplies an obvious omission or explains a former statute, the subsequent amendment relates back to the date of the original enactment and may operate retrospectively. The following paragraphs are pertinent:

“89. It could thus be seen that what is material is to ascertain the legislative intent. If legislature by an amendment supplies an obvious omission in a former statute or explains a former statute, the subsequent statute has a relation back to the time when the prior Act was passed.”

“94. We have no hesitation to say that the words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the I&B Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation.”

22.12. Applying the above principles, it is clear that the 2016 amendments were enacted to cure the mischiefs and omissions in the original legislation, which had become largely unworkable in practice. The legislative intent to make the statute effective is manifest. The prohibition against benami transactions already existed. No period of limitation was prescribed either under the original Act or under the amended Act for initiating action against benami property or against persons involved in such transactions. Action for confiscation or prosecution may therefore be taken whenever the transaction comes to the notice of the competent authorities.

⁵⁵ (2021) 9 SCC 657; (2021) 4 SCC (Civ) 638

22.13. Further, when a *lis* comes before a Court disclosing a benami transaction, the Court is duty-bound to consider the applicability of the Act and enforce the statutory prohibition. The amended provisions merely introduced a complete machinery for attachment, adjudication and appeals. Though attachment and adjudication were elaborately structured for the first time, these provisions are essentially procedural and regulatory, intended to ensure fairness and avoid arbitrary action before confiscation. Unless the amendment is given retroactive operation, the very object of making the legislation workable would be defeated.

22.14. The appellate remedies introduced are beneficial safeguards providing checks against arbitrary exercise of power, and beneficial procedural provisions ordinarily operate retrospectively. So far as penal consequences are concerned, enhanced punishment cannot be retrospectively imposed; however, the machinery provisions enabling adjudication, confiscation and enforcement, being curative and procedural, can apply retrospectively.

22.15. Accordingly, we hold that the 2016 amendments, insofar as they are declaratory, procedural, curative and machinery-oriented, operate retrospectively / retroactively, while penal provisions creating new offences or enhancing punishment can operate only prospectively.

(F) “FIDUCIARY CAPACITY” UNDER THE AMENDED ACT

23. Before proceeding to the facts, another aspect that requires consideration is the scope of the exception contained in Section 4(3) of the unamended Act viz-a-vis Section 2(9) of the Act post-amendment. Section 4(3) as it stood prior to amendment, exempted certain categories of transactions, namely, those between coparceners in a Hindu Undivided Family or members of a joint family, purchases in the name of wife or unmarried daughter, and transactions involving persons standing in a fiduciary capacity. The said provision was omitted, and the relevant exclusions were incorporated into the substituted Section 2(9) which defines a “benami transaction”. We have already held that such omission and substitution would operate retrospectively.

23.1. The expression “fiduciary capacity” was not defined in the original enactment. Under the amended provision, however, the explanation refers to a trustee, executor, partner, director of a company, a depository or participant as an agent under the Depositories Act, 1996, and any other persons as may be notified by the Central Government.

23.2. Ordinarily, where the legislature employs the word “includes”, the definition is prima facie extensive and enlarging. Where the word “means” alone is used, the definition is generally exhaustive. Where the expression “means and includes” is employed, the definition is ordinarily exhaustive while also clarifying its scope. However, even where only the word “includes” is used,

the context, object of the statute, and the structure of the provision may indicate a restrictive or exhaustive intention.

23.3. In *South Gujarat Roofing Tiles Manufacturers Association and another v. State of Gujarat and another*⁵⁶, a Bench of three Judges held that though “includes” is commonly used as a word of extension, it may, in a given statutory context, be construed in a restrictive sense where such interpretation alone advances the legislative intent. The following paragraphs are pertinent:

*“3. The question turns on a true construction of the Explanation to entry 22 which says that for the purpose of this entry potteries industry “includes” the manufacture of the nine “articles of pottery” specified therein. Pottery in a wide sense will take in all objects that are made from clay and hardened by fire, from crude earthen pots to delicate porcelain. Mr. Patel appearing for the respondent, State of Gujarat, contends that the Explanation indicates that potteries industry in entry 22 is intended to cover all possible articles of pottery including Mangalore pattern roofing tiles. Referring to the well-known use of the word ‘include’ in interpretation clauses to extend the meaning of words and phrases occurring in the body of the statute, Mr. Patel submits that the Explanation, when it says that potteries industry ‘includes’ the nine named objects, what is meant is that it includes not only these objects but other articles of pottery as well. It is true that ‘includes’ is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation. We may refer to the often-quoted observation of Lord Watson in *Dilworth v. Commissioner of Stamps* (1899) A.C. 105, that when the word ‘include’ is used in interpretation clauses to enlarge the meaning of words or phrases in the statute*

“these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include”.

Thus where ‘includes’ has an extending force it adds to the word or phrase a meaning which does not naturally belong to it. It is difficult to agree that ‘includes’ as used in the Explanation to entry 22 has that extending force. The Explanation says that for the purpose of entry 22, potteries industry includes the manufacture of the nine “articles of pottery” specified in the Explanation. If the

⁵⁶ (1976) 4 SCC 601 : AIR 1977 SC 90

objects specified are also "articles of pottery", then these objects are already comprised in the expression "potteries industry". It hardly makes any sense to say that potteries industry includes the manufacture of articles of pottery, if the intention was to enlarge the meaning of potteries industry in any way.

4. We are also unable to agree with Mr. Patel that the articles specified in the Explanation may have been mentioned out of abundant caution to emphasize the comprehensive character of the entry, to indicate that all varieties of pottery are included therein. This argument, though more plausible, does not also seem acceptable. It is possible that one might have doubts whether things like refractory or electrical or textile accessories would pass under the description pottery as that word is used in common parlance, but the Explanation also mentions crockery and toys regarding which there could be hardly any doubt. The inclusion in the list of objects which are well- recognised articles of pottery makes it plain that the Explanation was added to the entry not by way of abundant caution.

5. The contention of Mr. Tarkunde for the appellants is that the articles mentioned in the Explanation were intended to be exhaustive of the objects covered by entry 22. According to Mr. Tarkunde if the legislature wanted to bring within the entry all possible articles of pottery then there was hardly any point in mentioning only a few of them by way of Explanation. To this Mr. Patel's reply is that it is well-known that where the legislature wants to exhaust the significance of the term defined, it uses the word 'means' or the expression 'means and includes', and that if the intention was to make the list exhaustive, the legislature would not have used the word 'includes' only. We do not think there could be any inflexible rule that the word 'include' should be read always as a word of extension without reference to the context. Take for instance entry 19 in the schedule which also has an Explanation containing the word 'includes'. Entry 19 is as follows :

Employment in any tobacco processing establishment, not covered under entry No. 3.

Explanation.-For the purpose of this entry, the expression "processing" includes packing or unpacking, breaking up, sieving, thrashing, mixing, grading, drying, curing or Otherwise treating the tobacco (including tobacco leaves and stems) in any manner.

Entry 3 to which entry 19 refers reads:

Employment in any tobacco (including bidi making) manufactory.

It is clear from the Explanation to entry 19 that there could be no other way or manner of "processing" besides what is stated as included in that expression. Though 'include' is generally used in interpretation clauses' as a word of

*enlargement, in some cases the context might suggest a different intention. Pottery is an expression of very wide import, embracing all objects made of clay and hardened by heat. If it had been the legislature's intention to bring within the entry all possible articles of pottery, it was quite unnecessary to add an Explanation. We have found that the Explanation could not possibly have been introduced to extend the meaning of potteries industry or the articles listed therein added ex abundanti cautela. It seems to us therefore that the legislature did not intend everything that the potteries industry turns out to be covered by the entry. What then could be the purpose of the Explanation? The Explanation says that, for the purpose of entry 22, potteries industry 'includes' manufacture of the nine articles of pottery named therein. It seems to us that the word 'includes' has been used here in the sense of 'means', this is the only construction that the word can bear in the context. In that sense it is not a word of extension, but limitation; it is exhaustive of the meaning which must be given to potteries industry for the purpose of entry 22. The use of the word 'includes' in the restrictive sense is not unknown. The observation of Lord Watson in *Dilworth v. Commissioner of Stamps* (1899) A.C.105, which is usually referred to on the use of 'include' as a word of extension, is followed by these lines :*

"But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions".

It must therefore be held that the manufacture of Mangalore pattern roofing tiles is outside the purview of entry 22."

23.4. In *Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corpn. Ltd. and Others*⁵⁷, it was observed that whether the term "includes" is expansive or restrictive depends upon the purpose, context, and scheme of the enactment. The following paragraph is apposite:

"13. As the language shows, the definition of the word "premises" as given in Section 2(c) of the Act is a very comprehensive one and it not only means any building or hut or part of a building or hut and a seat in a room, let separately, but also includes godowns, gardens and outhouses appurtenant thereto and also

⁵⁷ (2007) 3 SCC 607 : AIR 2007 SC 788

any furniture supplied or any fittings or fixtures affixed for the use of the tenant in such building, hut or seat in a room, as the case may be....”

23.5. In *N.D.P. Namboodripad (Dead) by LRs. v. Union of India and Others*⁵⁸

this Court held that although “includes” is generally a word of enlargement, in certain contexts, it may also signify “means and includes”, “comprises” or “consists of”. The following paragraph is pertinent:

“18. The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include". Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain". Illustrated Oxford Dictionary defines the word "include" as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word "includes" as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word "includes" is also used to connote a specific meaning, that is, as "means and includes" or "comprises" or "consists of."

23.6. In *S.Vanitha v. Deputy Commissioner, Bengaluru Urban District and Others*⁵⁹, this Court held as under:

“27.....The definition of the expression "shared household" in Section 2(s) uses the familiar legislative formula of a "means and includes" definition.

28. Where the definition of an expression in an enactment adopts a 'means and includes' stipulation, it is intended to be exhaustive. The 'means' part of the definition indicates what would normally fall within the ambit of the expression, while the 'includes' element gives it an extended meaning. Together they indicate that the legislature has provided for an exhaustive enumeration of what falls within the ambit of the definition.

⁵⁸ (2007) 4 SCC 502

⁵⁹ (2021) 15 SCC 730

28.1. *Justice G P Singh in his seminal treatise on the Principles of Statutory Interpretation 21 observes:*

The Legislature has the power to define a word even artificially. So the definition of a word in the definitions Section may either be restrictive of its ordinary meaning or it may be extensive of the same. When a word is defined to "mean" such and such, the definition is prima facie restrictive and exhaustive.

28.2. *On the other hand, "includes" is titled so as to comprehend an extensive meaning:*

Whereas, where the word defined is declared to "include" such and such, the definition is prime facie extensive. When by an amending Act, the word "includes" was substituted for the word "means" in a definitions section, it was held that the intention was to make it more extensive.....

28.3. *The use of the expression "means" is intended to make it exhaustive. On the other hand, the use of the expression "includes" is intended to make it more extensive. The legislature by using an expression "includes" evinces, notwithstanding the meaning of the phrase, an intention:*

to enlarge the meaning of the words or phrases occurring in the body of the statute.

"Includes" is utilized so as to comprehend:

not only such things as they signify according to their nature and import but also those things which the interpretation Clause declares that they shall include.

28.4. *However, when a statutory definition incorporates the 'means and includes' approach, the intent is to make the definition exhaustive. Further, a definition may be in the form of 'means and includes', where again the definition is exhaustive."*

[See in this context the decisions in Jagir Singh v. State of Bihar; MANU/SC/0689/1975 : AIR 1976 SC 997, pp. 999, 1001 :1976 SCC (Tax) 204 : (1976) 2 SCC 942; Kasilingam v. P.S.G. College of Technology, supra, Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union, MANU/SC/1574/2007 : (2007) 4 SCC 685 (para 23) : (2007) 4 JT 573 : (2007) 2 LLJ 825 : AIR 2007 SC 2320; Paul Enterprise v. Rajib Chatterjee and Co., MANU/SC/0031/2009 : (2009) 3 SCC 709 para 28 : (2009) 1 JT 632]".

23.7. In the present case, while explaining the category of persons standing in a fiduciary capacity, the legislature has specified identifiable classes such as trustee, executor, partner, director, depository participant, and has further expressly reserved power to the Central Government to notify additional categories. The conferment of such specific delegated power is a significant indicator that enlargement beyond the enumerated classes was intended to occur through notification rather than unrestricted judicial expansion.

23.8. Accordingly, for the purposes of the Act, the expression “fiduciary capacity” must receive a restricted and controlled construction. Persons expressly enumerated would undoubtedly fall within the exception, and any additional category would ordinarily require notification by the Central Government. In the absence thereof, the scope of the exception cannot be widened merely on equitable considerations.

(G) EXEMPTION UNDER THE ACT ON ACCOUNT OF FIDUCIARY RELATIONSHIP

24. The Plaintiff, apart from contending that the suit is founded upon the Will, has also pleaded that there existed a fiduciary relationship between him and the deceased K. Raghunath. According to the Plaintiff, acting in trust and confidence, he entered into various MOUs with K. Raghunath, transferred funds to him for the purchase of agricultural lands in the latter’s name, to be held for the benefit of the plaintiff, thereafter converted into non-agricultural lands, and

ultimately reconveyed or transferred in favour of the plaintiff. For the said arrangement, a consideration of Rs. 2,50,000/- per acre was allegedly fixed.

24.1. Reliance has been placed by the learned Senior Counsel for the plaintiff on the decisions in *Pawan Kumar v. Babulal* (*supra*), *P.V. Guru Raj Reddy v. P. Neeradha Reddy* (*supra*), *Marcel Martins v. M. Printer* (*supra*) and the judgments in *Liverpool & London S.P. & I Assn. Ltd* (*supra*), *Hardesh Ores (P) Ltd* (*supra*), *Vinod Infra Developers Ltd.* (*supra*), *Shaifali Gupta v. Vidya Devi Gupta* (*supra*), and *Bharti Cellular Ltd v. CIT*⁶⁰, to contend that the existence or otherwise of a fiduciary relationship is a mixed question of fact requiring trial.

24.2. There can be no quarrel with the proposition that disputed questions of fact are ordinarily to be adjudicated upon trial. However, there equally exists a duty upon the Court, while considering an application for rejection of plaint, to ascertain whether any real dispute of fact arises at all and whether the suit is barred by law even if the averments in the plaint are taken at their face value. The Court must satisfy itself that the plaint discloses a genuine triable issue and not a mere illusion of cause of action.

24.3. We have already held that the plaint must be given a meaningful reading so as to determine whether it discloses a real cause of action and whether any statutory bar is attracted. In the present case, though the plaint does not expressly employ the phrase “fiduciary relationship”, the plaintiff seeks to infer

⁶⁰ (2024) 462 ITR 247

such relationship on the basis that the deceased K. Raghunath was a loyal employee in the group of companies run by the plaintiff's father and therefore, the relationship between the plaintiff and the deceased was fiduciary in character. We are unable to agree with the said contention.

24.4. Firstly, an employer-employee relationship does not, by itself, fall within the recognized categories of fiduciary relationship for the purpose of exemption under the Benami legislation. Secondly, the law does not ordinarily recognize a fiduciary relationship between a company and its employee, or between a director and an employee of the company, in the sense sought to be projected here. Rather, the recognized fiduciary duty is that of a director towards the company since a director is bound to act in the interests of the company.

24.5. A company is a distinct juristic entity, separate from its directors, though it necessarily acts through them. Likewise, directors are not ordinarily fiduciaries of individual shareholders, except in special circumstances where personal advice is tendered and relied upon in good faith. The limited fiduciary obligations that may arise in an employment relationship, such as duties relating to confidentiality, trade secrets, loyalty during service, or acts done in the course of employment, cannot be expanded so as to validate or transform an otherwise prohibited property arrangement into a fiduciary holding exempt from the statute.

24.6. In the present case, the plaintiff himself pleads that the deceased was an employee in companies run by his father. There is no pleaded personal

relationship of employer and employee between the plaintiff and the deceased K. Raghunath. Even otherwise, such relationship cannot, in law, be elevated to a fiduciary relationship so as to attract the statutory exception. Hence, the contention that the matter necessarily requires trial is liable to be rejected.

24.7. In this regard, it would be useful to refer to *Sangramsinh P. Gaekwad and others v. Shantadevi P. Gaekwad (Dead) through LRs and others*⁶¹, wherein this Court explained that fiduciary duty arises where one person is bound to protect the interests of another and must not derive personal gain from that position of trust. The Court further held that a director stands in fiduciary capacity vis-à-vis the company, but not ordinarily vis-à-vis individual shareholders, save in special circumstances. The following paragraphs are apposite:

“FIDUCIARY DUTY:

.....

42. A Director of a Company indisputably stands in a fiduciary capacity vis--vis the Company. He must act for the paramount interest of the company. He does not have any statutory duty to perform so far as individual shareholders are concerned subject of course to any special arrangement which may be entered into or a special circumstance that may arise in a particular case. Each case, thus, is required to be considered having regard to the fact situation obtaining therein and having regard to the existence of any special arrangement or special circumstance.

43. The question came up for consideration as far back in 1901 in Percival v. Wright, 1902 (2) Ch. 421. In that case, the shares of the company were in few hands which were transferable only with the approval of the Board of Directors. The shares did not carry any market price and were not to be quoted at the stock exchange. The plaintiffs therein intended to dispose of certain shares where for they offered 12 / 5 s. per share purported to be based on a valuation which they had obtained from independent valuers a few months prior thereto. The said

⁶¹ (2005) 11 SCC 314 : AIR 2005 SC 809

offer was accepted. The transaction pertaining to the said agreement was entered into but it was later on discovered by the plaintiffs that prior to and during their own negotiations for sale the Chairman and the Board were approached by one Holden with a view to purchase the entire undertaking of the company with a view to resell the same at a profit to a new company. The question of fiduciary obligation on the part of the Directors arose therein when the plaintiff brought an action against the Chairman and the two other purchasing Directors asking for setting aside the sale on the ground that the defendants as Directors ought to have disclosed the feature of negotiations with Holden when negotiating purchase of their shares. The question therein posed was: Assuming that directors are, in a sense, trustees for the company, are they trustees for individual shareholders? The Chancery Division despite holding that the Directors must act bonafide and for the best interest of the company did not accept the argument that the relationship between the shareholders inter se are the same as that of partners in an unincorporated company holding :

"...The contrary view would place directors in a most invidious position, as they could not buy or sell shares without disclosing negotiations, a premature disclosure of which might well be against the best interests of the company. I am of the opinion that directors are not in that position. There is no question of unfair dealing in this case. The directors did not approach the shareholders with the view of obtaining their shares. The shareholders approached the directors, and named the price at which they were desirous of selling."

44. *Percival (supra)* was noticed by a 4-Judge Bench of this Court in *Nanlal Zaver and Anr. v. Bombay Life Assurance Co. Ltd. and Ors.* MANU/SC/0003/1950 : [1950] 1 SCR 391 in the following terms:

"It is clear that until the Singhanian group get their names entered in the register of the members they are not shareholders but are complete strangers to the company. It has been held in *Percival v. Wright*, L.R. (1902) 2 Ch. 421 that ordinarily the directors are not trustees for the individual shareholders. Even if the directors owe some duty to the existing shareholders on the footing of there being some fiduciary relationship between them as stated in some cases [see for example *In re Gresham Life Assurance Society*] [L.R. 8 Ch. App. 446] I see no cogent reason for extending this principle and imputing any kind of fiduciary relationship between the directors and persons who are complete strangers to the company. In my judgment, therefore, the conduct of the respondents 2 to 9 cannot be judged on the basis of any assumed fiduciary relationship existing between them and the Singhanian group. In my opinion, the respondents 2 to 9 owed no duty to the Singhanian group and, therefore, the motive to exclude them cannot be said to be mala fide per se."

...

48. In *Palmer's Company Law*, 23rd edition, page 848, it is stated: "64-02. Relationship is with company: The fiduciary relationship of a director exists with the company: the director is not usually a trustee for individual shareholders. Thus, a director may accept a shareholder's offer to sell shares in the company although he may have information which is not available to that other, and the contract cannot be upset even if the director knew of some fact which made the offer an attractive proposition...."

49. In *Pennington's Company Law* 6th Edn. at page 608-09, it is stated :

"Directors owe no fiduciary or other duties to individual members of their company in directing and managing the company's affairs, acquiring or disposing of assets on the company's behalf, entering into transactions on its behalf, or in recommending the adoption by members of proposals made to them collectively. If directors mis-manage the company's affairs, they incur liability to pay damages or compensation to the company or to make restitution to it, but individual members cannot recover compensation for the loss they have respectively suffered by the consequential fall in value of their shares, and they cannot achieve this indirectly by suing the directors for conspiracy to breach the duties which they owed the company. However, there may be certain situations where directors do owe a fiduciary duty and a duty to exercise reasonable skill and care in advising members in connection with a transaction or situation which involves the company or its business undertaking and also the individual holdings of its members."

50. In *Dawson International plc v. Coats Patons plc*, 1988 SLT 854 *Percival (supra)* was relied upon holding that the Directors are, in general, under no fiduciary duty to shareholders and in particular current shareholders with respect to the disposal of their shares in the most advantageous way as directors are not their agents and as such are not normally entrusted with the management of their shares. It was, however, observed that if the directors take it upon themselves to give advice to current shareholders they have a duty to act in good faith and not fraudulently nor can mislead the shareholders whether deliberately or carelessly, in which event, they may have a remedy.

51. A distinction, thus, has been carved out as regards the fiduciary duty of the directors with regard to the property and funds of the company as contra-distinguished from the duty of directors to current shareholders as sellers of their shares. In case of conflict between two interests, the company's interest must be protected. The directors, however, will have a fiduciary relation if they have taken unto themselves the burden of giving advice to current shareholders.

52. The aforementioned principles of law found favour with the Court in *Needle Industries (India) Ltd. and Ors. v. Needle Industries Newey (India) Holding Ltd. and Ors.* MANU/SC/0050/1981 : [1981] 3 SCR 698 wherein it was held:

"Where directors of a company seek, by entering into an agreement to issue new shares, to prevent a majority shareholder from exercising control of the company, they will not be held to have failed in fiduciary duty to the company if they act in good faith in what they believe, on reasonable grounds, to be the interests of the company. If the directors' primary purpose is to act in the interests of the company, they are acting in good faith even though they also benefit as a result."

55. *Fiduciary duty of the Directors to the company should not be equated with the duty to the shareholders.*

56. *In Peskin and Anr. v. Anderson and Ors., [2001] 1 BCLC 372, Percival (supra) as also other decisions taking similar or contrary view were noticed by the Court of Appeal including the judgment of the Court of Appeal in New Zealand in Coleman v. Myers as also Court of Appeal of New South Wales in Brunninghausen v. Glavanics, (1999) 46 NSWLR and held that the directors had no fiduciary duty to the shareholders in the facts and circumstances obtaining therein. However, observations were made therein that such duties may arise in special circumstances demonstrating the salient features and well-established categories of fiduciary relationship such as agency which involves duties of trust, confidence and loyalty.*

24.8. Further, the pleadings and the documents filed along with the plaint disclose that the alleged transfer of funds for purchase of property was based on contractual arrangements embodied in the MOUs. The transaction is commercial in nature. A fixed consideration of Rs. 2,50,000/- per acre was allegedly agreed upon. Such an arrangement, involving consideration and reciprocal commercial obligations, cannot be equated with property being held in trust for the benefit of another so as to constitute a fiduciary holding. A commercial arrangement, breach of which may entitle remedies in contract or common law, does not become a fiduciary relationship merely because confidence is asserted by one party. Consequently, we reject the contention of the Respondent / Plaintiff that

there existed any fiduciary relationship between him and K. Raghunath so as to exempt the transaction from the rigour of the Benami law.

(H) BAR TO SUCCESSION TO THE ESTATE OF THE DECEASED

25. The learned senior counsel for the Appellants submitted that the Respondent is disentitled to inherit the estate of the deceased K. Raghunath by virtue of the disqualification contained in Section 25 of the Hindu Succession Act, 1956. On the other hand, the learned senior counsel appearing for the Respondent relying upon the judgment of the Karnataka High Court in *Ramaiah's* case (*supra*) contended that execution of a Will does not amount to a transfer of property and therefore, the bar under Section 25 would not apply.

25.1. Before advertng to the rival submissions, it is necessary to notice the relevant provisions of the Hindu Succession Act, 1956, as follows:

“5. Act not to apply to certain properties

This Act shall not apply to

- (i) *any property succession to which is regulated by the Indian Succession Act, 1925 (39 of 1925), by reason of the provisions contained in section 21 of the Special Marriage Act, 1954 (43 of 1954);*
- (ii) *any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;*
- (iii) *the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.*

25. Murderer disqualified

A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

27. Succession when heir disqualified

If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

30. Testamentary succession:

Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.”

25.2. As per Section 5 of the Hindu Succession Act, the provisions of the Act do not apply only to the categories expressly excluded therein. Apart from the said exceptions, there is nothing in the Act which excludes the application of its provisions to a Hindu, who succeeds to the estate of a deceased by testamentary succession.

25.3. It is trite law that disposition by Will is contemplated under Section 30 of the Hindu Succession Act, 1956 and Part VI of Indian Succession Act, 1925. In *N.P. Saseendran v. N.P. Ponnammam and others*⁶², while considering whether a document was a Will or a settlement, this Court held that a Will is a testamentary instrument intended to take effect after the death of the testator and remains revocable during his lifetime. The relevant paragraphs read as under:

“11.2. Will is a testamentary document dealt under the Indian Succession Act, 1925. Part VI of the Act deals with the Testamentary Succession. We will consider only the relevant provisions applicable to this case. Will is defined under Section 2(h) as a legal declaration of the intention of the testator to be

⁶² 2025 Livelaw SC 345

given effect after his death. Such declaration is with respect to his property and must be certain. As per Section 59, every person of sound mind, not being a minor, may dispose of his property by executing a Will. Section 61 states the circumstances under which a Will is void. Section 62 enables a person to revoke or alter a Will at any time while he is competent to dispose of his property by will. Needless to say, since the Will comes into effect only after his life time, he is at full liberty to revoke or alter his earlier Will any number of times as long as he is in sound state of mind and not hit by the circumstances enumerated under Section 62...

Interplay between Gift and Will

11.4. As we have seen, a will is the declaration of the intention of the testator to give away his property. Such will comes into force after the death of the testator. The most important requirement for a valid will is that it must again be a voluntary disposition in sound mind, which must be explicit from the instrument itself. Therefore, it can be concluded that every will also has an element of gift, with the difference being the disposition deferred until the death of the testator. Insofar as the revocation is concerned, the testator is at liberty to revoke or alter the will any number of times until his demise, but it is essential that he remains of sound mind while doing so."

25.4. However, in the present case, we are not concerned with a mere transfer of property, but with inheritance and succession to the estate of the deceased. Succession to the estate of the deceased devolves in two ways, namely: (i) intestate succession, and (ii) testamentary succession. Intestate succession takes place in accordance with the rules of personal law governing inheritance. Testamentary succession takes place when property is bequeathed through a Will.

25.5. Section 25 of the Hindu Succession Act provides that a person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which such person committed or abetted the

commission of murder. Section 27 further declares that where a person is so disqualified, the property shall devolve as if such person had predeceased the intestate. Section 30 recognises testamentary succession and enables any Hindu to dispose of property by Will or other testamentary disposition in accordance with the Indian Succession Act, 1925 or any other applicable law. Thus, the Hindu Succession Act contemplates both intestate and testamentary succession. Consequently, the bar under Section 25 applies equally to a person who seeks to inherit the estate of the deceased through testamentary succession.

25.6. The principle underlying Section 25 is founded upon public policy, justice, equity and good conscience, namely, that no person can be permitted to profit from his own wrong. The statutory provision merely incorporates a long-settled equitable doctrine. The bar against a murder inheriting the estate of the deceased existed even prior to the coming into force of the Hindu Succession Act, 1956. A person must not be permitted to profit from or take advantage of his own wrong. This principle is reflected in the maxim *ex turpi causa non oritur actio* and the rule that no man may benefit from his own wrong.

25.7. It would be appropriate to refer to the judgment of this Court in ***Union of India and others v. Major General Madan Lal Yadav***⁶³, which explain the underlying principle, as follows:

“28. Even if narrow interpretation is plausible, on the facts in this case, we have no hesitation to conclude that the trial began on 25-2-1987 on which date the court martial assembled, considered the charge and the prosecution undertook

⁶³ (1996) 4 SCC 127 : 1996 SCC (Cri) 592

to produce the respondent who was found escaped from the open detention, before the Court. It is an admitted position that GCM assembled on 25-2-1987. On consideration of the charge, the proceedings were adjourned from day to day till the respondent appeared on 2-3-1987. It is obvious that the respondent had avoided trial to see that the trial would not get commenced. Under the scheme of the Act and the Rules, presence of the accused is a precondition for commencement of trial. In his absence and until his presence was secured, it became difficult, nay impossible, to proceed with the trial of the respondent-accused. In this behalf, the maxim *nullus commodum capere potest de injuria sua propria* — meaning no man can take advantage of his own wrong — squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2). In *Broom's Legal Maxim* (10th Edn.) at p. 191 it is stated:

“... it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim *frustra legis auxilium invocat quaerit qui in legem committit*. He relies on *Perry v. Fitzhove* [(1846) 8 QB 757 : 15 LJ QB 239]. At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that “it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned”. At p. 195, it is further stated that “a wrong doer ought not to be permitted to make a profit out of his own wrong”. At p. 199 it is observed that “the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed”.

25.8. The aforesaid principle was reiterated in ***Municipal Committee Katra and others v. Ashwani Kumar***⁶⁴, as follows:

“18. The situation at hand is squarely covered by the latin maxim ‘*nullus commodum capere potest de injuria sua propria*’, which means that no man can take advantage of his own wrong. This principle was applied by this Court in the case of *Union of India v. Maj. Gen. Madan Lal Yadav*...

⁶⁴ 2024 SCC OnLine SC 840

19. It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make profit out of his own wrong'. The conduct of the respondent-writ petitioner is fully covered by the aforesaid proposition."

25.9. Similarly, in *Binod Pathak and others v. Shankar Choudhary and others*⁶⁵, this Court explained the distinction between right arising from wrongdoing and advantages flowing from wrong doing, and reiterated that courts must not validate gains derived from abuse of process or wrongful conduct. The following paragraphs are pertinent:

"45. The genesis of the provision of Rule 10A of the Order XXII lies in the doctrine of 'clean hands'. The doctrine of 'clean hands' originates from the Roman Law, and finds expression in two latin maxims being (i) ex injuria ius non oritur and (ii) nullus commodum capere potest de injuria sua propria, which mean "from wrong, no right arises" and "no one can take advantage of their own wrong", respectively. [See: Schwebel, Stephen M. "Clean Hands, Principle" Eds., Rüdiger Wolfrum, Oxford University Press, 2009].

46. Although the aforesaid two maxims, semantically appear to be one and the same, with the courts often applying the two interchangeably, yet there lies a very fine but pertinent distinction between the two maxims. The two maxims are comparable to each other but they are not interchangeable, and differ in their scope. Aaron X. Fellmeth and Maurice Horwitz in the "Guide to Latin Maxims in International Law" 1st Ed., Oxford University Press, has explained the maxim ex injuria ius non oritur as follows: -

"A right does not arise from wrongdoing." A maxim meaning that one cannot generally rely on a violation of law to establish a new legal right or to confirm a claimed right. E.g., "As Lauterpacht has indicated the maxim ex injuria ius non oritur is not so severe as to deny that any source of right whatever can accrue to third persons acting in good faith. Were it otherwise the general interest in the security of transactions would be too greatly invaded and the cause of minimizing needless hardship and friction would be hindered rather than helped." Advisory Opinion on Legal Consequences For States Of The Continued Presence Of South Africa In Namibia (South

⁶⁵ 2025 SCC OnLine SC 1411

*West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. Rep. 16, 167 (separate opinion of Judge Dillard). An alternative formulation is *Ius ex iniuria non oritur*. Compare with *Nullus commodum capere potest de sua iniuria propria*. ”*

48. A perusal of the aforesaid makes it abundantly clear, that while the maxim ‘*ex injuria ius non oritur*’ is a principle governing the general spirit of the jurisprudence of “rights”, that a right cannot emanate or emerge from a wrongful act, the maxim ‘*nullus commodum capere potest de injuria sua propria*’, on the other hand, confirms the general rule of equity and prudence that no one can benefit from their own wrongdoing. The scope of the latter is wider than the former. The first maxim explains that the legitimacy of a right stands vitiated if such right, which otherwise would have been legitimately exercisable, accrues from a wrongdoing of the person claiming under or exercising such right. Although, under the law, a right may arise even if from a wrongdoing, yet if exercise of such right is allowed, it would malign the very jurisprudential underpinning of ‘right’ and ‘duty’. A right has a legal sanctity and backing to it, in order for it to have a legitimising effect, since the jural correlative of a right is duty. More particularly, the term “right” is very specific to not include every benefit, profit or advantage. The maxim solidifies the faith in law that no wrong action will be given a legal validity. The legal validity of a right flows from other legal norms or from a source of law [See: Niel MacCormick, “Rights in Legislation”, *Law, Morality and Society: Essays in Honour of H.L.A. Hart*, P.M.S. Hacker, and Joseph Raz (eds). 189-206, Oxford: Clarendon Press (1977)].

49. The maxim, ‘*nullus commodum capere potest de injuria sua propria*’, on the other hand, lays itself as a rule of equity. An advantage falling from wrongdoing may be a legal or illegal advantage. The maxim dictates that, be that as it may, no profit or advantage of a person’s wrongful act may be validated by the seal of law. It may very well happen, that the advantage may be legal or illegal, but the validation of law will not be extended to it by the law. Thus, the courts that have the discretion to allow or disallow the availment of such advantage in ordinary circumstances, are constrained to not permit a person who has committed a wrongful act to benefit from the advantageous position afforded to him because of such wrongful action as a matter of justice, equity and fairness. Fellmeth and Horwitz rightly extend an illustration, that when a person himself destroys evidence, he cannot take shelter of the defence of lack of evidence. The advantage falling from the wrong will not be validated by the courts of law. 50. The interpretation of Order XXII Rule 10A is a manifestation of the latter and not the former i.e., the cornerstone of its nature and the effect is the maxim ‘*nullus commodum capere potest de injuria sua propria*’ or no one should derive benefit from their own wrong. This is because of the procedural nature of the provision as held in *Kanan Bala* (supra) and a catena of other decisions of

this Court. Although, the provision aims to do justice over technicalities by casting a duty upon the pleader to apprise the court as-well as all parties about the demise of his client, yet it does not prescribe any penalty for the non-compliance of the same, wilful or inadvertent. A pleader may not be put to the perils of any penalty for his failure in performing the duty under Rule 10A in law, yet it does not mean that such failure would also be of no bearing in equity or of inconsequence to the ultimate abatement of the suit or appeal.

.....

53. We would like to remind the High Court of this very important legal maxim of ‘*nullus commodum capere potest de injuria sua propria*’. It is the duty of the court to ensure that dishonesty or any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorised or unjust gain for anyone by abusing of the process of the court. No one should be permitted to use the judicial process for earning undeserved gains for unjust profits. The courts’ constant endeavour should be to ensure that everyone gets just and fair treatment.

54. We may clarify with a view to obviate any possibility of confusion that the maxim ‘*ex injuria ius non oritur*’ is different from the maxim ‘*nullus commodum capere potest de injuria sua propria*’ for the reason that the former pertains to a ‘right’ that may become available to a wrongdoer due to the wrongful act and the latter relates to an ‘advantage’ or ‘benefit’ that a wrongdoer may derive from his wrongful conduct. Although both are in essence a byproduct of the doctrine of equity and share a common genealogy under the doctrine of clean hands, the field in which they operate are different and distinct. In case of the first maxim, had the right not emanated from a wrongful act, it would have been cemented in law and the person in whose favour such right had accrued, could have pleaded for vindication of the same, with sufficient guarantee, that his plea would be accepted by the court. However, in the case of the second maxim, if the advantage was not being derived from a wrongful act, the courts would nevertheless still have the discretion to hold whether the person in whose favour such advantage had arisen, could avail such advantage or not. While in such a case there would be no embargo on the courts to deny the advantage to the person eligible to benefit from the same, the courts could still rule that such person could not avail the benefit. Having considered the cases in which there is no wrong done by the person deriving the right or benefit from their actions, we shall now see how the wrongful action affects the conclusion of the courts in both such scenarios as-well. The answer to this is straightforward. In the first case, when a right accrues to the person who has committed the wrongful act due to such act, and while the law regards it as an enforceable right, yet the courts are armed with power to deny the vindication of such rights, which they ordinarily could not have done. Put it differently, while the existence of such rights is undeniable in the eyes of law, yet the exercise or enforceability of such

rights would nevertheless be deniable by the courts in equity. The way the maxim envisages the application of this principle is based on one another well-known principle; that equity cannot supplant the law. When the courts deny the right that may have accrued by a wrongdoing, the courts in essence are not denying the right itself i.e., they are not supplanting the right emanating from a law, rather, they are drawing upon the reservoir of equity within their conscience, to withhold its enforcement, not to contradict the law, but to ensure that the law does not become an instrument for legitimizing its own violation through the hands of courts who are expected and reposed of the faith to uphold the law in the first place. Hence, under the first maxim, the courts cannot deny such rights, as they flow from the law, but any vindication or enforcement can be if they require the touch of courts, by invoking a higher standard of fairness that guards against the instrumentalization of legal rights as vehicles of injustice.”

25.10. Further, Section 25 does not envisage a situation where the person claiming inheritance must necessarily stand convicted in a criminal case. The disqualification operates against a person who commits murder or abets the commission of murder. The provision does not make conviction a condition precedent. The provision imposes a civil consequence against a wrongdoer and the issue may be examined on the standard of preponderance of probabilities, independent of the strict standard of proof applicable to criminal prosecution.

25.11. We take judicial notice of the judgments by various High Courts following the law laid down by this Court, holding that the expression “murder” occurring in Section 25 would include culpable homicide. Reference may be made to *Anil Behari Ghosh v. Latika Bala Dassi and others*⁶⁶, *Nannepuneni Seetharamaiah and others v. Nannepuneni Ramakrishnaiah*⁶⁷, *Chaman Lal v.*

⁶⁶ (1955) 1 SCC 638

⁶⁷ AIR 1970 AP 407

*Mohan Lall and others*⁶⁸, *Minoti v. Sushil Mohan Singh Malik and another*⁶⁹ and *M. Nagarajan v. V.M. Nagammal*⁷⁰.

25.12. The reliance placed upon *Ramaiah*'s case to contend that there is no transfer of property is misplaced. We are concerned here with inheritance and succession, and not with a mere *inter vivos* transfer. The execution of a Will is an expression of the intention of the testator that the property shall devolve upon the beneficiary after his lifetime. As held in *N. Saseendran v. N.P. Ponnammal and others* (supra), the disposition takes effect upon the death of the testator, subject to revocation during his lifetime. In any event, the judgment in *Ramaiah*'s case does not advance the case of the Respondent / Plaintiff as the present controversy concerns disqualification from succession and not transfer simpliciter.

25.13. In the present case, the Plaintiff has been accused of the murder of K. Raghunath and a CBI investigation is stated to be pending. The said fact has been suppressed by the Plaintiff in the pleadings. We have already held that a person guilty of suppression of material facts is not entitled to be heard and that the plaint is also liable to be rejected. We have further held that an application under Order VII Rule 11 CPC and a preliminary issue on a pure question of law may be considered together. Since the suppression is apparent on a plain reading of the plaint, we deem it unnecessary to relegate the parties to the trial Court

⁶⁸ AIR 1977 DELHI 97

⁶⁹ AIR 1982 BOMBAY 68

⁷⁰ Second Appeal No. 225 of 2006 decided on 23.12.2011, Madras High Court

again for adjudication of any question of law as a preliminary issue. The matter can appropriately be decided at this stage itself.

(I) WHETHER THE OBJECT OF THE CONTRACT IS LAWFUL

26. As per Sections 10 and 23 of the Indian Contract Act, 1872, a contract without lawful consideration or with an unlawful object is void. The relevant provisions read as under:

“10. What agreements are contracts.—All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.”

“23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless—
it is forbidden by law; or
is of such a nature that if permitted, it would defeat the provisions of any law; or
is fraudulent; or
involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

26.1. In the present case, the averments in the plaint, read conjointly with the documents filed therewith, disclose that the object of entering into the four MOUs was to circumvent the provisions of the Karnataka Land Reforms Act, 1961, particularly Sections 79A and 79B thereof, which imposed financial

restrictions on persons or families seeking to purchase agricultural lands. The provisions also required that the holder personally cultivate the lands.

26.2. The pleadings further disclose that since the Plaintiff or his company was disentitled from directly purchasing the lands, a mechanism was devised whereby the Plaintiff allegedly funded the purchase in the name of another, caused the lands to be converted for non-agricultural use, and thereafter sought transfer in his own favour. The Plaintiff also claims to have paid the entire consideration. Such an arrangement was plainly intended to defeat the statutory mandate of the Karnataka Land Reforms Act and is therefore hit by Section 23 of the Contract Act. The MOUs, being founded upon an unlawful object, are illegal and void, and no rights can arise therefrom.

26.3. That apart, the transaction, in substance, bears all the indicia of a benami arrangement of the kind sought to be prohibited under the Benami Act. What cannot be done directly cannot be permitted to be achieved indirectly. The Plaintiff through careful drafting, seeks to portray the suit as one founded solely on the Will. However, the pleadings in the plaint, as also the recitals in the Will, expressly refer to the MOUs and thereby reveal the underlying illegal arrangement between the Plaintiff and the deceased. Though the expression “benami” is not used in the plaint, a meaningful and substantive reading unmistakably discloses such an arrangement. It is trite that substance must prevail over form. Courts are not bound by mere labels in pleadings and must read between the lines to ascertain the true nature of the transaction. The

plaint, therefore, was wholly unsustainable in law, and the trial Court was justified in rejecting the same.

(J) RELIEFS TO WHICH THE APPELLANTS ARE ENTITLED

27. Though the plaint is liable to be rejected, the appellants cannot, for that reason alone, claim entitlement to the suit schedule properties. Their case is that the said properties were the self-acquired properties of the deceased K.Raghunath, who is stated to have executed a registered Will dated 28.01.2016 bequeathing the same in favour of his wife, pursuant to which the appellants claim to have secured mutation in the revenue records and to be in peaceful possession thereof. The appellants have substantially relied upon the averments contained in the plaint filed by the Respondent and the criminal cases registered against him.

27.1. We have already held that the transactions in question are benami in nature. Once such finding is returned, the properties become liable to confiscation in accordance with law. In that view of the matter, the appellants have failed to establish that the suit properties were acquired from the independent funds of the deceased.

V. FINDINGS

28. We are of the considered view that experience shows property is often acquired in the name of another, not out of necessity, but to circumvent statutory restrictions, defeat creditors, conceal beneficial ownership or avoid the rigours of law. Such arrangements, though outwardly innocuous, are designed to separate ostensible title from real control, enabling persons to enjoy benefits while evading corresponding legal obligations. The Prohibition of Benami Property Transactions Act, 1988, as amended, was enacted precisely to dismantle such structures and to ensure that substance prevails over form.

28.1. Courts, in the discharge of their adjudicatory function, must therefore remain vigilant against attempts to secure judicial recognition of what the law expressly prohibits. The judicial process cannot be employed as an instrument to enforce rights founded upon transactions forbidden by statute. Courts are duty-bound to pierce the veil of form and ascertain the real nature of the transaction, for what cannot be done directly cannot be permitted to be achieved indirectly through the medium of legal proceedings.

28.2. At the same time, the power to reject a plaint at the threshold under Order VII Rule 11 CPC is a serious jurisdiction to be exercised with due circumspection. While genuine causes must not be shut out prematurely, courts are equally bound to prevent misuse of judicial process where the pleadings, on their own showing, disclose no enforceable right or reveal a claim barred by law. The provision thus serves as an important filter, balancing access to justice

with the need to prevent frivolous, vexatious, or legally untenable claims from being carried to trial.

28.3. In the present case, though the plaint is ostensibly framed as one founded upon a testamentary instrument and succession to the estate of the deceased, a meaningful and holistic reading shows that the real foundation of the claim is the assertion that the suit properties were purchased by the deceased with funds allegedly provided by the plaintiff and were thereafter held for his benefit. The claim is thus inseparably intertwined with an assertion of beneficial ownership arising from an arrangement which squarely attracts the mischief of the Benami Act.

28.4. We have already held that the initial transactions of purchase were benami transactions, against which the statutory bar continues even after the amendment. Therefore, the plaintiff cannot assert any claim thereto. The purchase of the properties by K. Raghunath is not protected by any of the exceptions contained in Sections 3 or 4 of the Benami Act, either before or after amendment, and the object of the MOUs relied upon is illegal and void. Equally, the appellants / defendants, claiming as legal heirs, are not entitled to derive any advantage therefrom, having failed to establish that the suit properties were acquired from the independent funds of the deceased.

28.5. The suit schedule properties are consequently liable to confiscation under Section 27 of the Act. Since the bar under Sections 45 and 65 does not

operate against the High Court or this Court, it is unnecessary to relegate the parties to the Adjudicating Authority once a competent judicial determination declaring the transaction benami has attained finality. In such circumstances, confiscation may follow as a consequence of that declaration.

29. The conspectus of our discussion and findings may be summarised thus:

- (i) An application under Order VII Rule 11 can be taken up along with a preliminary objection and decided together by the trial Court;
- (ii) Admission of a plaint is not automatic; trial Courts shall verify whether the plaint satisfies the requirements of Order VII Rule 11 CPC before issuing summons. However, merely because the plaint has been admitted and summons issued, the defendants are not precluded from seeking rejection of the plaint or raising a preliminary objection;
- (iii) A disputed question of fact requiring the adducing and appreciation of evidence cannot ordinarily be decided as a preliminary objection or while considering an application for rejection of plaint. However, this does not preclude the Court from examining whether the very basis of such question is legally sustainable before relegating the parties to the ordeal of trial;

- (iv) There is no fiduciary relationship between a director of a company and an employee of the company. Rather, the relationship between the company and its director is fiduciary in nature. Contractual relationships supported by valid consideration also stand outside the fiduciary exception, being commercial transactions and not arrangements founded merely on trust;
- (v) The bar under Section 25 of the Hindu Succession Act, 1956 applies to both intestate and testamentary succession. A person accused of the murder of one from whom inheritance is claimed, is disentitled from asserting rights, not only under Section 25 but also on the principles of justice, fair play and equity. Strict proof is not indispensable in civil proceedings if the preponderance of probabilities points to commission of the offence;
- (vi) A contract entered into for the purpose of circumventing the law is illegal and cannot be enforced or relied upon in a court of law;
- (vii) Courts below must curtail frivolous suits which are barred by law, and cases where the cause of action disclosed is illusory, by piercing the veil of clever drafting and giving a meaningful and wholesome reading to the plaint and accompanying documents, preferably at the earliest stage of the suit;
- (viii) A curative or declaratory amendment is retrospective in operation. The scheme of the Benami Act does not prescribe any

timeline for initiation of action by issuance of notice. The amendments introduced in 2016 are retrospective in operation and the provisions can be invoked in respect of earlier benami transactions as well;

- (ix) Confiscation is a civil consequence and does not amount to prosecution under the scheme of the Act. Confiscation and prosecution contemplated under the Benami Act operate in distinct spheres and are governed by different procedures. Hence, Article 20(2) of the Constitution is not attracted;
- (x) Once a transaction is declared to be benami in judicial proceedings and such declaration attains finality, the property is liable to confiscation, and recourse to the procedure under Sections 24 to 26 of the Act need not be followed, since the Adjudicating Authority cannot sit in appeal over a judicial determination. Prosecution may thereafter proceed in accordance with Chapter VII of the Act, if not already initiated.
- (xi) Trial Courts, where any matter touching upon a benami transaction is pending, shall take up the issue as a preliminary issue and decide it at the earliest point of time, and if a prima facie case is made out, transfer the matter to the Adjudicating Authority or the Appellate Tribunal, as the case may be.

VI. CONCLUSION

30. Before parting, we deem it appropriate to observe that it is not uncommon in legal history that whenever the law seeks to prohibit, human ingenuity seeks to disguise. From the use of proxies in earlier times to modern layered transactions, the separation of real ownership from ostensible title has long been employed as a device to evade legal restraints. Benami transactions are but a contemporary manifestation of that tendency, where legality is outwardly simulated though never truly intended. Courts, however, are concerned not with the façade, but with the substance that lies beneath it. The judicial process cannot be invoked to validate, protect, or perfect that which the law itself declares impermissible.

30.1. It is this interplay between form and reality that falls for consideration in the present case, where a claim ostensibly founded upon a testamentary instrument was, in substance, an attempt to secure judicial recognition of a transaction prohibited by law. Such an approach cannot be countenanced by this Court. Where the statute not only prohibits such transactions but also provides for stringent consequences, the Court would be failing in its duty if it were to remain a silent spectator.

30.2. The power of confiscation is not merely punitive in character, but serves a larger public purpose, namely to preserve the sanctity of lawful ownership, deter colourable devices, and ensure that no person derives advantage from transactions structured to defeat the mandate of law. Stern enforcement of the

statute, wherever warranted, alone would send a clear message that benami transactions shall neither receive judicial indulgence nor escape statutory consequences.

31. In view of the above, the impugned judgment dated 22.02.2024 passed by the High Court in R.F.A. No. 2216 of 2023 (DEC/INJ) is set aside. The Central Government is directed to appoint an Administrator and take over the suit properties, in accordance with law, within a period of eight weeks from the date of receipt of this judgment. It is made clear that since the judicial determination declaring the transaction to be *benami* has attained finality, no court shall entertain any claim in respect of the subject properties arising out of or founded upon such *benami* transaction.

32. With the aforesaid directions, the Civil Appeal stands disposed of. There is no order as to costs.

33. Pending application(s), if any, shall stand disposed of.

.....J.
[J.B. PARDIWALA]

.....J.
[R. MAHADEVAN]

**NEW DELHI;
MAY 8, 2026**

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

FPA-PBPT-1005/KOCHI/2019

Yoosaf N A.

S/o Sh. Aboobacker Kutty

... Appellant

Versus

The Initiating Officer, (BPU), Kochi

... Respondent

Advocates/Authorized Representatives who argued

For the Appellant : Ms. Vandana Sharma Bhandari, Advocate,

For the Respondent : Mr. Kanhaiya Singhal, Advocate.

CORAM

SHRI BALESH KUMAR : MEMBER

SHRI RAJESH MALHOTRA : MEMBER

FINAL ORDER

14.05.2026

Dictated By: Rajesh Malhotra

The present appeal under Section 46 (1) of Prohibition of Benami Property Transaction Act, 1988 (PBPT) is filed by the appellant against the order dated 25.03.2019 passed by the Adjudicating Authority under Section 26 (3) of the PBPT Act, 1988 in Reference no. 599/2018, thereby confirming the Provisional Attachment Order (PAO) dated 12.03.2018 passed by the respondent ACIT (BPU) under Section 24 (4)(b)(i) of the PBPT Act, 1988. The detail of the said property is cash of Rs. 50,13,000/- seized from the possession of the appellant on 27.03.2017 and was stated to be transferred to ITO on 29.11.2018.

2. As per the facts of the case, two persons- Shri Yoosaf N. A and Shri Jamsheer P.K of Kozhikode were found in possession of cash of Rs.50,13,000 (Rupees Fifty lakhs and Thirteen Thousand only) by the Sub Inspector of Police, Kunnamangalam Police station on 27.03.2017. Since these persons were not able to explain the source of the cash, the same was seized by the Police. The amount was produced before JFCM Court, Kunnamangalam and a claim petition was filed before the Hon'ble Judicial

First-Class Magistrate, Kunnamangalam by the Income-Tax Department. The said two persons failed to give any explanation for the source of the seized money amounting to Rs. 50,13,000/- before the Hon'ble JFCM-Kunnamangalam. Both could not furnish any legal and verifiable claim regarding the ownership and nature of the cash seized; could not furnish any evidence/proof with regard to the claim that they are from genuine accounted sources; and they have not even filed income tax returns. Thus, Ld. JMFC, after hearing the parties and the Income Tax Department, allowed the claim petition and thereby the amount of Rs. 50,13,000/- seized by police was handed over to the Income Tax Department on 04.12.2017.

On receiving the aforesaid information, verifications were made by the DDIT (Inv), Kozhikode. The sworn statement of Shri Yoosaf N A was recorded on 24.04.2017 wherein he claimed the full ownership of the seized cash of Rs. 50,13,000/- and also stated that Shri Jamsheer P.K has no concern with this cash. He has also stated that the total amount Rs. 50,13,000/- seized from him was in fact received from his friends & relatives as contribution towards investment in an immovable property at Koduvally, but he did not provide valid documents for this claim.

He also filed an Affidavit on 12.04.2017 that seized amount of Rs. 50,13,000/- was received from his friends and relatives towards investment in immovable property (land) and since those parties are hesitant to come forward before IT Department and make claims, therefore, deponent declares the entire amount of Rs. 50,13,000/- seized from him as his income for the Assessment year 2017-18. He further submitted that he has no objection in adjusting the applicable amount of tax on the said Income and thereby refunding the balance amount.

Shri Jamsheer P K has also filed an affidavit on 12.04.2017 stating that he has no relationship with the seized cash Rs. 50,13,000/- and he would not make any claim for the amount in future, as the entire cash seized belongs to Mr. Yoosaf N A.

Since both were not able to sufficiently explain the source of the seized cash of Rs. 50,13,000/-, it was held by the DDIT (Inv) that they have received money from shady sources.

In view of the above facts/statements, the DDIT(Inv.), Kozhikode concluded that the benamidar has no possible explanation for the origin and source of money seized and accordingly, the amount was liable to be treated as undisclosed income u/s 69 A of the IT Act, 1961 in the hand of both the persons.

In response to the notice, Shri Yoosaf N A e-mailed the copy of the letter addressed to DDIT(Inv), Kozhikode, stating that he had decided to invest in Real Estate business so he collected and pooled the funds from close relatives and friends and when he along with Shri Jamsheer P.K were on the way Police intercepted the vehicle and seized cash of Rs. 50,13,000/-. He also stated that as the persons from whom the money was collected are hesitant to come forward, he is requesting to accept the surrender of cash seized as Income from other sources for AY 2017-18. But he has not furnished any supporting documents/proof to substantiate his claims till date and accordingly, the same was treated as Benami property as per the provisions laid down under Section 2 (9)(D) of the PBPT Act, 1988. Based on these facts, the IO under Section 24(4)(b)(i) of the PBPT Act passed the provisional attachment order on 12.03.2018 wherein he found the same to be benami property.

After that a reference was filed by the IO under Section 24(5) for confirmation of the provisional attachment order. The SCN was issued to the appellant on 13.04.2018 by the ACIT, BPU, Kochi, in response to which appellant approached the hon'ble High Court of Kerala for challenging the order dated 12.03.2018 but its writ petition was dismissed and then, appellant was again given notice dated 27.06.2018 for appearance before the AA. The appellant submitted his objections on 30.7.2018 and after going through the reply and hearing the rival submissions, the Adjudicating Authority being not convinced with the replies & submissions allowed the reference No. 599/2018 vide order dated 25.03.2019.

Aggrieved the said order, appellant filed the present appeal.

3. During the arguments, Ld. Counsel for the appellant submitted that the proceedings u/s 24 of the Act can be initiated only when the Initiating Officer discharges the initial burden cast on him to prove that the cash found represents sale proceeds of "property held as benami" by the notice (herein appellant) for a "beneficial owner who is not traceable in the present case. In the instant case, there is not even a suggestion that the cash found represents "sale proceeds" of a property held as benami by the appellant. It is submitted that in the facts and circumstances of the case, the Initiating Officer is not justified in invoking the provisions of the Act in respect of the cash found in his possession by the Police on 27.03.2017 merely on the presumption that the said amount belongs to unknown person so as to cover it under Sec. 2[9][D], without conducting any investigation on this aspect. There is nothing on record to presume that the recovered cash from the possession of the appellant is a benami property. She argued that it is an admitted fact the Police found the Appellant in possession of an amount of about Rs. 50,13,000/- during a

routine vehicle check and subsequently seized u/s 132 A of the Income Tax Act. The Appellant in his reply to the Notice U/s 24 (1) issued by the ACIT (Benami Prohibition unit) Kochi, has given the specific reply dated 08.03.2018. Appellant also submitted that he will be offering entire amount as his income for Financial Year 2017-18. She contended that the initiating officer went on presumption and surmises while considering that Rs 50,13,000/- was benami property without any evidence or material in support. She contended that the said cash amount cannot be branded as benami property simply because the persons who gave the amount to him for purchasing the land declined to give any affidavit/document in this regard. She stressed that the concept of "benami property" involves the existence of a "benamidar" as defined by Sec. 2(10) as also a "beneficial owner" as defined under Sec. 2[11] of the Act and a "property" which can only mean "immovable property" or a "movable property" which is capable of being the subject matter of a transaction. In fact, Sec. 2[8] of the Act defines "**benami property**" as "*any property which is the subject matter of a benami transaction and also includes the proceeds from such property*". She pointed out that the purpose of the introduction of the Amendment Act is for avoiding or preventing the activity of obtaining of properties in the name of fictitious and other persons. When viewed in this context, it is apparent that the legislature never intended that the Act would cover cash where the person in whose possession the same is found has explained the source of cash and other person claimed the cash and when adequate provision in this regard has been made in the Income Tax Act through Ss. 68 & 69 as well as other enactments. This is apparent by reading section 60 of the Act, that the application of other laws is not barred. The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of any other law for the time being in force. This clearly express the intention of

legislature. Sec. 24(1) of the Act under which the Initiating Officer issued notice dated 13.12.2017 reads thus:

24: Notice and Attachment of Property involved in Benami Transactions:

[1]: Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property:

The basic requirement for the issue of notice is the “reason to believe” that a person is a "benamidar" in respect of a property. "Benamidar" in turn, is defined u/s 2[10] of the Act thus:

*“[10]: **Benamidar** means a person or a fictitious person, as the case may be, in whose name the property is transferred or held and includes a person who lends his name.”*

Accordingly, she argued that in order to invoke Sec. 24[1], there must exist, a "property" which is "transferred" by another person in the name of "benamidar" or a property that is "held" in the name of a fictitious or non-existent person by another person. She contended that the Initiating Officer has no legitimate and legally sustainable reason to "believe that the appellant was a benamidar" in respect of the cash found from his possession by the Police during vehicle check. She pointed out-

*Sec. 2[9][D] **benami transaction** means: a transaction or an arrangement- [D]: a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious.*

She submitted that apparently, there must exist a "property" with respect to which there is a transaction or arrangement involving "consideration" and the person providing the consideration is "not traceable" or is "fictitious". It is therefore quite clear that the provision calls for the existence of a property either "immovable property or "movable" which is sought to be purchased with the purchaser paying consideration being "not traceable" or is "non-existent". In the instant

case, notice dt. 13.12.2017 as well as Proceedings/order dt. 12.03.2018 nowhere alleges the existence of a "property" which is sought to be purchased by a person who is either "not traceable" or "non-existent". In fact, the proceedings do not refer to any "transaction" or "arrangement" with respect to the cash found and therefore it is clear that Sec. 2[9][D] has no application to the facts at all and the "cash" found in the possession of the Noticee cannot be the subject matter of proceedings u/s 24[1] of the Act. Proceedings u/s 24[4] of the Act passed by the Initiating Officer setting in motion adjudication proceedings are totally unfounded and are void ab-initio. The Initiating Officer has failed to note that "benami property is "property held by a "benamidar" (as defined u/s 2[10] of the Act) for and on behalf of a "Beneficiary owner" [as defined u/s 2[12] of the Act]" to whom he is answerable. When the term "benami property is defined as a property which is the subject matter of a "benami transaction" as well as "the proceeds from such property", it is obvious that "unexplained cash or cash source regarding which is not explained with acceptable evidence will not come within the ambit of the term "benami property" that could be proceed against under Sec. 24[1] of the Act. She stressed that the Initiating Officer has failed to further note that presence of cash on the person of the appellant did not prove any "transaction or arrangement in respect of a property" involving consideration which alone is covered by Sec. 2[9][D] of the Act. The transaction or arrangement in respect of a property referred to in Sec. 2[9][D], it is apparent, covers the sale or transfer of a movable or immovable property involving passing of consideration from the buyer to the seller - where the buyer is either not traceable or is fictitious. As against this, in the instant case, the only case of the Initiating Officer is that the "source" for the cash found is not properly explained which cannot make the cash found, benami property that could be proceeded

against u/s 24[1] of the Act. In the same manner, the Officer has no case that the cash found on the possession of the appellant by the police is sale proceeds of a property that was held by him on behalf of a "beneficial owner or a person who is not traceable or fictitious and consequently the said cash cannot constitute "benami property that could be proceeded against u/s 24[1]. There is nothing on record to show that the "cash" found in possession of appellant was "property involved in a benami transaction", as the onus to prove the source for the cash seized is on the Initiating Officer and in absence of any investigation that appellant is a benamidar does not justify action u/s 24[1] of the Act.

She pointed out that as per section 2(26) property means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property. This means all these assets can be owned or controlled to produce value in simple words these can be converted into cash from the above-mentioned property. Had the intention of the legislature to include the cash lying with/confiscated from a person to be treated as property, the same would have been mentioned in the definition of property. Therefore, cash found with a person, without any benami transaction of a property, cannot fall under the ambit of the Act. The intention of the legislature is not to include cash in definition of Section 2 (26), section 53 can be looked into:

“53. (1) Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction. (2) Whoever is found guilty of the offence of

benami transaction referred to in sub-section (1) shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent of the fair market value of the property. The fine may extend to 25% of the fair market value of the property not of the benami cash recovered.”

Ld. Counsel for the appellant also argued that the reason to believe must be in writing based on cogent material which ought to be supplied to the Noticee which were never communicated to him and therefore said proceedings are bad in law. She contended that it was incumbent upon the respondents to give reasons in writing to the noticee which must be relevant and germane.

She further pointed out that the seized amount of Rs. 50,13,000/- be taken as the income of the appellant for the FY 2017-18 and thus appellant is only liable to pay the Income Tax for the seized amount and after deduction of the same, the balance amount needs to be returned to the appellant.

She argued that the respondent is not concerned with the source of cash earned by the appellant by any means whatsoever and once appellant is ready to pay the Income Tax on the seized amount, the respondent department has no concern with the source of said income, but even then, appellant has also explained the same during investigation of the case being given by his friends and relatives.

Prayer is accordingly made to allow the present appeal.

4. On the other hand, Ld. Counsel for the respondent controverted the contention of Ld. Counsel for the appellant on each and every issue, which will be reflected in our discussion in the following para.

5. On the basis of rival submissions, following issues emerge for decision:

- i) Whether cash is not property?
- ii) Whether for any Benami transaction three parties are required?
- iii) Whether Section 2(9)(D) cannot be invoked in absence of any investigation regarding the ownership of cash?
- iv) Whether the provisions of PBPT Act are not attracted, seeing the fact that appellant is ready to file ITR qua the seized amount?

6. Coming to issue no i), we are of the view that property means any movable or immovable asset. The properties can also be divided as corporeal and incorporeal/ tangible or intangible. Cash (physical currency) is often considered as tangible movable property due to its physical nature. Bank deposits, electronic funds, or investments are covered in the category of intangible property because they represent value without physical form. In financial accounting, an asset is any resource owned or controlled by a business or an economic entity. It is anything (tangible or intangible) that can be used to produce positive economic value. Assets represent value of ownership that can be converted into cash (although cash itself is also considered an asset). Also, it is pertinent to note that the legislative intent in respect of the PBPT Act is that the black money be curbed. Regarding the same, a synopsis of debates held in Lok Sabha dated 27th July 2016, the Extracts from the speech of Hon'ble FM are:

“the principal object behind this Act is to discourage benami transactions. It is predominantly an anti-black money measure that any transaction which is benami is illegal and the property is liable to confiscated.”

Thus, unaccounted cash or cash without ownership cannot go scot-free from the purview of the PBPT Act and the same will be covered under the Act. The recovered cash in the present case is thus covered under the nature of movable properties as per Section 2 (26) of PBPT Act, 1988. Further, as per Section 2(8) of the PBPT Act, benami property means any property which is the subject matter of a benami transaction and also includes the proceeds from such property and cash in the present matter

is unaccounted for as its source is unexplanatory and thus falls under the definition of benami property.

Accordingly, we are of the considered view that cash is covered within the definition of tangible movable property.

7. Now coming to issue no. ii), the relevant provisions are reproduced as under:

Sec. 2[8] of the Act defines "**Benami property**" as

"any property which is the subject matter of a benami transaction and also includes the proceeds from such property".

"**Benamidar**" in turn, is defined u/s 2[10] of the Act thus:

"[10]: 'benamidar' means a person or a fictitious person, as the case may be, in whose name the property is transferred or held and includes a person who lends his name."

Section 2(12) of the PBPT Act defines "**Beneficial owner**" :

"means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar."

"**Benami property**" is thus a property held by a "benamidar" (as defined u/s 2[10] of the Act) for and on behalf of a "Beneficiary owner" [as defined u/s 2[12] of the Act]" to whom he is answerable.

Therefore, the contention of the Ld. counsel for the appellant that for any Benami transaction three parties are required is devoid of any merits, as the benami transaction requires only the 'benamidar' and 'beneficial owner', hence just two parties are sufficient to constitute a benami transaction, as apparent from the bare perusal of definition mentioned in Section 2 (9)(D) of PBPT Act, 1988.

8. Now coming to issue no. iii), after hearing the rival submissions, we have given our thoughtful consideration of the same. The contention of the appellant that Section 2(9)(D) cannot be invoked in absence of any investigation regarding the ownership of cash. We are of the view that the appellant has not denied the fact that on 07.06.2018, the Sub-Inspector of Police Station Kunnamangalam has seized the cash of Rs. 50,13,000/-

found from the possession of present appellant Shri Yossaf N A along with Shri Jamsheer P K without any valid document/evidence for the source of cash. Further, we cannot ignore the statement of appellant **Sh. Yoosaf NA** recorded under Section 131 of the Income Tax Act on 24.04.2017, wherein he stated that he claims full ownership to the seized cash of Rs. 50,13,000/- and also stated that Shri Jamsheer P K has no relationship with the cash and that the total amount of Rs. seized from him was received from his friends and relatives as contribution towards the investment in an immovable property at Koduvally. However, he did not provide the valid documents for his claim.

Appellant has not challenged the said statement. He has also not disclosed the persons from whom he received such huge amount, in support of his contention. The fact that the Initiating Officer of respondent could not trace out the source from where appellant collected the cash clearly attracts Section 2 (9) (D) of PBPT Act. As per under Section 2 (9)(D) of the PBPT, Act, 1988, *“A transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious, is a Benami Transaction”*.

Thus, this issue is decided against the appellant and in favour of the respondent.

9. Now coming to issue no iv), it is stressed by the appellant that the provisions of PBPT Act are not attracted, seeing the fact that appellant is ready to file the ITR qua the seized amount. However, we are of the view that firstly, the submission of Income Tax Return after being caught and proceeded against is an afterthought strategy to claim back at least 50% out of the seized amount. Secondly, the recovery of cash in absence of any explanation is duly covered under the scope of PBPT Act. The contention of the respondent that Section 60 of the PBPT Act prescribes that the provisions of this Act shall be in addition to any other laws in

force and the right of action under the PBPT Act cannot be restrained just because appellant is ready to file ITR under the Income Tax Act. Moreover, the principal object of the Income Tax Act is to collect Income Tax, but the object of the PBPT Act is to prohibit the practice of benami purchases to check the accumulation of wealth in the name of benamidars for the use of beneficial owner without detection and to confiscate the property involved in a benami transaction. The Income Tax is being collected in respect of the “unexplained money” at the rate of 60% of the same along with 25% of the Surcharge on the Income Tax. But the PBPT Act provides for the confiscation of the benami property in 100% and the fine of 25% of the value of the benami property. Hence, both the acts are being enacted for different purposes. We agree with the contention of Ld. counsel for the respondent that ITRs is a self-declaration of the ACC and the Income Tax Authority have no business to check the source of the money and only the Authority under PBPT Act, 1988 can initiate the proceedings for Benami Property. In the ITR the appellant has not explained the source of accumulating of the huge amount. The appellant wants to declare the sum of Rs. 50,13,000/- as miscellaneous income in the ITR. Thus, merely filing or intent to file ITR, does not exonerate the person from the application of the PBPT Act, in case the source of that money is not known and unanswered for. Accordingly, this issue is also decided against the appellant.

10. In sequel to our discussion para 6 to 9, the present appeal is hereby dismissed being devoid of any merits.

Appeal Dismissed.

Pronounced on this 14th Day of May, 2026.

(Rajesh Malhotra)

Member

‘Him’

(Balesh Kumar)

Member

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4805 OF 2019
(ARISING OUT OF SLP (C) NO.29642 OF 2016)

Mangathai Ammal (Died) through

LRs and Others

..Appellant(s)

Versus

Rajeswari & Others

..Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned Judgment and Order passed by the High Court of Judicature at

Madras dated 05.01.2016 passed in AS No.785 of 1992

dismissing the same and affirming the Judgment and Decree

dated 05.08.1992 passed by the learned Subordinate Judge, Arni

in O.S. No.124 of 1990 decreeing the suit for partition by original plaintiff, the original defendant nos. 1 to 3 have preferred the present appeal.

3. The facts leading to the present appeal in nutshell are as under :

That, one Rajeswari and Others-original plaintiffs instituted a suit bearing O.S. No.124 of 1990 for partition of the suit properties and separate possession. It was the case on behalf of the plaintiffs that the first defendant is the wife of one Narayanasamy Mudaliar. That, the said Narayanasamy Mudaliar and original defendant no.1 had one son and three daughters namely Elumalai (son), Ranganayaki (daughter), Nagabushanam (daughter) and Navaneetham (daughter). That, the son Elumalai and daughter Ranganayaki had died. The first plaintiff is the wife of Elumalai, the second plaintiff and plaintiff nos. 3 to 8 are the husband and children of the deceased Ranganayaki. That, Elumalai and the first plaintiff did not have issue. According to the original plaintiffs, Narayanasamy Mudaliar sold the ancestral properties and purchased the suit property in the name of first defendant - Mangathai Ammal (wife of Narayanasamy Mudaliar).

Therefore, it was the case on behalf of the plaintiffs that Narayanasamy Mudaliar and his son Elumalai are entitled to half share of the ancestral properties. That, it was the case on behalf of the plaintiffs that the same Narayanasamy Mudaliar had died twenty years back to the filing of the suit. His share in the properties was inherited by Elumalai, defendant nos. 1 and 2 viz Nagabushanam Ammal and Ranganayaki Ammal. That, the Ranganayaki died about six years before filing of suit, therefore, her legal representatives viz original plaintiff nos.2 to 8 inherited her share in the properties. That, the Nagabushanam executed the Release Deed dated 24.04.1990 in favour of the first defendant. According to the plaintiffs, the first plaintiff is entitled to 5/8th share, plaintiff nos. 2 to 8 are entitled to 1/8th share and the defendants are entitled to 1/4th share in the suit properties. According to the plaintiffs, since the defendant tried to claim the suit properties, the plaintiffs filed the present suit for partition.

3.1 The suit was resisted by the defendants. As per the case of the first defendant, except item nos. 1 and 3 of the suit properties, the other properties are self-acquired properties of the

first defendant. According to the first defendant, the first item of the suit property was purchased out of the money provided by her in her name. According to the first defendant, the suit properties are not the ancestral properties of Narayanasamy Mudaliar. It was denied that the suit properties were purchased by selling the ancestral properties. It was the case on behalf of the defendant no.1 that except properties in item nos. 1 and 3 of Schedule II, the properties were purchased by the defendant no.1 out of the stridhana she received from her parents' house and by selling the gold jewellery. It was also the case on behalf of defendant no.1 that after purchasing the property from Thangavel Gounder and others; she constructed a house and is in possession and enjoyment of the said property. According to the defendant no.1, the deceased Narayanasamy Mudaliar was entitled to 47 cents in Survey No. 218/1 and 8 cents in Survey No. 218/3 and the deceased Ranganayaki Ammal is entitled to 1/5th share in the suit properties. It was also the case on behalf of the first defendant that, similarly, the first plaintiff's husband is also entitled to 1/5th share, in which, first defendant and first plaintiff are entitled to half share in the suit properties. According to the first defendant, the first defendant's daughter

Nagabhushanam executed a Release Deed in respect of her own share. It was also the case on behalf of the first defendant that she never acted as a manager of the joint family. According to her, she executed a Will dated 11.02.1987 in favour of plaintiff nos. 1 and 2 and Nagabhushanam Ammal. However, since the beneficiaries of the Will did not take care of the first defendant, she revoked the Will on 11.06.1990.

3.2 Defendant nos. 2 and 3 supported defendant no.1. According to defendant nos. 2 and 3, defendant no.1 mortgaged the property with defendant no. 3 for a valuable consideration, which was also known to the plaintiffs. Defendant nos. 2 and 3 also adopted the written statement filed by defendant no.1.

3.3 That the learned Trial Court framed the following issues:

“1) Whether the suit schedule properties are ancestral properties of husband of the 1st plaintiff namely Elumalai and the deceased Narayansamy?

2) Whether it is true that the 1st defendant had managed the suit schedule properties being the Manager of the Family?

3) Whether it is true that the Suit Schedule properties are jointly enjoyed by all the family members as Joint Family Property?

- 4) Whether the plaintiffs are entitled to claim partition in view of the Release Deed dated 24.04.90 executed by Nagabooshanam Ammal?
- 5) Whether it is true that the 1st defendant had executed a Will on 11.2.87 to and in favour of plaintiffs in respect of suit schedule property and revoked the said Will on 11.6.90?
- 6) Whether it is true that the plaintiffs are in joint possession of the suit schedule properties?
- 7) Whether the plaintiffs are entitled to get 3/4th share over the suit schedule properties?
- 8) Whether the present suit is not valued properly?
- 9) To what relief the plaintiffs are entitled?

3.4 Before the Trial Court, on the side of the plaintiffs, four witnesses were examined and three documents Exh. A1 to A3 were marked. On the side of the defendants, two witnesses were examined and 19 documents Exh. B1 to B19 were marked. That, the learned Trial Court, after taking into consideration the oral and documentary evidences of both the sides, passed a preliminary decree finding that the plaintiffs are entitled to 3/4th share in the suit properties. Feeling aggrieved and dissatisfied with the Judgment and Decree passed by the Trial Court, the original defendant nos. 1 to 3 preferred appeal before the High Court. That, by impugned Judgment and Order, the High Court has dismissed the said appeal and has confirmed the Judgment

and Decree passed by the Trial Court. Feeling aggrieved and dissatisfied with the impugned Judgment and Order passed by the High Court dismissing the appeal and confirming the Judgment and Decree passed by the learned Trial Court, original defendant nos.1 to 3 have preferred the present appeal.

4. Shri V. Prabhakar, learned Counsel has appeared on behalf of the appellants-original defendants and Shri G. Balaji, learned Counsel has appeared on behalf of the respondents-original plaintiffs.

5. Shri V. Prabhakar, learned Counsel appearing on behalf of the original defendant nos.1 to 3 has vehemently submitted that in the facts and circumstances of the case, both, the learned Trial Court as well as the High Court have committed a grave error in decreeing the suit and holding that the original plaintiffs have 3/4th share in the suit properties.

5.1 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that the suit properties were purchased by defendant no.1 out of the stridhana she received from her parents and by selling the gold jewellery. It is submitted that, admittedly, the suit

properties were purchased in the name of original defendant no.1 and was in possession of defendant no.1. It is submitted therefore, the finding that the properties were purchased by Narayanasamy Mudaliar is erroneous.

5.2 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that if it was the case on behalf of the original plaintiffs that the properties purchased in the name of defendant no.1 were the benami transactions, in that case, the onus is/was upon the plaintiffs to prove by leading cogent evidence that the transactions were benami transactions. It is submitted that in the present case, the plaintiffs have failed to discharge the onus to prove that the transactions were benami transactions. It is submitted that, both, the Trial Court as well as the High Court had erroneously shifted the burden upon the defendants to prove that the transactions/Sale Deeds in favour of defendant no.1 were not benami transactions. It is submitted that the aforesaid is contrary to the settled proposition of law laid down by this Court.

5.3 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that in the present case, solely on considering two documents, namely, Exh. B3, Sale Deed in respect of one of the properties and Exh. B4, the Sale Deed with respect of two properties, the Courts below have considered the entire suit properties as ancestral properties and/or the same properties purchased from the funds raised by selling the ancestral properties.

5.4 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that merely because some consideration or part consideration was paid by the husband at the time of purchase of property at Exh. B3-Sale Deed and/or merely purchasing the stamp papers while purchasing the property at Exh. B4-Sale Deed, it cannot be said that the same properties as such were purchased from the funds raised by selling the ancestral properties and/or the same were purchased for and on behalf of joint family.

5.5 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that both the Courts below have materially erred in misinterpreting the Release Deed at Exh. A1. It is submitted that both the Courts below have materially erred in holding the suit properties as joint family properties of Narayanasamy Mudaliar on the ground that execution of Release Deed at Exh. A1 by Nagabhushanam on payment of Rs.10,000/- to Nagabhushanam and on such payment Nagabhushanam released her share in the property, was good to hold that the properties are the joint family properties of Narayanasamy Mudaliar.

5.6 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that even considering the documentary evidences on record, more particularly, Exh. B3 to B7, it can be seen that the suit properties were purchased in the name of defendant no.1 were purchased much prior to the sale of some of the ancestral properties of Narayanasamy Mudaliar. It is submitted that, therefore, the case on behalf of the plaintiffs that the suit properties were purchased in the name of defendant no.1 out of

the funds raised on selling the ancestral properties of Narayanasamy Mudaliar, cannot be accepted. Relying upon paragraph 10 of the decision of this Court in the case of *Om Prakash Sharma v. Rajendra Prasad Shewda*, (2015) 15 SCC 556, it is submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants that as the transactions/Sale Deeds in favour of defendant no.1 were prior to the enactment of the Hindu Succession Act and the amendments made thereto from time to time, even it can be said that the intention of the Narayanasamy Mudaliar to purchase the properties in the name of defendant no.1-his wife was in order to provide the wife with a secured life in the event of his death.

5.7 Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 submitted that even otherwise, the plaintiffs have failed to prove by leading cogent evidence that the transactions of sale in favour of defendant no.1 were benami transactions. It is submitted by Shri V. Prabhakar that even in the plaint also there were no specific pleadings that the sale transactions of the suit properties in favour of defendant no.1 were benami transactions. It is

submitted that even the learned Trial Court also did not frame any specific issue with respect to benami transactions. It is submitted that even otherwise on merits also and on considering the recent decision of this Court in the case of *P. Leelavathi v. V. Shankarnarayana Rao* (2019) 6 SCALE 112, in which after considering the earlier decisions of this Court in the case of *Jaydayal Poddar v. Bibi Hazra (Mst.)* (1974) 1 SCC 3; *Thakur Bhim Singh v. Thakur Kan Singh* (1980) 3 SCC 72; *Binapani Paul v. Pratima Ghosh* (2007) 6 SCC 100 and *Valliammal v. Subramaniam* (2004) 7 SCC 233, it cannot be said that the Sale Deeds executed in favour of defendant no.1 were benami transactions.

5.8 Making above submissions and relying upon above decisions it is prayed to allow the present appeal.

6. Present appeal is vehemently opposed by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs.

6.1 Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs has vehemently submitted that on appreciation of entire evidence on record, both, learned Trial

Court as well as the High Court, have rightly held that the transactions of sale in favour of defendant no.1 were benami transactions as the said properties were purchased by Narayanasamy Mudaliar in the name of defendant no.1 out of the funds received from selling the ancestral properties. It is submitted that on considering the documentary evidences Exh. B3, B4 and even Exh. A1, the High Court has rightly observed and held that the transactions/Sale Deeds in favour of defendant no.1 were benami transactions and therefore the plaintiffs are entitled to 3/4th share in the suit properties which were purchased in the name of defendant no.1 but purchased out of the funds received from selling the ancestral properties by Narayanasamy Mudaliar.

6.2 It is further submitted by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs that in the present case, all the conditions to prove the transactions as benami transactions as laid down by this Court in the case of *P. Leelavathi* (Supra) have been satisfied.

6.3 It is vehemently submitted by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs

that in the present case, even from the intention and conduct of the parties it is proved that though the properties were in the name of defendant no.1, they were purchased and enjoyed as Joint Family Properties. It is submitted that otherwise the Nagabhushanam would not have released her share in favour of defendant no.1, if the daughter Nagabhushanam had no share. It is submitted that execution of the Release Deed by Nagabhushanam in favour of defendant no.1 suggests that defendant no.1 also considered the share of the daughter Nagabhushanam by treating the suit properties as Joint Family Properties.

6.4 It is further submitted by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs that the Will dated 11.02.1987, executed by defendant no.1, also included even the properties exclusively belonging to Narayanasamy Mudaliar. It is submitted, therefore, the intention can be gathered from Exh. B8 and Exh. B9 that the suit properties are Joint Family Properties and therefore liable for partition and not exclusive properties of defendant no.1.

6.5 It is further submitted by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs that the suit properties were purchased in the name of defendant no.1 during the lifetime of Narayanasamy Mudaliar. It is submitted that original defendant no.1 had no independent income. It is submitted that Narayanasamy Mudaliar had ancestral properties/agricultural lands which were generating income and he purchased all the properties in the name of his wife-defendant no.1 from the income generated from the ancestral properties and by selling some of the ancestral properties.

6.6 It is further submitted by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs that even the statutory presumption which was rebuttable under Section 3 (2) of the Benami Transaction Act, 1988 has been omitted by Benami Amendment Act of 2016. It is submitted that therefore as on date, there is no such statutory presumption that the purchase made in the name of wife or children is for their benefit.

6.7 Making above submissions and relying upon above decisions it is prayed to dismiss the present appeal.

7. Heard the learned Counsel appearing on behalf of the respective parties at length. We have gone through and considered in detail the findings recorded by the learned Trial Court as well as the High Court. We have also considered in detail the evidences on record both oral as well as documentary.

7.1 At the outset, it is required to be noted that the original plaintiffs instituted the suit before the learned Trial Court for partition of the suit properties and claiming 3/4th share with the pleadings that the suit properties were ancestral properties and that the Narayanasamy Mudaliar has purchased the suit properties in the name of his wife-defendant no.1 out of the funds derived through selling his share of the property acquired through ancestral nucleus to some other person and that the suit properties were in absolute possession and enjoyment of the Joint Family Property since the date of purchase. From the pleadings, it appears that it was not specifically pleaded by the plaintiffs that the Sale Deeds/transactions in favour of defendant no.1 were benami

transactions. It was also not pleaded that the suit properties were purchased in the name of defendant no.1 by Narayanasamy Mudaliar from the income derived out of the ancestral properties. Even the learned Trial Court did not specifically frame the issue that whether the transactions/Sale Deeds in favour of defendant no.1 are benami transactions or not? Despite the above, learned Trial Court and the High Court have held that the transactions/Sale Deeds in favour of defendant no.1 were benami transactions. The aforesaid findings recorded by the Trial Court confirmed by the High Court and the consequent relief of partition granted in favour of the plaintiffs is the subject matter of the present appeal.

8. While considering the issue involved in the present appeal viz. whether the transactions/Sale Deeds in favour of defendant no.1 can be said to be benami transactions or not, the law on the benami transactions is required to be considered and few decisions of this Court on the aforesaid are required to be referred to.

8.1 In the case of *Jaydayal Poddar* (Supra) it is specifically observed and held by this Court that the burden of proving that a

particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be sold. It is further observed that this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of the benami transaction or establish circumstances unerringly and reasonably raising an inference of that fact. In paragraph 6 of the aforesaid decision, this Court has observed and held as under :

“6. “It is well-settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question whether

a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship if any, between the claimant and the alleged benamidar; (5) the custody of the title deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale.

In the case of *Thakur Bhim Singh* (Supra) this Court in paragraph 18 observed and held as under :

“18. The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus: (1) the burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action

in bringing about the transaction and their subsequent conduct, etc.”

8.2 In the case of *P. Leelavathi* (Supra) this Court held as under :

“9.2 In *Binapani Paul* case (Supra), this Court again had an occasion to consider the nature of benami transactions. After considering a catena of decisions of this Court on the point, this Court in that judgment observed and held that the source of money had never been the sole consideration. It is merely one of the relevant considerations but not determinative in character. This Court ultimately concluded after considering its earlier judgment in the case of ***Valliammal v. Subramaniam*** (2004) 7 SCC 233 that while considering whether a particular transaction is benami in nature, the following six circumstances can be taken as a guide:

“(1) the source from which the purchase money came;

(2) the nature and possession of the property, after the purchase;

(3) motive, if any, for giving the transaction a benami colour;

(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and

(6) the conduct of the parties concerned in dealing with the property after the sale. (*Jaydayal Poddar v. Bibi Hazra* (supra), SCC p. 7, para6)”

8.3 After considering the aforesaid decision in the recent decision of this Court in the case of *P. Leelavathi* (Supra), this Court has again reiterated that to hold that a particular transaction is benami in nature the aforesaid six circumstances can be taken as a guide.

8.4 Applying law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the reasoning given by the Trial Court confirmed by the High Court, it appears that both, the learned Trial Court and the High Court have erred in shifting the burden on the defendants to prove that the sale transactions were not benami transactions. As held hereinabove in fact when the plaintiffs’ claim, though not specifically pleaded in the plaint, that the Sale Deeds in respect of suit properties, which are in the name of defendant no.1, were benami transactions, the plaintiffs have failed to prove, by adducing cogent evidence, the intention of the Narayanasamy Mudaliar to

purchase the suit properties in the name of defendant no.1 – his wife.

9. Even the reasoning and the findings recorded by the Trial Court confirmed by the High Court while holding the Sale Deeds/transactions in favour of defendant no.1 as benami cannot be said to be germane and or fulfilling the circumstances as carved out by this Court in the aforesaid decisions.

9.1 The first reason which is given by the learned Trial Court while holding the suit properties as benami transactions is that part sale consideration was paid by Narayanasamy Mudaliar at the time of the purchase of the property vide Sale Deed Exh. B3. As held by this Court in catena of decisions referred to hereinabove, the payment of part sale consideration cannot be the sole criteria to hold the sale/transaction as benami. While considering a particular transaction as benami, the intention of the person who contributed the purchase money is determinative of the nature of transaction. The intention of the person, who contributed the purchase money, has to be decided on the basis of the surrounding circumstances; the relationship of the parties; the motives governing their action in bringing about the

transaction and their subsequent conduct etc. It is required to be noted that Narayanasamy Mudaliar, who contributed part sale consideration by purchasing property at Exh. B3, might have contributed being the husband and therefore by mere contributing the part sale consideration, it cannot be inferred that Sale Deed in favour of the defendant no.1-wife was benami transaction and for and at behalf of the joint family. Therefore, the Trial Court as well as the High Court have committed a grave error in holding the suit properties as benami transactions/ancestral properties on the basis of the document at Exh. B3.

9.2 Similarly, merely because of the stamp duty at the time of the execution of the Sale Deed at Exh. B4 was purchased by Narayanasamy Mudaliar, by that itself it cannot be said that the Sale Deed at Exh. B4 in favour of defendant no.1 was benami transaction. It is required to be noted that except the aforesaid two documentary evidences at Exh. B3 and B4, no other documentary evidence/transaction/Sale Deed in favour of defendant no.1 have been considered by the learned Trial Court and even by the High Court.

9.3 Now, so far as the findings recorded by the Trial Court and the High Court on considering the Release Deed at Exh. A1 viz. the Release Deed executed by Nagabushanam in favour of defendant no. 1 on payment of Rs.10,000/- and therefore inference drawn by the learned Trial Court and the High Court that therefore even the defendant no.1 also considered the share of the daughter and considered the suit properties as joint family properties and therefore plaintiffs have also share in the suit properties is concerned, the said finding is just a mis-reading and mis-interpretation of the evidence on record. In her deposition, defendant no.1 has explained the payment of Rs.10,000/- to Nagabushanam, daughter and the Release Deed executed by her. It is specifically stated by her that though she had no share in the suit properties, with a view to avoid any further litigation in future and to be on safer side, Rs.10,000/- is paid and the Release Deed was got executed by Nagabushanam in favour of defendant no.1. Even in the Release Deed at Exh. A1, it is so specifically stated. Therefore, merely because to avoid any further litigation in future and though Nagabushanam had no share in the suit properties, Rs.10,000/- was paid and the Release Deed was got executed in favour of defendant no.1, by that itself, it

cannot be said that defendant no.1 treated the suit properties as ancestral properties and/or Joint Family Properties.

9.4 Even considering the Will executed by defendant no.1 dated 11.02.1987 and the subsequent revocation of the Will is suggestive of the fact that defendant no.1 all throughout treated the suit property as her self-acquired property which according to her were purchased from the Stridhana and selling of the jewellery.

10. It is required to be noted that in the plaint the plaintiffs came out with the case that the suit properties purchased in the name of defendant no.1 by Narayanasamy Mudaliar from the funds raised by selling the ancestral properties received by him. It was never the case on behalf of the plaintiffs that the suit properties were purchased by Narayanasamy Mudaliar in the name of defendant no.1 out of the income received from the ancestral properties. However, considering the date of transactions with respect to the suit properties and the ancestral properties sold by Narayanasamy Mudaliar, it can be seen that all the suit properties purchased in the name of defendant no.1 were much prior to the sale of the ancestral

properties by Narayanasamy Mudaliar. The ancestral property was sold by the Narayanasamy Mudaliar (Exh. A3) 11.11.1951. However, the Sale Deeds at Exh. B3, B4, B5, B6 and B7 which are in favour of defendant no.1 were much prior to the sale of the property at Exh. A3. Therefore, also it cannot be said that the suit properties were purchased in the name of defendant no.1 by Narayanasamy Mudaliar from the funds received by selling of the ancestral properties.

11. Even considering the observations made by this Court in paragraph 10 in the case of Om Prakash Sharma (Supra) it can be said that Narayanasamy Mudaliar might have purchased the properties in the name of defendant no.1 in order to provide his wife with a secured life in the event of his death. It is required to be noted that it was the specific case on behalf of the defendant no.1 that the suit properties were purchased by her from the Stridhana and on selling of the jewellery.

12. It is required to be noted that the benami transaction came to be amended in the year 2016. As per Section 3 of the Benami Transaction (Prohibition) Act 1988, there was a presumption that the transaction made in the name of the wife

and children is for their benefit. By Benami Amendment Act, 2016, Section 3 (2) of the Benami Transaction Act, 1988 the statutory presumption, which was rebuttable, has been omitted. It is the case on behalf of the respondents that therefore in view of omission of Section 3(2) of the Benami Transaction Act, the plea of statutory presumption that the purchase made in the name of wife or children is for their benefit would not be available in the present case. Aforesaid cannot be accepted. As held by this Court in the case of *Binapani Paul* (Supra) the Benami Transaction (Prohibition) Act would not be applicable retrospectively. Even otherwise and as observed hereinabove, the plaintiff has miserably failed to discharge his onus to prove that the Sale Deeds executed in favour of defendant no.1 were benami transactions and the same properties were purchased in the name of defendant no.1 by Narayanasamy Mudaliar from the amount received by him from the sale of other ancestral properties.

12.1 Once it is held that the Sale Deeds in favour of defendant no.1 were not benami transactions, in that case, suit properties, except property nos. 1 and 3, which were purchased

in her name and the same can be said to be her self-acquired properties and therefore cannot be said to be Joint Family Properties, the plaintiffs cannot be said to have any share in the suit properties (except property nos. 1 and 3). At this stage, it is required to be noted that the learned Counsel appearing on behalf of defendant no.1 has specifically stated and admitted that the suit property Item nos. 1 and 3 can be said to be the ancestral properties and according to him even before the High Court also it was the case on behalf of the defendant no.1 that item nos. 1 and 3 of the suit properties are ancestral properties.

13. In view of the above and for the reasons stated above, the present appeal is partly allowed. The impugned judgement and order passed by the High Court as well as the Trial Court holding that the plaintiffs have 3/4th share in the suit properties (Except Item Nos. 1 and 3 of the suit properties) are hereby quashed and set aside. It is observed and held that except Item Nos. 1 and 3 of the suit properties, the plaintiffs have no share in other suit properties. Preliminary Decree directed to be drawn by the learned Trial Court, confirmed by the High Court, is hereby

directed to be modified accordingly. The present appeal is partly allowed to the aforesaid extent. No costs.

.....J.
[L. NAGESWARA RAO]

New Delhi;
May 09, 2019.

.....J.
[M.R. SHAH]

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

MP-PBPT-2915/MUM/2023 Stay
FPA-PBPT-2497/MUM/2023

DCIT Mumbai ... Appellant

Versus

M/s Nibhodh Trading Pvt. Ltd. &Ors. ... Respondent

Advocates/Authorized Representatives who appeared

For the Appellants : Mr. Manmeet S. Arora, Adv.
Mr. YashBatra, Adv.
Mr. Chaitanya Mehta, Adv.

For the Respondent Nos. 1,2&3 : Mr. AshwaniTaneja, Adv.
Mr. Ayush Saini, Adv.
Mr. Gunjan Chauhan, Adv.
Ms. Shakti Pandey, Adv.
Mr. Gaurav Arora, Adv.
Mr. Pranika Kaushik, Adv.

For the Respondent Nos.4 to 6 : Mr. Prashant Patil, Adv.

CORAM

JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN

SHRI BALESH KUMAR : MEMBER

FINAL ORDER

05.11.2024

FPA-PBPT-2497/MUM/2023

By this appeal under Section 46(1) of the Prohibition of Benami Property Transactions Act, 1988 (in short `the Act of 1988), a challenge has been made to the order dated 02.12.2022 passed by the Adjudicating Authority under Section 26(3) of the Act of 1988. By the impugned order, the attachment so as the reference have not been confirmed and, therefore, the appeal has been filed by the DCIT, Mumbai.

2. The learned counsel for the appellant submitted that Search & seizure action u/s 132 of Income Tax Act, 1961 (in short, IT Act,

1962) was carried out on 07.10.2021 at the office premises of respondent at 2nd Floor, Nirmal Building, Block no. 241/242, Backbay Reclamation, Nariman Point, Mumbai (hereinafter referred as 'benami property') which was purchased on 13.06.2014 by M/s Nibhodh Trading Pvt Ltd (in short 'Nibodh'), M/s Praterna Trading Pvt Ltd (in short 'Praterna') and M/s Aparimeya Trading Pvt Ltd (in short 'Aparimeya').

3. Upon further investigation carried out by the IO, it transpired that Nibodh, Praterna and Aparimeya are not having any active business and there was one common director w.e.f. 01.02.2013 i.e., Ms. Kashish Jagdish Dudeja who had got the sale deeds executed as AR of these companies on 13.06.14. Further, during the search action, the statements of the previous directors of the Respondent's companies Mr. Milind Madhukar Karmarkar, Mr. Avi Madan Gawde and Mr. Nitin Nilkanth Jog were recorded on oath u/s 132(4) on 09.10.2021 wherein they admitted that they were the dummy directors.

4. The present directors of Respondent companies are Hansa Khimji Shah, Kashish Jagdish Dudeja, Arti Satish Shah and Chandni Vipul Jain. They are family members & employees of Shri Dhirendra Shah (Partner of Sheeta India) who deposed that he has arranged these directors on the instructions of Shri Ajit Pendse (CA of M/s Richa Realtors) and Shri Vivek Jadhav (Partner of M/s Richa Realtors).

5. Further, after analyzing the shareholding pattern, it was found that Mohan Patil and Neeta Patil (Relatives of respondent no. 4 to 6) are ultimate stake controllers of Nibodh, Praterna and

Aparimeyathrough a layered shareholding pattern of certain companies with total investment of Rs 1,00,000/-.

6. The learned counsel further submitted that Nibodh, Praterna and Aparimeyaha have no active business. The companies initially applied for shares but got the share application money forfeited amounting to Rs. 10.7 Crores. Thus, these three companies accumulated an initial seed capital of Rs 10.7 Crores.

7. The majority shares of Nibodh, Praterna and Aparimeyawa were subsequently allotted to M/s Firepower Agrifarms Pvt. Ltd., Jay Agrotech Pvt Ltd. (now known as Sparkling Soil Pvt Ltd) and Kalpavruksha Plantation Pvt. Ltd. respectively. These shares were indirectly held through web of corporate entities by the two dummy natural person shareholders (i.e. Mohan Patil and Neeta Patil) controlled by Parth Pawar, Ajit Pawar and Mrs. Sunetra Pawar.

8. One MOU was signed between Nibodh, Praterna and Aparimeya and Richa Realtors for investing in commercial space in the proposed project of Richa Realtors which they could not complete. Richa Realtors entered into another contract with TATA housing on 27.12.2010, without cancelling or completing the existing MOU with Nibodh, Praterna and Aparimeya. However, Richa Realtors accepted the last tranche of Rs. 5,00,000/- & Rs. 10,00,000/- from Nibodh and Praterna on 01.03.2011 & 26.02.2011 respectively under the MOU itself. Eventually, arbitration proceedings were mutually invoked. The same lasted for a long period of one month and Richa realtors in October 2012 paid back Rs 37.6 Cr to Nibodh, Praterna and

Aparimeya. Thus, the money acquired in the first place through the transaction of share forfeiture was then proceeded with as Investment by Nibodh, Praterna and Aparimeya in Richa Realtor; which further swelled up about 200% in quantum vide the second layer of the benami transaction undertaken and endured to the advantage of Nibodh, Praterna and Aparimeya. The proceeds thereof stood finally parked in the immovable property.

9. In the year 2014, Nibodh, Praterna and Aparimeya purchased different areas in the 2nd Floor without any demarcation or boundaries signifying that they can neither sell nor lease out their property independently.

10. The search revealed that one Sahil Pradhan was involved in the process of acquisition of said property and on the other hand he was involved with Parth Pawar in the renovation and interior decoration of the said property.

11. The Parth Foundation operates from the benami property without paying any compensation/charges to the original owners. The data available in public domain like MCA records clearly shows that many entities like M/s Amico Agri Commodities LLP, M/s Su-Tara Agro Private Ltd and M/s FP Realty Pvt Ltd. (in which Parth Pawar, Ajit Pawar and Sahil Pradhan were directors) were registered from the same address of Parth Pawar's partnership firm M/s Ananta Merx LLP which shows that the entire premises was and being used for the exclusive purpose of Parth Pawar, Ajit Pawar and their concerns.

12. The statement of Ms. Kashish Dudeja was recorded on oath u/s 131 of the Income Tax Act, 1961 on 25.11.2021, admitting that she

was a dummy director and was not aware of being dummy director of Nibodh, Praterna and Aparimeya. She never attended any meetings or offices. She signed the transfer deed of the benami property on the direction of Shri TusharDarji (Account Executive of M/s Daund Sugar Ltd.) and other companies, group company of ParthPawar, AjitPawar and Mrs. SunetraPawar, working at office premises at Nirmal Building. The same was confirmed from deposition by Shri TusharDarji that he arranged the signing of papers by dummy directors. It is thus, submitted that Ms. KashishDudeja was signing on the transfer deeds without any knowledge about the Nibodh, Praterna and Aparimeyain which she was a director and without any knowledge about the property being purchased by Nibodh, Praterna and Aparimeyaand acting atthe instance of controlling third party.

13. Ms. KashishDudeja is one common director in Nibodh, Praterna and Aparimeyaand all past directors resigned from Nibodh, Praterna and Aparimeyain 2015 within a gap of a week. Thus, these persons are mere name lenders and had no knowledge of the business activities of Nibodh, Praterna and Aparimeya. They were dummy directors and just signed the documents (pertaining to Respondent's companies) working on the instructions of someone else, in expectation of meagre returns. They denied the knowledge of Nirmal building office property, registered in the name of the Respondent's companies. The transfer deeds of Benami property reflect the signature of KashishDudeja on behalf of Respondent's companies, who also admitted to be dummy directors.

14. The Directors stated that any documents, forms, cheques etc. signed by them shall be treated as null and void and they were not involved in any activity of the company under their directorship.

15. During enquiries, following facts were emerged: -

a) While two of the three initial directors and shareholders of Nibodh, Praterna and Aparimeyanamely MilindKarmakar and Nitin Nilkanth were recommended by their friend Shri AjitPendse, one initial director namely Shri Avi Madan Gawde was recommended by Shri Prakash Joshi, a partner in M/s Richa Realtors (As Mr. AviGawde's brother was working with Shri Prakash Joshi's M/s Richa Realtors group for past 15 years).

b) Mr. VivekJadhav (Partner of M/s Richa Realtors) confirmed that he introduced Shri Dharendra Shah (Director of Sheetal India) to CA Shri AjitPendse. Shri Dharendra Shah had deposed that he has arranged for these dummy directors as per the instructions of Shri AjitPendse and Shri VivekJadhav.

c) Statement of VivekJadhav was recorded on oath u/s 132(4) of I.T. Act on 03.12.2021 in which he stated that he was known to Mr. GajananPatkar, through his connections in M/s Daund Sugar Ltd. He introduced Mr. GajananPatkar to Mr. Prakash Joshi and AjitPendse. In his deposition, Shri GajananPatkar confirmed knowing Mr. Joshi & Mr. Pendse and accepted that he had a meeting with them, in relation to investment by Nibodh, Praterna and Aparimeyain M/s Richa Realtors.

d) The role of Mr. Prakash Joshi, Partner of M/s Richa Realtors, Shri AjitPendse (CA of M/s Richa Realtors), Shri VivekJadhav (Partner of M/s Richa Realtors) and Shri GajananPatkar, Chartered Accountant has come into light clearly in creating dummy directors and getting the documents of respondent nos. 1 to 3 signed by these dummy directors.

16. Statements recorded u/s 131 of PBPT Act are as under:-

a) Statement of GajananPatkar (Director of M/s Daund Sugar and Fire Power Group) was recorded on oath u/s 131 of I.T. Act on 29.12.2021 and 24.01.2022.

(i) He confirmed that he was associated with M/s Firepower Agri Farms Pvt. Ltd., Jay Agrotech Ltd. / Sparkling Soil Pvt.

Ltd. and Kalpavruksha Plantations Pvt. Ltd. major shareholders of Nibodh, Praterna and Aparimeya, M/s Daund Sugar Pvt. Ltd. and other companies as Director.

(ii) He was salaried employee of M/s Daund Sugar Limited, drawing monthly salary of Rs. 50,000/- alongwith other benefits such as vehicle. For other company, he was not getting any Income.

(iii) He confirmed that he knew Mr. AjitPendse. Mr. AjitPendse was introduced to him by Mr. VivekJadhav, one of the directors of M/s Daund Sugar Pvt. Ltd.

(iv) He accepted that Fire group of companies were looking for some investment opportunities. During F.Y. 2009-10, Shri Prakash Joshi who was referred by Shri VivekJadhav, came up with an investment offer in Richa Realtors which was executing a Real Estate project at Mulund. Thus, he proposed to invest Rs. 5 Crore as share capital in 5 companies out of 9 web companies and asked CA AjitPendse to incorporate and manage those 5 investment companies of Fire Power group.

(v) He accepted that he directed CA AjitPendse to make investment in Richa Realtors through 5 companies of Fire Power group which was incorporated and managed by AjitPendse and Shri Prakash Joshi.

b) From the statements of AviGawde (Director of M/s Aparimeya Trading Pvt. Ltd), MilindKarmakar (Director of M/s Aparimeya Trading Pvt. Ltd) and Nitin jog (Director of M/s Nibodh Trading Pvt. Ltd.) were recorded on oath u/s 132(4) of I.T. Act on 09.10.2021 and statements of Shree AjitPendse recorded on oath u/s 132(4) of I.T. Act on 29.10.2021 and Shri Prakash Joshi recorded on oath u/s 131 of I.T. Act on 16.11.2021, it can be inferred that Shree GajananPatkar has an active role in the incorporation of the web of 9 companies including Respondent no. 1 to 3 companies and on further analysis it was found that he was operating these companies for the benefit of ParthPawar.

c) Statement of Prakash Sharad Joshi (Partner of M/s Richa Realtors) was recorded on oath u/s 131 of I.T. Act on 16.11.2021 which is mentioned as under: -

(i) He was associated with M/s Richa Realtors LLP as a Partner since inception i.e. on 11.11.2003 with 50% share.

(ii) Mr. VivekJadhav joined M/s Richa Realtors as partner in 2009 to secure funds required for the project. Subsequently M/s Richa Realtors received funding of Rs. 36 crore from certain entities.

(iii) He confirmed that M/s Richa Realtors LLP received investment of Rs. 36 Crores approximately from web of 9 companies including the Respondent no. 1 to 3 companies.

(iv) Mr. Gajanan Patkar approached Shri Vivek Jadhav for investment opportunities in M/s Richa Realtors. For fund introduction, Mr. Vivek Jadhav wanted to incorporate different companies and subsequently Mr. Vivek Jadhav and he deputed Shri Ajit Pendse, CA of Richa Group of companies to help Mr. Gajanan Patkar in creating few companies. Accordingly, web of 9 companies were created (including Respondent's companies) and fund for PMGP Mulund project were received through web of those 9 companies.

(v) Shri Prakash Joshi signed the MoUs on behalf of M/s Richa Realtors and sent the documents to Mr. Ajit Pendse, as Shri Ajit Pendse had arranged the directors for setting up the 9 companies. Subsequently, Mr. Ajit Pendse got the MoUs signed by the directors of 9 companies. The directors of 9 companies did not visit office for signing the MoUs. Even, the terms and conditions of the MoUs were finalized by the investors i.e. CA Mr. Gajanan Patkar.

(vi) He suggested the name of Mr. Avi Madan Gawde and Mr. Subhash Kare to Mr. Gajanan Patkar for appointment as a director in the 9 companies. The other directors were introduced and managed by Shri Ajit Pendse.

(vii) He confirmed that the whole investment of dispute of 9 companies including Respondent no. 1 to 3 companies with M/s Richa Realtors was a make believe and pre thought arrangement and doing so, directions of Shri Gajanan Patkar was followed. Moreover, no communication was made with any company regarding non fulfillment of obligation i.e. delivery of commercial space.

(viii) He confirmed that the web of 9 companies invested around 36 crores and the compensation was around Rs. 63 crores as per arbitration award and it was completed within 15 days and also M/s Richa Realtors did not appeal against arbitration award.

(ix) He confirmed that the whole dispute and arbitration award was a pre-planned arrangement by Mr. Gajanan Patkar wherein the companies operated by him were give huge compensation by M/s Richa Realtors.

(x) He acknowledged that M/s Richa Realtors kept on receiving the fund from web of 9 companies even after their agreement with Tata Housing.

It is also clear that GajananPatkar indirectly made these dummy directors through the layering of various persons and entities for the benefits of ParthPawar.

d) Summary of statement recorded u/s 131 of Shri AjitGajananPendse, CA of M/s Richa Realtors LLP.:

(i) He confirmed that Richa Realtor group which is located in Dadar, is his client since 2006 and Mr. Prakash Joshi is the person who contacts him with regard to the company matters.

(ii) He confirmed the web of 9 companies i.e., investors in M/s Richa Realtors, with whom compensation was paid after arbitration was made by Richa Relators & investors. He also stated that approx. 36.99 Crores were invested in M/s Richa realtors by web of 09 companies including Respondent's companies.

(iii) He confirmed that arbitrations were awarded based on liquidated damages and the arbitration award was approximately twice the amount of the investment made and he appeared on behalf of M/s Richa Realtors during arbitration proceedings.

(iv) He confirmed that he introduced his friend Mr. MilindKarmarkar, Mr. Nitin Jog and wife of Nitin Jog, Mrs. Neha Jog to GajananPatkar. Mr. GajananPatkar is a CA from Pune and associated with Respondent no. 1 to 3. Thus, in 2009-10, Nibodh(with Director Nitin Jog), Praterna(with Director MilindKarmakar and Nitin Jog) and Aparimeya(with MilindKarmakar) were incorporated i.e. incorporation of dummy directors in the Respondent's companies were done by him and as per instructions of Mr. GajananPatkar and whatever need to be done in Nibodh, Praterna and Aparimeyalike coordination of VAT returns, signing of documents from Directors etc. were done by him. He used to get the documents sent by Mr. GajananPatkar and signed from Mr. MilindKarmarkar and Mr. Nitin Jog as per the directions and instructions of Mr. GajananPatkar.

(v) He stated that CA GajananPatkar was introduced to him by Mr. VivekJadhav who was his client. Mr. VivekJadhav informed him that Mr. Patkar wanted to create 8-9 companies in Mumbai.

(vi) He acted on the directions and instructions of Mr. GajananPatkar and Mr. VivekJadhav in the process of incorporation and coordination of the companies who invested in Richa Realtors.

e) Summary of statement recorded u/s 131 of Shri Vivek Shankar Jadhav, Partner of M/s Richa Realtors LLP:

(i) He stated that He knew Mr. GajananPatkar because of his association with Daund Sugars. When Mr. GajananPatkar wanted to make some investments in Mumbai in commercial spaces, then, he introduced CA AjitPendse and Prakash Joshi to Mr. GajananPatkar with respect to investment in Richa Realtors.

(II) He confirmed that all the web of 9 companies (including Respondent's companies) invested in Richa Realtors for commercial property and he suggested Mr. GajananPatkar to buy property at Mulund PMGP Project.

17. It was submitted that Nibodh, Praterna and Aparimeya were incorporated on 11.06.2009, 12.06.2009 and 11.06.2009 respectively and got initial share capital of Rs. 1 lac from persons of no financial heft namely Avi Madan Gawde, N.N. Jog & Milind Karmarkar, who admitted in their statements to be dummy directors. The respondent nos. 1 to 3 companies started getting funds in the form of the share application money from dubious companies and the same was forfeited under unusual circumstances. A total of Rs. 10.7 crores of money was forfeited and interestingly none of the past directors were aware about the same, while they accepted to have signed on the documents related to share forfeiture. The amount forfeited from share application money was soon invested in M/s Richa Realtors.

18. Respondent no. 1 to 3 got the initial funds for investment in M/s Richa Realtors, from share forfeiture of the investor companies namely M/s Creative World Telefilms Ltd., M/s KIM electronics industries Ltd., M/s Jagmandar invest Pvt. Ltd., M/s Glider holdings Ltd (now known as 'Nikhita Jewellery Ltd.), M/s Oshin Investments and Finance Pvt. Ltd., M/s Sidh Housing Development Cooperative

Ltd. (now known as 'Bhdrawatilspatand Energy Limited'), M/s Ero Management Consulting Pvt. Ltd., M/s Jash Securities Pvt. Ltd. and M/s Jagdharm Strategic Advisors Pvt. Ltd.

19. The entire share application money received by Respondent nos. 1 to 3 companies was forfeited under uncertain circumstances, on the pretext of non- payment of call money. Further enquiries revealed that the share applicant companies are having dubious credentials, most of them are presently striked off from Registrar of Companies (ROC) records and were involved in providing accommodation entries only and had past records of severe non-compliances before Income Tax Authorities.

20. Respondent no. 1 to 3companies received Rs. 23.85 crores as compensation from M/s Richa Realtors and shown as 'Exceptional Income' in its books of accounts. Further investigations were carried out and it is found that 9 groups of companies are having similar modus operandi for accumulating funds by way of share forfeiture and receiving compensation from M/s Richa Realtors.

21. The funds received in Respondent companies as share application money were invested in M/s Richa Realtors within a month of incorporation of these three companies. In pursuance to the initial investment, Respondent companies received huge compensation from M/s Richa Realtors for further utilization. This clearly depicts that the Respondent's companies were created, funds were introduced as seed capital, initial capital was invested and compensation was received from M/s Richa Realtors for the purpose

of accumulating capital in the name of Respondent companies. In this regard, Mr. Prakash Joshi, Partner of M/s Richa Realtors confirmed that Mr. GajananPatkar got companies incorporated for funds introduction in M/s Richa Realtors. Mr. AjitPendse, Chartered Accountant (CA) of M/s Richa Realtors further stated that Mr. GajananPatkar is a CA from Pune and associated with Respondent companies. From the Income Tax Returns, it is noted that MrGajananPatkar was director and drawing salary from M/s Daund Sugar Ltd. which is under control ofParthPawar.

22. It was submitted by the counsel for the appellant that the share applicants of Respondent no. 1 and 3 were having common directors / past directors. The respondents' companies re-issued such forfeited shares to M/s Fire Power Agri Farms Pvt Ltd., M/s Sparkling Soils Pvt Ltd and M/s Kalpavruksha Plantations Pvt Ltd. respectively, whose ultimate natural person shareholders are family relatives of ParthPawar and who became their majority shareholders. Even other currentand past directors have also accepted the fact that they were dummy directors. Infact, the contention of Respondent no. 1 to 3 regarding unawareness of the reason behind denial by the directors and statements given by them as dummy directors cannot be accepted. The company is managed and run by natural person directors and natural person shareholders. In this case, natural person directors and natural person shareholders, both, have accepted that they are dummy during statement on oath. This benami property is squarely covered under the provisions of Section 2(9)(A) of PBPT Act, 1988.

23. From the screenshots of the ITRs and statements of Shri GajananPatkar, Shri Prakash Joshi, Shri AjitPendse, and Shri VivekJadhav that initial dummy shareholders as well as dummy directors were introduced by nexus of Shri GajananPatkar, Shri Prakash Joshi, Shri AjitPendse, Shri VivekJadhav and ParthPawar. Then, the transactions related to bogus share forfeiture has been orchestrated. Further investments in M/s Richa Realtors were made within a year, the shareholding has been changed, dummy shareholders have been replaced by the companies namely M/s Firepower Agri farms Pvt. Ltd., M/s Sparkling Soil Pvt. Ltd and M/s Kalpvruksha Plantation Pvt. Ltd. related to ParthPawar indirectly.

24. The share application money was forfeited and was subsequently used to allot majority shares of Nibodhto M/s Fire Power Agri-Farms Pvt. Ltd. (initial shareholders and directors of the company were SunetraPawar and AjitPawar from 11.04.2007 to 22.06.2009), majority shares of Praternato M/s Sparkling Soil Pvt. Ltd. (initial shareholders were SunetraPawar and AjitPawar from AY 2008-09 to AY 2009-10) and majority shares of Aparimeyato M/s Kalpavruksha Plantation Pvt. Ltd. The shareholding pattern further reveals that the only ultimate natural persons holding the shares of Nibodh, Praterna and Aparimeya are NeetiPatil and Mohan Patil (sister and brother-in-law of AjitPawar and Mrs. SunetraPawar). Further, Mr. GajananPatkar, a close associate of Respondent No. 1 to 3 companies was also a director in Fire Power Agri Farms Pvt. Ltd. During 2009-2014.

25. Based on the facts given above, the learned counsel for the appellant submitted that the benami transaction was at the instance of Shri AjitPawar, Smt. SunetraPawar and ParthPawar and even if it is not by them then by their family members thus there was no reason for the Adjudicating Authority to deny confirmation of the reference and the attachment. Therefore, the appeal has been filed to challenge the order with a prayer to allow the reference and confirm the attachment.

26. It is lastly urged that the matter would not be covered by the judgment of the Apex Court in the case of **Union of India Vs. M/s GanpatiDealcom Pvt. Ltd.** reported in 2022 SCC Online SC 1064. Rather against the said judgment, Review Petition is pending before the Apex Court thus the Adjudicating Authority should have waited for the outcome of the Review Petition before the Apex Court. In any case, the impugned order is not sustainable in the eyes of law for the reason that the benami transaction in hand falls under Section 2(9)(A) of the Amending Act of 2016 by which the amendment in the definition of benami transaction was made. The property is still held by benamidar of which the beneficial owners are the respondents Shri AjitPawar and Smt. SunetraPawar apart from Shri ParthPawar. Thus, by setting aside the impugned order, the reference and attachment be confirmed.

27. The appeal has been contested by the respondents. It is submitted that no material could be placed on record by the appellant to prove Shri AjitPawar, Smt. SunetraPawar and Shri ParthPawar to be beneficial owners of the alleged benami

transaction. Referring to the impugned order, it is submitted that the appellant failed to produce any document or material to show that Shri AjitPawar, Smt. SunetraPawar and Shri ParthPawar were the beneficial owners. In fact, their names were introduced in reference to sister of Shri AjitPawar and her husband though they were not party to the proceedings and only for the reason that they are relatives of Shri AjitPawar alleged to have held the property, Shri AjitPawar and Smt. SunetraPawar would not become the beneficial owner unless the material is produced to show that consideration was provided by them for purchase of the property. The Adjudicating Authority has meticulously considered the case and denied the confirmation of reference and the attachment. The prayer was accordingly made to dismiss the appeal.

28. We have considered the rival submissions of the parties and perused the record.

29. It is not in dispute that the property in question was acquired in the year 2014 i.e. much prior to the Notification dated 25.10.2016 to make amendment in the Act of 1988 by the Amending Act of 2016. In view of the above, the case was held to be covered by the judgment in the case of **GanpatiDealcom** (supra).

30. The learned Adjudicating Authority did not find any material on record to prove Shri AjitPawar, Smt. SunetraPawar and Shri ParthPawar to be beneficial owner. In fact, no material or document could be produced to show that consideration to purchase the property was provided by the non-appellants. In the

light of the aforesaid, the Adjudicating Authority refused to confirm the reference so as the attachment.

31. The learned counsel for the appellant has made reference of the company M/s Fire Power Agri Farms Pvt Ltd. and M/s Sparkling Soils Pvt Ltd wherein shares have been held by Shri AjitPawar and Smt. SunetraPawar from 11.04.2007 to 22.06.2009 and from AY 2008-09 to AY 2009-10 respectively. It was also stated by the counsel for the appellant that Mrs. Neeta Patil and Mohan Patil (relatives of SunetraPawar and AjitPawar) are the ultimate natural persons holding shares in M/s Kalpavruksha Plantations Pvt Ltd., M/s Fire Power Agri Farms Pvt Ltd. and M/s Sparkling Soils Pvt Ltd. It has been stated by AjitPawar and Mrs. SunetraPawar that once they transferred the entire shareholding and did not occupy any post in the company, any transaction thereupon cannot be connected with the past Directors unless the material is produced to prove that consideration for purchase of property was provided by them. In the argument raised by the counsel for the appellant, no material has been referred to prove that for purchase of property, consideration was provided by the Respondents 4to 6 before us, rather it makes a reference of relatives of Shri AjitPawar for holding the company but then also it has not been proved that the Respondents 4to 6before us had provided consideration for purchase of property to make out a case of benami transaction. The conclusion cannot be drawn on assumption.

32. The facts recorded in reference to the arguments of the learned counsel for the appellant does not show proof for providing consideration for purchase of the property alleged to be by the beneficial owner. The appellants themselves have argued that Shri Ajit Pawar and his wife Smt. Sunetra Pawar kept distance to make a genuine purchase and the fact aforesaid cannot prove that consideration for purchase of the property was provided by Shri Ajit Pawar and his wife Smt. Sunetra Pawar. It cannot be even on the basis of her being sister and her husband, namely, Mrs. Neeta Patil and Mr. Mohan Patil. They even shown ignorance about the activity of the company and based on the aforesaid, inferences were drawn over the control of Shri Ajit Pawar and his wife Smt. Sunetra Pawar on M/s Sparkling Soil Pvt. Ltd., M/s Kalpavruksha Plantations Pvt Ltd. and M/s Fire Power Agri Farms Pvt Ltd. despite their resignation as Director and transfer of shareholding much prior to the purchase in 2014.

33. The learned counsel for the appellant has given reference of M/s. Richa Realtors for purpose of further utilization and use of forfeited share money to allot shares in the three companies controlled by respondent no. 4 to 6. The case is made out to show a circular transaction but for that, the appellants failed to produce any evidence to prove that consideration for purchase of the property was provided by the alleged beneficial owner. In absence of it, the case would not be made out to fall under Section 2(9)(A) of the Act of 1988, as amended by the Amending Act of 2016. The provision aforesaid could have been applied if consideration would

have been provided by the beneficial owner and to prove the aforesaid, material is to be produced coupled with the fact that even after the amendment in the year 2016, the property was held by the benamidar. In absence of it, the transaction may fall under Section 2(9) (B) to (D) but those provisions cannot be applied retrospectively for a transaction which took place before 01.11.2016. The only exception is for a transaction under Section 2(9)(A) of the Act of 1988. Thus, for all the reasons given above, we find that the appellants failed to produce any cogent evidence to prove respondents to the appeal to be beneficial owner.

34. In the light of the aforesaid, a case could not be made out against Respondents 4 to 6 to fall under Section 2(9)(A) of the Act of 1988, as amended. Thus, we do not find any reason to interfere in the impugned order. Appeal accordingly fails and is dismissed.

(Justice MunishwarNath Bhandari)
Chairman

(Balesh Kumar)
Member

New Delhi,
5th November, 2024
‘srd’

[2026] 182 taxmann.com 401 (SAFEMA - New Delhi)[12-01-2026]

INCOME TAX/BENAMI ACT : Where respondent-company received share application money at premium and made investments therefrom, and provisional attachment under section 24 was made alleging benami routing through shell entities based solely on income-tax material, in absence of evidence of consideration by or benefit to beneficial owner and with contradictory invocation of sections 2(9)(A)/(D), attachment was rightly revoked

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**[2026] 182 taxmann.com 401 (SAFEMA - New Delhi)
APPELLATE TRIBUNAL SAFEMA, NEW DELHI BENCH
ACIT (BPU-2)**

v.

Gainful Multitrade (P.) Ltd.*

**MUNISHWAR NATH BHANDARI, CHAIRMAN
AND GOPAL CHANDRA MISHRA, MEMBER
FPA-PBPT- 2245,2246, 2247 AND 2249(MUM) OF 2022
JANUARY 12, 2026**

Section 24, read with section 2, of the Prohibition of Benami Property Transactions Act, 1988 - Notice and attachment of property involved in benami transaction (Scope of) - Respondent-company received share application money for allotment of shares at high premium from various entities - Said amount was utilized for acquiring shares of other companies and for further investments - Thereafter, based on information from Income-tax proceedings, it was alleged that shell companies provided accommodation entries where money was infused by beneficial owner to obtain shares of respondent companies on premium and thus, it was a case of benami transaction - Accordingly, Initiating Officer issued notice under section 24(1) and passed provisional attachment order under Section 24(3) identifying and attaching shares of listed company - Adjudicating Authority revoked attachment, holding that no material established infusion of consideration by beneficial owners and that respondent-companies were not shell entities and had made investments for their own benefit - It was recorded that notice initiating proceedings simultaneously invoked Section 2(9)(A) and Section 2(9)(D) despite beneficial owner being identified, and found no independent inquiry beyond statements under Income-tax Act - It was also noted that respondents had filed returns, shown profits and acquisitions were made not only from share application money but also from dividends and other available funds - Whether in absence of satisfaction of first limb, a case was not found for benami transaction under Section 2(9)(A) - Held, yes - Whether once beneficial owner being identified, invocation of Section 2(9)(D) was not tenable - Held, yes - Whether since department solely relied upon material collected in Income-tax proceedings, department could not show that alleged benami transaction was used for benefit of beneficial owner - Held, yes - Whether benefit was never passed on to beneficial owner and department had failed to show any such arrangement to make out a case of benami transaction - Held, yes - Whether thus, confirmation of provisional attachment had been rightly denied - Held, yes [Paras 30, 31, 32, 33, 37 and 38] [In favour of assessee]

FACTS

- The -company had received share application money for allotment of shares at premium from various entities. Said amount was utilized for acquiring shares of other companies and for further investments.
- Thereafter, based on information from Income-tax proceedings and statements of alleged accommodation entry operators, it was alleged that the beneficial owner infused money through shell companies in the share application money received by the respondent-company and thus, it was a case of benami transaction.
- Accordingly, a show cause notice was issued under section 24(1) and a provisional attachment order under section 24(3) were passed against the shares.
- The Adjudicating Authority held that the properties were not out of benami transactions and held that the properties were legitimate property of the assessee-company and revoked the Provisional Attachment Order in its entirety.
- On appeal:

HELD

- The rival submissions made by the parties in reference to separate orders passed by the Adjudicating Authority though on the same date are considered. The facts of GPIPL are illustratively taken because allegations on all the respondent companies for receipt of share application money for allotment of shares at premium through shell companies are common. The money in share application is alleged to have been infused by the beneficial owner, thus, it was considered to be a case of benami transaction. In the case of GPIPL, it had received the share application money in two tranches. Rs. 10 crores was received on 31-3-2008 and Rs. 5.30 crores on 29-4-2008. The amount of Rs. 7.95 crores was received on 25-7-2009. It was received from the Kolkata based entities. In second tranche, Rs. 43 crores was received from Mumbai based entity - SRPL. The share application money was received from the year 2008 to 2011. The amount received by the respondent companies was utilized for acquiring shares of other companies and for further investments. The Adjudicating Authority did not find any evidence to show infusion of cash by the beneficial owner through the accommodation entry provider entities/companies at Kolkata and Mumbai so as to convert the cash amount into share of GPIPL as a benami transaction. Subsequently, the benamidar company, GPIPL transferred the funds to KML and GIA at a very low price. However, how the issue is relevant could not be specified. The Adjudicating Authority even considered the role of BSC alleged to be beneficial owner. It did not find evidence for infusion of cash by him in the shell companies to acquire the share of the department, GPIPL and for its onward acquisition of shares of CGCL and for other investments. [Para 29]
- In absence of satisfaction of first limb, a case was not found for benami transaction under section 2(9)(A). [Para 30]
- The Adjudicating Authority further found self-contradiction in the notice and the initiation of the proceedings by the Initiating Officer. The transaction could not have taken simultaneously under two provisions *i.e.* section 2(9)(A) and section 2(9)(D). The section 2(9)(D) would be applicable if the beneficial owner is unknown but in the instant case, the name of the beneficial owner was given and therefore invocation of section 2(9)(D) was not found tenable. There is substance in the finding because application of two provisions to make a case of benami transaction can be taken when the Initiating Officer is not certain to find out the nature of benami transaction. [Para 31]
- The statement of the witnesses recorded under the Income-tax Act could not have been relied without further independent inquiry and in conflict with the documentary evidence. The Adjudicating Authority did not find any independent inquiry by the Initiating Officer to find out a case of benami transaction. [Para 32]
- The Adjudicating Authority in the impugned order categorically considered the issues and recorded its finding that the Initiating Officer failed to provide any material to show how the cash was transferred by the beneficial owner to the shell entities and finally landed in the benamidar company to be utilized for purchase of share of CGCL. It is with further finding that the Initiating Officer even failed to provide any material to show that benamidar company was a shell company whose corporate veil stands pieced and

the shareholder/promoter is the only real entity. No evidence was produced to show that benamidar company is not deriving benefit for itself but for the beneficial owner, rather, it was found that the respondent company has shown huge profit in the returns from the assessment year 2009-10 and onwards, the period involved in these matters. It is apart from the fact that acquisition of shares of CGCL and other investments were not only out of the share application money but out of dividends and other funds available with the respondent company. Thus, acquisition of shares of CGPL could not have been taken for onwards acquisition of property out of the benami transaction. [Para 33]

- The Adjudicating Authority even made a reference to the financial status of the respondent company which had disclosed its income in the return for the period 2008 till 2020 and thus could not have been treated to be paper entry. The profit shown by the respondent company was assessed by the income-tax authorities continuously. All the reasons were elaborately discussed by the Adjudicating Authority in passing the impugned order. [Para 34]
- The respondent further made a reference that the initial transaction taken to be benami in nature by the Adjudicating Authority with the remark that the department could have attached the shares allotted by the respondent company in that case and not the shares acquired on its onward investment on receipt of the share application money on allotment of shares on premium. The order is gone through and it is found that the observation has been made only to analyze the action of the department where they did not attach the alleged infusion of cash into benami transaction converted into the shares of the department company to the alleged shell companies. The Adjudicating Authority made observation as to why the shares allotted by the respondent companies to the alleged shell companies could not to be attached if it was a case of benami transaction. The argument was raised by the department in ignorance of the finding that the Initiating Officer failed to subscribe the evidence to make out a case of benami transaction. Thus, there is no conflict in finding of the Adjudicating Authority. [Para 35]
- It is further found that the respondent company has shown not only their business activity but a profit earned out of it. It was followed by the return of income-tax duly assessed. The respondent has shown their profit before tax to a sum of Rs. 3.09 crores in the financial year 2008-09 on the paid-up capital of Rs. 77.25 lakhs. The profit was shown to be more than 400 per cent to its capital in one year alone, demonstrating its financial capacity from business operations to justify allotment of shares on the premium in pursuance to the share allotment application which said to have been routed through the shell companies. Accordingly, the facts pertaining to the alleged shell companies may be referred to. [Para 36]
- According to the respondent, the beneficial owner routed the funds through the shell companies and for that the statements recorded under section 131 has been relied. The department has failed to show an independent inquiry to find out a case of benami transaction. The department have solely relied upon the material collected in the Income-tax proceedings. For that reason alone, the department could not show that alleged benami transaction was used for the benefit of beneficial owner. The facts on records, rather, show that the properties in the shape of shares of CGCL and other financial investments were acquired by the respondent companies for their own benefit and not for the benefit of the beneficial owner. The benefit was never passed on to beneficial owner and the department have failed to show any such arrangement to make out a case of benami transaction. Accordingly, the Adjudicating Authority did not find a case to confirm the provisional attachment order while answering the references. [Para 37]
- The Adjudicating Authority further found that the Initiating Officer has failed to show any material or that the initial cash amount was infused by the beneficial owner to route through the banking channel using the shell companies. It is despite of the fact that burden of proof lies on the person making allegation of benami transaction which in that case is the Initiating officer. There is no error in the findings recorded by the adjudicating Authority for the aforesaid. [Para 38]
- The issue now remains that provisional attachment of the investments other than in the shares of CGCL. The department has made an allegation about provisional attachment of the properties other than caused under section 24(3). Section 24 is to be invoked to continue the PAO passed under section 24(3) or if no such order has been passed then to pass an order for provisional attachment under section 24(4) which in the instant case was not applicable in the light of the availability of the order under section 24(3). The addition of the properties for provisional attachment was caused and has been taken to be illegal by the Adjudicating Authority. It has been highlighted by the respondent in their arguments. [Para 39]

- Accordingly, the arguments raised by the respondent touching the merits of the case are accepted to endorse the order passed by the Adjudicating Authority denying the confirmation of the provisional attachment order finding lack of evidence to prove a case of benami transaction. [Para 40]
- In the light of the discussions made above, there is no reason to cause interference in the impugned order. The confirmation of the provisional attachment of different properties in the hands of the four respondents has been rightly denied and accordingly this order would cover the cases of four respondent companies. [Para 41]
- The appeals are accordingly dismissed. [Para 42]

CASE REVIEW

Commissioner of Central Excise v. Shital International [2010] 1 taxmann.com 413/(2011) 1 SCC 109, *Smt. P. Leelavathi v. V. Shankarnarayana Rao* [2019] 104 taxmann.com 153/263 Taxman 105 (SC), *Kalyan Buildmart Pvt Ltd v. Initiating Officer Deputy Commissioner* [2021] 131 taxmann.com 99/439 ITR 62/[2022] 285 Taxman 335 (Rajasthan) and *Mrs. Bacha F. Guzdar v. Commissioner of Income-tax* [1955] 27 ITR 1 (SC) (para 40) followed

CASES REFERRED TO

DCIT v. Gladiolus Property & Investment (P.) Ltd. [ITA No. 2924(MUM) of 2017, dated 16-5-2019] (para 10), *Mrs. Bacha F. Guzdar v. CIT* [1955] 27 ITR 1 (SC) (para 20), *Kalyan Buildmart (P.) Ltd. v. Dy. CIT (Benami Prohibition), Jaipur* [2021] 131 taxmann.com 99/439 ITR 62/[2022] 285 Taxman 335 (Rajasthan) (para 20), *Smt. P. Leelavathi v. V. Shankarnarayana Rao* [2019] 104 taxmann.com 153/263 Taxman 105 (SC) (para 21), *Jaydayal Poddar v. Mst. Bibi Hazra* (1974) 1 SCC 3 (para 21), *Gangadara Ayyar v. Subramania Sastrigal* AIR (36) 1949 FC 88 (para 22), *DCIT v. Nibhodh Trading Pvt. Ltd.* [FPA PBPT-2497(MUM) OF 2023 dated 05-11-2024] (para 22) and *CCE, Chandigarh v. Shital International* [2010] 1 taxmann.com 413/259 ELT 165 (SC) (para 27).

Manmeet Singh Arora, SSP and **Camran Iqbal**, Adv. for the Appellant. **Rahul Kaul**, **Ms. Stuti Gujral**, **Ms. Trisha Mittal**, **Nishant Sharma** and **Ms. Vidushi Sabharwal**, Advs. for the Respondent.

ORDER

1. The batch of the appeals have been preferred by the Assistant Commissioner of Income-tax (Benami Transaction) Unit 2, Mumbai to challenge four separate orders passed by the Adjudicating Authority on 18.07.2022 on four different references. The Adjudicating Authority did not confirm the Provisional Attachment Order ('PAO') of the properties while answering the references. Aggrieved by the orders passed separately on 18.07.2022, these appeals have been preferred by the Department raising several factual and legal issues. The reason to deny confirmation of the provisional attachment order of the properties is common. Thus, a common order is passed in four appeals.

2. In the case of M/s Gainful Multitrade Pvt. Ltd., Shri Balveer Singh Choudhary was shown to be beneficial owner while appellant M/s Gainful Multitrade Private Limited as Benamidar. In the appeal against M/s Samvrudhi Multitrade Pvt. Ltd., the Beneficial Owner is Shri Nawal Kishor Joshi and M/s Samvrudhi Multitrade Pvt. Ltd. is alleged to be Benamidar. In the appeal against M/s Roopam Multitrade Private Limited, the Beneficial Owner is Shri Pawan Kumar Varma while M/s Roopam Multitrade Private Limited is alleged to be benamidar. In the appeal against M/s Gladiolus Property & Investments Pvt. Ltd., the Beneficial Owner is again Shri Balveer Singh Choudhary while the respondent company - M/s Gladiolus Property & Investments Pvt. Ltd. is alleged to be the Benamidar.

3. The reference of different Benamidar and Beneficial Owners in different appeals have been given, though the allegations for benami transactions in all the appeals are common. It is a case where money was used to obtain the shares of the respondent companies on premium. It is alleged that the Shell Companies provided accommodation entries where the money was infused by the beneficial owner. It was through Share Application Money to obtain shares of the respondent companies and accordingly a case of benami transaction was taken up. It is with the further statement that after receipt of the application money for allotment of shares, the benamidar companies utilized it for further investment in the shares of other

companies and other financial investments and accordingly provisional attachment of those investments were made.

4. For the convenience and clarity, we would be referring the facts involved in the case of the respondent, M/s Gladiolus Property and Investments Private Limited (in short "GPIPL"). It is for the reason that *modus operandi* of benami transaction is common in all the appeals. Therefore, instead of repeating the facts of each case separately, the reference of the facts in the case of GPIPL would be given to have clarity on the issues. It is with the consent of the Ld. Counsel for both the parties.

Arguments of the Ld. Counsel for the appellant:

5. Ld. Counsel for the appellant submitted that despite a benami transaction in the hands of the beneficial owner and the benamidar, the Adjudicating Authority did not confirm the PAO mainly on the ground that infusion of money by the beneficial owner in the shell Companies for allotment of shares of the respondent companies could not be proved. The findings aforesaid has been recorded in ignorance of the material on record sufficient to prove a case of benami transaction. It was a case where Shell companies made application for allotment of shares of the respondent companies which allotted the shares on premium.

6. The respondent companies issued the shares without any business activity to justify premium. It was a devise to involve cash through the banking channels for benami transaction. The money was first infused in the shell Companies at the instance of the beneficial owner for making application for allotment of shares of the respondent companies which was not on the face value but on premium and thereby huge cash was transferred in the shape of the application for allotment of the shares through the banking channel. On the receipt of the amount by the respondent companies, it was used to acquire the shares of other companies M/s Capri Global Capital Limited (in short "CGCL") and financial investment in ICICI Prudential Money Fund, Tata Money Market Funds and ICICI Prudential Ultra Short-term Funds aggregating Rs.5,04,93,959/-. Ignoring all those facts, the Adjudicating Authority refused to confirm the PAO. It is also in ignorance of the fact that once the respondent company received proceeds out of benami transaction, then its onward utilization was also liable for provisional attachment of those properties as per Section 6 of the Prohibition of Benami Property Transactions Act, 1988 (in short "the Act of 1988"). It was further stated that even the shell Companies had no business to their credit so as to infuse huge amount for seeking allotment of shares of respondent companies and at the same time the respondent company had no business to charge premium for allotment of shares. The transactions were routed to infuse cash by the beneficial owner to use it through banking channel. It resulted in benami transaction because consideration for allotment of shares was infused by the beneficial owner and with allotment of shares to the Shell Companies, it became a case of benami transaction.

7. Ld. Counsel for the appellant department made a reference to the arguments raised by the respondent. It was to the effect that the respondent companies received the money in the shape of Share Application with due allotment of shares to the entities applied for it. The amount received through the Share Application was utilized to purchase shares of other companies and financial investments. The argument aforesaid was raised in ignorance of the financial status of the respondent companies as well as of the shell Companies and thereby the Adjudicating Authority ought to have confirmed the provisional attachment of the properties taking it to be a case of benami transaction. The statements of the witnesses recorded under Section 131 of the Income-tax Act were sufficient to prove a case of benami transaction but ignored by the Adjudicating Authority.

8. Ld. Counsel for the appellant further submitted that the notice was caused referring to Section 2(9)(A) and Section 2(9)(D) of the Act of 1988. It seemed to be a case falling under both the provisions but Adjudicating Authority has erroneously taken it to be a notice in conflict or contradiction to the provisions referred above with the finding that benami transaction can fall either under Section 2(9)(A) or under Section 2(9)(D) of the Act of 1988. It cannot fall under both the provisions simultaneously. It is for the reason that under Section 2(9)(D), the beneficial owner remains unknown while under Section 2(9)(A) it remains identified. In the instant case, the beneficial owner was known and has been named in the impugned order and even copy of the notice was caused to him under Section 24(1) of the Act of 1988. The case was however adjudicated, finding it to be under Section 2(9)(A) of the Act of 1988. The prayer was accordingly made to cause interference in the impugned order because department could prove a case of benami transaction.

Arguments of the Ld. Counsel for the respondent:

9. The appeal was contested by the respondent. It was submitted that no illegality or error has been committed by the Adjudicating Authority in passing the impugned order, rather, facts were meticulously considered It

resulted in denial of confirmation to the provisional attachment of the properties in the hands of the respondent.

10. The respondent company was incorporated on 05.08.2004 and has been engaged in the business of investing and trading in shares and securities since 22.02.2008. Between FY 2007-08 to 2010-11, the company received Rs.56,35,00,000 (Rupees Fifty Six Crore Thirty Five Lakhs only) as subscription towards shares capital from various entities ("investing companies") through banking channels and against the subscription so received, the Company issued shares to those Companies. The Company was regularly filing of income tax returns. Returns of Income declared for AY 2008-09 to 2020-21, reflect that the Company was a profitable entity, earning profit before tax of INR 3,09,78,498/- (FY 2008-09) on a paid-up equity share capital of Rs 77.25 lacs i.e., more than 400% of its capital in one year alone, demonstrating its financial capacity from business operations. This high level of profitability was the reason for premium charged on issue of shares. The ITAT in its order in *DCIT v. Gladiolus Property & Investment (P.) Ltd.* [ITA No. 2924(MUM) of 2017, dated 16-5-2019] for AY 2009-10 has observed as under:

"6.3 So far as the justification of share premium is concerned, we find that the assessee, in its investment note, adopted Discounted Cash Flow method to arrive at the valuation of shares."

11. Over the years, the source of investment in the Attached Properties was the share capital/premium received as well as profits from sale of shares and dividend earned thereupon, which were reinvested in the purchase of the Attached properties.

12. The Assessing Officer reopened Company's assessment on the grounds that the amounts received by the Company from issue of share capital at premium was not genuine as the identity and credit worthiness of the investor companies was not proved and accordingly added Rs. 13,25,00,000/- as unexplained credits U/s 68 of the IT Act. It was challenged by the Company before the Commissioner of Income Tax (Appeals)- 20, Mumbai. *Vide* Order dated 18.01.2017, the CIT(A) allowed the appeal holding that investing companies' have shown credit worthiness and therefore the transactions were genuine on the basis of the documents produced before AO such as PAN, bank accounts, Balance Sheet etc, and accordingly was pleased to delete the additional income. The Order of CIT(A) was upheld by the Income Tax Appellate Tribunal "G" Bench, Mumbai ["ITAT"] *vide* Order dated 16.05.2019, dismissing the Department's appeal.

13. The Initiating Officer issued a Show Cause Notice U/s 24(1) PBPTA on 24.06.2021 and PAO U/s 24(3) PBPTA of the even date for 25,80,375 shares of CGCL. The PAO U/s 24(4) PBPTA was passed on 27.09.2021 against the Attached Properties. Subsequently, the total shares of CGCL stood attached were reduced from 25,01,501 to 24,90,337 by the Appellant Department *vide* Order dated 11.05.2022 [Rectification Order"] passed U/s 47 of the Act.

14. The Ld. Adjudicating Authority has considered the submissions by the Respondent Company with regard to investment in share capital and share premium and held that the Attached Properties are not out of benami transactions and passed the impugned Order, holding the Properties to be the legitimate property of the Answering Respondent and revoked the PAO in its entirety.

15. The entire case of the Appellant Department is based on the uncorroborated statements of the third parties recorded by the Income Tax Department in unrelated proceedings U/s 131 of the IT Act. Neither any separate statements were recorded nor any independent investigation was carried out by the Appellant Department under the PBPTA. The statements were inadmissible under Section 33 of the Indian Evidence Act, 1872.

16. The Appellant failed to adduce any direct, reliable, or substantive evidence demonstrating that the share capital and premium received by the Respondent Company from the Investing Companies was the cash/income of the BO and channelized through the accommodation entry providers, into the Investing Companies which finally purchased shares of the Company. The Appellant solely relied on the statements of certain individuals who claim to be accommodation entry providers operating in Kolkata recorded by the Income Tax Department U/s 131 of the Income Tax Act, 1961. The proceedings in which statements were recorded by IT Authorities have no connection with the Answering Respondent, and are entirely unrelated qua unknown entities. The aforesaid persons neither named Respondent Company nor Respondent No. 2 that money received from Respondent No. 2 was purportedly channelized into the Investing Companies.

17. The Appellant has also failed to provide any material to demonstrate that the Respondent Company is a mere shell company/paper entity and that the Attached Properties are actually held by and for the benefit of the BO/ Respondent No. 2.

18. On the contrary, it is evident that the Respondent Company and investing companies were having PAN, their audited financial statements were placed on record and were duly filing their income tax returns / paying taxes. Further Attached Properties were held by the Answering Respondent for its benefit. As acknowledged in the Impugned Order and not disputed by the Appellant), it is evident that tax aggregating more than INR 3 Cr. was paid by the Respondent Company during AY 2008-09 and AY 2020-21. Therefore, any presumption / allegation by the Appellant Department that the Respondent Company and or investing companies are shell companies is without any basis and devoid of any merit.

19. All the income generated from dividend and sale of shares was reinvested by the Company into purchase of the attached properties. It was thus a case where gains were reutilised by the Company itself and no benefit has been passed on to any other entity or person, including the BO. Therefore, it is evident that the Properties were held for the benefit of the Answering Respondent itself and not for the BO/Respondent No. 2. Therefore the ingredients of S. 2(9)(A) PBPT are not made out.

20. The Respondent Company, as a distinct juristic person, owns its assets, including the Properties. The assets owned by the Company cannot be termed as assets of the shareholders. The law established in *Mrs. Bacha F. Guzdar v. Commissioner of Income-tax* [1955] 27 ITR 1 (SC)/(1955) 1 SCR 876, reinforces this legal position. The same was reiterated by the Rajasthan High Court in *Kalyan Buildmart Pvt Ltd v. Initiating Officer Deputy Commissioner* [2021] 131 taxmann.com 99/439 ITR 62/[2022] 285 Taxman 335 (Rajasthan)2021 SCC OnLine Raj 4391.

21. *The burden of proof of benami transaction rests upon the person asserting it i.e., the Appellant Department.* The Department has failed to discharge its burden. The Appellant Department has proceeded without any reliable, cogent and material evidence to discharge the burden of proof cast upon it under the PBPTA. Consequently, the Appeal is liable to be dismissed. (Ref: *Jaydayal Poddar v. Mst. Bibi Hazra* (1974) 1 SCC 3 ; *Smt. P. Leelavathi v. V. Shankarnarayana Rao* [2019] 104 taxmann.com 153/263 Taxman 105 (SC)/(2020) 19 SCC 816 ; *Gangadara Ayyar v. Subramania Sastrigal* AIR (36) 1949 FC 88).

22. Reliance was also placed on the order of this Tribunal in *DCIT v. Nibhoddh Trading Pvt. Ltd.* [FPA-PBPT-2497/MUM/2023, order dated 05-11-2024] dismissing the Department's Appeal because department failed to produce any evidence to prove that consideration for purchase of the property was provided by the BO and therefore the Respondents therein were the BOs.

23. Section 2(9)(D) PBPTA is applicable only where the source of consideration for purchasing a benami property is "not traceable or fictitious". It has no application in cases where the beneficial owner is identified.

24. Admittedly, in the present case, the Respondent No. 2 is alleged to be the beneficial owner, who alleged to have provided the consideration, which was invested by the Investing Companies as share capital of the attached properties. Since the source of the consideration is known, Section 2(9) (D) PBPTA could not have been invoked.

25. Since the Appellant Department failed to conduct any independent investigation, including recording of the statements of the relevant persons under the Act, outcome of proceedings in re-assessment are relevant and binding in the present proceedings.

26. The Ld. ITAT, *vide* its Order dated 16.05.2019 observed that the identities of the Investing Companies stood established through documentary evidence. Further the source and creditworthiness of the investments were satisfactorily explained, and no cash was exchanged, demonstrating the genuineness of the transactions.

27. The Show Cause Notice as well as the PAO U/s 24(3) PBPTA only identified and provisionally attached the CGCL shares as benami property. Other Properties were attached for the first time in the PAO U/s 24(4) PBPT, without providing any opportunity to the Respondent No. 1 Company to defend attachment of other properties. It is settled law of the land that the Department cannot agitate a case which is not set up in the show cause notice. Consequently, the attachment of the other Properties for the first time under the PAO issued under Section 24(4) PBPT is liable to be set aside. The judgment in the case of *Commissioner of Central Excise v. Shital International* [2010] 1 taxmann.com 413/(2011) 1 SCC 109 Para 19 was relied.

28. Furthermore, it is settled law that "information" does not constitute as independent satisfaction unless the investigating authority conducts its own inquiry; borrowed or dictated satisfaction is impermissible. Consequently, the purported satisfaction upon which the proceedings under PBPTA were based, is vitiated by its reliance on extraneous and untested material. The prayer was accordingly made to dismiss the appeals.

Findings of the Tribunal:

29. We have considered the rival submissions made by the Ld. Counsel for the parties in reference to separate orders passed by the Adjudicating Authority though on the same date. We have illustratively taken the facts of GPIPL because allegations on all the respondent companies for receipt of Share Application Money for allotment of shares at premium through Shell Companies are common. The money in share application is alleged to have been infused by the beneficial owner, thus, it was considered to be a case of benami transaction. In the case of GPIPL, it had received the Share Application Money in two tranches. Rs. 10 Crores was received on 31.03.2008 and Rs.5.30 Crores on 29.04.2008. The amount of Rs.7.95 Crores was received on 25.07.2009. It was received from the Kolkata based entities. In second tranche, Rs. 43 Crores was received from Mumbai based entity - M/s Sidhivinayak Relators Pvt. Ltd. The Share Application Money was received from the year 2008 to 2011. The amount received by the respondent companies was utilized for acquiring shares of other companies and for further investments. The Adjudicating Authority did not find any evidence to show infusion of cash by the beneficial owner through the accommodation entry provider entities /companies at Kolkata and Mumbai so as to convert the cash amount into share of GPIPL as a benami transaction. Subsequently, the benamidar company, GPIPL transferred the funds to M/s Kala Mercantile Pvt. Ltd. and M/s Gainful Investments & Advisors Pvt. Ltd. at a very low price. However, how the issue is relevant could not be specified. The Adjudicating Authority even considered the role of Shri Balveer Singh Choudhary alleged to be beneficial owner. It did not find evidence for infusion of cash by him in the shell companies to acquire the share of the appellant, GPIPL and for its onward acquisition of shares of CGCL and for other investments.

30. In absence of satisfaction of first limb, a case was not found for benami transaction under Section 2(9)(A) of the Act of 1988.

31. The Adjudicating Authority further found selfcontradiction in the notice and the initiation of the proceedings by the Initiating Officer. The transaction could not have taken simultaneously under two provisions i.e. Section 2(9)(A) and Section 2(9)(D) of the Act of 1988. The Section 2(9)(D) would be applicable if the beneficial owner is unknown but in the instant case, the name of the beneficial owner was given and therefore invocation of Section 2(9)(D) of the Act of 1988 was not found tenable. We find substance in the finding because application of two provisions to make a case of benami transaction can be taken when the Initiating Officer is not certain to find out the nature of benami transaction.

32. The statement of the witnesses recorded under the Income-tax Act could not have been relied without further independent inquiry and in conflict with the documentary evidence. The Adjudicating Authority did not find any independent inquiry by the Initiating Officer to find out a case of benami transaction.

33. The Adjudicating Authority in para 9.11 of the impugned order categorically considered the issues and recorded its finding that the Initiating Officer failed to provide any material to show how the cash was transferred by the beneficial owner to the Shell entities and finally landed in the benamidar company to be utilized for purchase of share of CGCL. It is with further finding that the Initiating Officer even failed to provide any material to show that benamidar company was a shell company whose corporate veil stands pieced and the shareholder / promoter is the only real entity. No evidence was produced to show that benamidar company is not deriving benefit for itself but for the beneficial owner, rather, it was found that the respondent company has shown huge profit in the returns from the Assessment Year 2009-10 and onwards, the period involved in these matters. It is apart from the fact that acquisition of shares of CGCL and other investments were not only out of the Share Application Money but out of dividends and other funds available with the respondent company. Thus, acquisition of shares of CGCL could not have been taken for onwards acquisition of property out of the benami transaction.

34. The Adjudicating Authority even made a reference to the financial status of the respondent company which had disclosed its income in the return for the period 2008 till 2020 and thus could not have been treated to be paper entry. The profit shown by the respondent company was assessed by the income-tax authorities continuously. All the reasons were elaborately discussed by the Adjudicating Authority in passing the impugned order.

35. Ld. Counsel for the respondent further made a reference that the initial transaction taken to be benami in nature by the Adjudicating Authority with the remark that the appellant could have attached the shares allotted by the respondent company in that case and not the shares acquired on its onward investment on receipt of the Share Application Money on allotment of shares on premium. We have gone through the order carefully and find that the observation has been made only to analyze the action of the appellant where they did not attach

the alleged infusion of cash into benami transaction converted into the shares of the appellant company to the alleged Shell Companies. The Adjudicating Authority made observation as to why the shares allotted by the respondent companies to the alleged Shell Companies could not to be attached if it was a case of benami transaction. The argument was raised by the appellant in ignorance of the finding that the Initiating Officer failed to subscribe the evidence to make out a case of benami transaction. Thus, we do not find any conflict in finding of the Adjudicating Authority.

36. We, further, find that the appellant company has shown not only their business activity but a profit earned out of it. It was followed by the return of income-tax duly assessed. The appellant has shown their profit before tax to a sum of Rs.3,09,78,498/- in the Financial Year 2008-09 on the paid-up capital of Rs 77.25 lakhs. The profit was shown to be more than 400% to its capital in one year alone, demonstrating its financial capacity from business operations to justify allotment of shares on the premium in pursuance to the Share Allotment Application which said to have been routed through the Shell Companies. We may accordingly refer to the facts pertaining to the alleged Shell Companies.

37. According to the respondent, the beneficial owner routed the funds through the Shell Companies and for that the statements recorded under Section 131 of the Income-tax Act has been relied. The appellant has failed to show an independent inquiry to find out a case of benami transaction. The appellants have solely relied upon the material collected in the Income-tax proceedings. For that reason alone, the appellant could not show that alleged benami transaction was used for the benefit of beneficial owner. The facts on records, rather, show that the properties in the shape of shares of CGCL and other financial investments were acquired by the respondent companies for their own benefit and not for the benefit of the beneficial owner. The benefit was never passed on to beneficial owner and the appellants have failed to show any such arrangement to make out a case of benami transaction. Accordingly, the Adjudicating Authority did not find a case to confirm the provisional attachment order while answering the references.

38. The Adjudicating Authority further found that the Initiating Officer has failed to show any material or that the initial cash amount was infused by the beneficial owner to route through the banking channel using the Shell Companies. It is despite of the fact that burden of proof lies on the person making allegation of benami transaction which in that case is the Initiating officer. We do not find any error in the findings recorded by the adjudicating Authority for the aforesaid.

39. The issue now remains that provisional attachment of the investments other than in the shares of CGCL. The appellant has made an allegation about provisional attachment of the properties other than caused under Section 24(3) of the Act of 1988. Section 24 of the Act of 1988 is to be invoked to continue the PAO passed under Section 24(3) of the Act of 1988 or if no such order has been passed then to pass an order for provisional attachment under Section 24(4) of the Act of 1999 which in the present case was not applicable in the light of the availability of the order under Section 24(3) of the Act of 1988. The addition of the properties for provisional attachment was caused and has been taken to be illegal by the Adjudicating Authority. It has been highlighted by the respondent in their arguments.

40. The arguments made by the Ld. Counsel for the respondent are supported by the judgments on each issue whereas in rebuttal no judgment was cited by the Ld. Counsel for the appellants to take a view adverse to the view taken by this Tribunal, High Court and the Hon'ble Apex Court on each issue. We accordingly accept the arguments raised by the Ld. Counsel for the respondent touching the merits of the case supported by the judgments to endorse the order passed by the Adjudicating Authority denying the confirmation of the Provisional Attachment Order finding lack of evidence to prove a case of benami transaction.

41. In the light of the discussions made above, we do not find any reason to cause interference in the impugned order. The confirmation of the provisional attachment of different properties in the hands of the four respondents has been rightly denied and accordingly this order would cover the cases of four respondent companies.

42. The appeals are accordingly dismissed.

*In favour of assessee.

APPELLATE TRIBUNAL FOR SAFEMA AT NEW DELHI

1. **MP-PBPT-2092/MUM/2022 (Misc.)**
MP-PBPT-970/MUM/2020 (Stay)
MP-PBPT-972/MUM/2020 (Exem.)
FPA-PBPT-1079/MUM/2020

M/s. Prism Scan Express Pvt. Ltd. ... Appellant

Versus

The Initiating Officer,
DCIT (BPU-2), Mumbai ...
Respondent

2. **MP-PBPT-2093/MUM/2022 (Misc.)**
MP-PBPT-973/MUM/2020 (Stay)
MP-PBPT-975/MUM/2020 (Exem.)
FPA-PBPT-1080/MUM/2020

M/s. Futurage Corporate Care Pvt. Ltd. ... Appellant

Versus

The Initiating Officer,
DCIT (BPU-2), Mumbai ... Respondent

3. **MP-PBPT-2698/MUM/2022**
FPA-PBPT-1085/MUM/2020

Suresh Bhageria ... Appellant

Versus

The Initiating Officer,
DCIT (BPU-2), Mumbai ... Respondent

Advocates/Authorized Representatives who appeared

For the Appellants : Mr. Madhav Khurana,
FPA-PBPT-1079 & 1080/MUM/2020 Ms. Sanjivani,
Mr. Nikhil Pillai, Sh. Athak Walia
& Sh. Parth Kaushik,
Advocates

For the Respondent : Mr. Manmeet Singh Arora,
S.P.P.

For the Appellant : Sh. Singh & Sh. Gurfateh Singh
FPA-PBPT-1085/MUM/2020 Khosa, Advocates

For the Respondent : Mr. Manmeet Singh Arora,
S.P.P.

CORAM

JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN
SHRI V. ANANDARAJAN : MEMBER

ORDER
15/12/2023

**FPA-PBPT-1079/MUM/2020,
FPA-PBPT-1080/MUM/2020 &
FPA-PBPT-1085/MUM/2020**

These appeals have been filed under section 46 of Prohibition of Benami Property Transactions Act, 1988 (in short, the Act of 1988). It is to challenge the order dated 11.05.2020 passed by the Adjudicating Authority on a reference. The Adjudicating Authority has confirmed the Provisional Attachment Order dated 01.04.2019. By the order of provisional attachment, demat and bank accounts of two Companies, namely M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited were attached.

2. It is stated that one of the appellants Suresh Bhageria, is a promoter and Director of M/s Bhageria Industries Limited (In short “BIL”) and part of Bhageria Group of Companies. A survey was conducted under section 133 A of the Income Tax Act, 1961 on Bhageria Industries Ltd. It was alleged that there is benami

purchase of shares of B.I.L. by Benamidars, M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited.

3. It was also alleged that the financials of M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited are not administered with the credentials of their Directors.

It is also found that Directors of above two Companies were not drawing any benefits from the Company. They were the employees of B.I.L.. More than 50% of shareholding of M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited was held by two other Companies, i.e. M/s Wayforward Trade Private Limited and M/s Accelerate Tradestar Private Limited. The financials of M/s Wayforward Trade Private Limited and M/s Accelerate Tradestar Private Limited were also not commiserating with the credentials of the Directors. The companies had no business activities. The funds in the companies were not matching with the credentials of the Directors. They were having no means to infuse money in the Company. The Companies yet purchased the shares of B.I.L. and other Companies.

4. Based on the survey, an inference was drawn that M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited are involved in Benami transactions. During the course of the survey, statements of Directors of all the four companies were recorded under section 131 of the Income Tax Act.

5. The Directors of four companies, namely, M/s Prism Scan Express Pvt. Ltd., M/s Futurage Corporate Care Private Limited, M/s Wayforward Trade Private Limited and M/s Accelerate Tradestar Private Limited denied knowledge about the business activities of the Company. The Directors of M/s Accelerate Tradestar Private Limited alleged to have majority shareholding of M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited used to sign documents on the instruction of one Mr. Pikes in lieu of cash.

6. In pursuance to the survey, Initiating Officer found that the transaction of investment in share of BIL by M/s Prism Scan Express Private Limited and M/s Futurage Corporate Care Limited are Benami Transaction under section 2 (9) (C) and (D) of the Act.

7. The two companies were treated as Benamidars for purchase of shares of Bhageria Industries Ltd. and accordingly a show cause notice was served under section 24 (1) of the Act of 1988. The Initiating Officer attached demat accounts of M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited by invoking section 24 (3) of 1988 the Act. The Initiating Officer drew the following conclusions pursuant to the enquiry:-

- (i) Prism and Futurage had negligible funds till financial year 2013-14**
- (ii) The directors of the two companies were inducted in 2014.**
- (iii) Thereafter, huge funds were infused in the two companies by way of share capital on huge premium.**
- (iv) These funds were used for investments in shares, mainly of listed companies such as BIL**
- (v) There was no evidence of conduct of business by Prism and Futurage**
- (vi) One of the directors of Prism – Sh. Rohit Lohiya, and one of the directors of Futurage- Sh. Murarilal Gupta - work as Managers in BIL.**
- (vii) The contact email ID in one of the bank accounts of Prism and Futurage is ‘accounts.mumbai@bhageriagroup.com’.**
- (viii) The Headquarters of the Bhageria Group were located in the same geographical area as a bank accounts of Prism and Futurage.**

8. On a show cause notice, the appellants submitted their response. The provisional attachment order was, however, confirmed and is being challenged by these appeals. Before going further into the facts, it would be relevant to refer the only issue

raised by the counsel for the appellant to challenge the order of Adjudicating Authority. It was in reference to the Judgement of the **Apex Court in the case of Ganpati Dealcom Private Limited Versus Union of India, 2020 SCC online SC 1064.** It was submitted that the Benami Transaction involved in this case is prior to the amendment in the Act of 1988. The amendment was brought by the notification dated 25th October, 2016 to amend certain provisions of the Act, 1988. The amendment by the Amending Act of 2016 was subject matter of challenge before the Apex Court in the case of Ganpati Dealcom (Supra).

9. After elaborate discussion of the issues raised before the Apex Court, it was held that section 3 (2) of the unamended Act of 1988 is unconstitutional. Section 3 (2) of the Act of 2016 was also declared unconstitutional. It was further held that forfeiture provision under section 5 of unamended Act of 1988, prior to Amending Act of 2016 was also unconstitutional for being manifestly arbitrary.

10. In rem, it was held that forfeiture proceedings under section 5 of the Act of 2016 would be prospective and would not have

retrospective effect. It was with the direction that authorities cannot initiate or continue the criminal prosecution or confiscation proceedings for a benami transaction prior to coming into force the Act of 2016 vide the notification dated 25.10.2016. In reference to the aforesaid, the learned counsel for the appellant submitted that benami transaction involved in this case are prior to the amendment in the Act of 1988 by Amending Act of 2016.

11. The alleged share purchased by benami transactions are of the period prior to 01.11.2016, i.e. before the Amending Act of 2016 so amended by the Benami Transactions (Prohibition) Amendment Act, 2016 (In short, the Act of 2016).

12. In the light of the aforesaid, prayer was made to set aside both the orders by applying the Judgement of the Apex Court in the case of Ganpati Dealcom Private Limited (Supra).

13. The counsel for the appellant did not argue any other issue while making oral arguments but later on, submitted written arguments, touching even factual issues also.

14. We would deal with those issues also but the first issue, rather the only issue argued orally before the Tribunal is to be dealt with first because if the case is covered by the judgement of the Apex Court in the case of Ganpati Dealcom Private Limited (Supra), nothing more would require then to set aside both the orders impugned herein.

15. A contest to the legal issue in reference to the judgement of the Apex Court was made by the learned counsel for the respondents. It was submitted that the benami transactions involved in the present case are not only of the period prior to 01.11.2016, (Date from which Amending Act 2016 was given effect) but are even of the period subsequent to it.

16. Elaborating the arguments, it was submitted that transfer of shares may be prior to the amendment by the Amending Act 2016, but they were held by the two companies M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited even subsequent to the amendment.

17. In the light of the aforesaid, they were involved in the benami transactions even subsequent to the amendment.

A reference of the definition of “Benami Transaction” under section 2 (9) of the Act of Amending Act of 2016 was given and is quoted hereunder:-

Section 2. Definitions.—*In this Act, unless the context otherwise requires,—*

(9) “benami transaction” means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

Explanation.—*For the removal of doubts, it is hereby declared that benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), if, under any law for the time being in force,—*

(i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;

(ii) stamp duty on such transaction or arrangement has been paid; and

(iii) the contract has been registered.

18. As per the definition quoted above, the benami transaction means a transaction or an arrangement where a property is transferred to or is held by a person and the consideration of such property has been provided or paid by another person. The aforesaid definition is applicable to this case. According to the definition, “benami transaction” does not mean only transfer of property, but include even its holding by a person without payment of consideration rather it was paid or provided by another person. Since it has come on record that on the date of survey, subsequent to amendment by the Amending Act 2016 and even show cause notice, the shares were held by the appellant Companies, it would fall in the definition of “Benami Transaction” under the Amending Act of 2016.

19. The aforesaid issue was not argued by the counsel for the appellant in reference to word “held” rather they prayed for quashing of the orders in the light of the Judgement in the case of Ganpati Dealcom Private Limited (Supra).

20. The reference of paragraph nos. “69, 90, 91, 92, 93, 96, 98, 117, 120, 127, and 130” were given to support the arguments.

21. Those paras are quoted hereunder for ready reference:-

69. From the above, Section 3 (criminal provision) read with Section 2(a) and Section 5 (confiscation proceedings) of the 1988 Act are overly broad, disproportionately harsh, and operate without adequate safeguards in place. Such provisions were still-born law and never utilized in the first place. In this light, this Court finds that Sections 3 and 5 of the 1988 Act were unconstitutional from their inception.

90. With respect to the first line of argument, our discussion above can be summarized as under:

- (a.) Section 3(1) of 1988 Act is vague and arbitrary.**
- (b.) Section 3(1) created an unduly harsh law against settled principles and Law Commission recommendations.**
- (c.) Section 5 of 1988 Act, the provision relating to civil forfeiture, was manifestly arbitrary.**
- (d.) Both provisions were unworkable and as a matter of fact, were never implemented.**

91. Having arrived at the aforesaid conclusions that Sections 3 and 5 were unconstitutional under the 1988 Act, it would mean that the 2016 amendments were, in effect, creating new provisions and new offences. Therefore, there was no question of retroactive application of the 2016 Act. As for the offence under Section 3(1) for those transactions that were entered into between 05.09.1988 to 31.10.2016, the law cannot retroactively invigorate a stillborn criminal offence, as established above.

92. As per the concession made by the Union of India and a fair reading of Section 53 of the 2016 Act, the offence under the aforesaid provision is prospective, and only applied to those transactions that were entered into after the amendment came into force, viz., 1.11.2016. Any contrary interpretation of Section 3 of the 1988 Act would be violative of Article 20(1) of the Constitution. Article 20(1) reads as under:

20. Protection in respect of conviction for offences

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

93. In the case at hand, the 2016 Act containing the criminal provisions is applicable only prospectively, as the relevant Sections of the pre-amendment 1988 Act containing the penal provision, have been declared as unconstitutional. Therefore, the question of construction of the 2016 Act as retroactive qua the penal provisions under Sections 3 or 53, does not arise.

96. This brings us to the last aspect as to the retroactive operation of confiscation (forfeiture) under Section 5 read with Chapter IV of the 2016 Act. It is the argument of the Union of India that civil forfeiture being in the domain of civil law is not punitive in nature. Therefore, it does not attract the prohibition contained under Article 20(1) of the Constitution. Meaning thereby, that if this Court holds that the civil forfeiture prescribed under the 2016 Act is punitive, only then will the prohibition under Article 20(1) apply. If not, then the prohibition does not apply.

98 It is well settled that the legislature has power to enact retroactive/retrospective civil legislations under the Constitution. However, Article 20(1) mandates that no law mandating a punitive provision can be enacted retrospectively. Further, a punitive provision cannot be couched as a civil provision to by-pass the mandate under Article 20(1) of the Constitution which follows the settled legal principle that “what cannot be done directly, cannot be done indirectly”.

117 From the above discussion, it is manifest that the Courts have read down the provisions of civil forfeiture to be dependent on the underlying criminal prosecution to temper the harsh consequences envisaged under such provisions. No doubt, such reading down was mandated to ameliorate harsh consequences of confiscatory laws which otherwise would have allowed the

State agencies to take over the property without seriously pursuing the criminal prosecutions. At this stage, we can only recommend that the utility of independent provisions of forfeiture, distinct from criminal prosecution, needs to be utilised in a proportional manner, looking at the gravity of the offence. Few examples which may pass the muster of proportionality for having such stringent civil forfeiture, may relate to crimes involving terrorist activities, drug cartels or organised criminal activities. As we have discussed, the application of such a provision to numerous other offences which are not of such grave severity, would be of serious risk of being disproportionate, if procedures independent of criminal prosecution are prescribed. We may note that the proportionality of separate confiscation procedure prescribed under the 2016 Act, has not been argued herein. Accordingly, we leave the aforesaid question of law open.

120 Coming to the Benami Act post the Amendment, the interplay of Sections 27(3), (5) and 67 of the 2016 Act creates a confiscation procedure which is distinct from the procedure contemplated under the CrPC or any other enactment till now in India. This separation of the confiscation mechanism is not merely procedural. It has also altered substantive rights of the evidentiary standards from 'beyond reasonable doubt' to 'preponderance of probabilities'. Such a change of standards cannot be merely termed as procedural.

127 In view of the fact that this Court has already held that the criminal provisions under the 1988 Act were arbitrary and incapable of application, the law through the 2016 amendment could not retroactively apply for confiscation of those transactions entered into between 05.09.1988 to 31.10.2016 as the same would tantamount to punitive punishment, in the absence of any other form of punishment. It is in this unique circumstance that confiscation contemplated under the period between 05.09.1988 and 31.10.2016 would characterise itself as punitive, if such confiscation is allowed retroactively. Usually, when confiscation is enforced retroactively, the logical reason for accepting such an action would be that the continuation of such a property or instrument, would be dangerous for the community to be left free in circulation. In *R (on the appln of the Director of the Assets Recovery Agency) v Jia Jin He and Dan Dan Chen*, [2004] EWHC Admin 3021, where Collins, J. had stated thus:

"52. In Mudie, at page 1254, in the judgment of Laws LJ, who gave the only reasoned judgment, there is set out the citation from Butler which reads, so far as material, as follows:

"It is the applicant's contention that the forfeiture of his money in reality represented a severe criminal sanction, handed down in the absence of the procedural guarantees afforded to him under article 6 of the Convention, in particular his right to be presumed innocence [sic]. The court does not accept that view. In its opinion, the forfeiture order was a preventive measure and cannot be compared to a criminal sanction, since it was designed to take out of circulation money which was presumed to be bound up with the international trade in illicit drugs. It follows that proceedings which led to the making of the order did not involve 'the determination ... of a criminal charge (see Raimondo v Italy [1994] 18 EHRR 237, 264, at para 43; and more recently Arcuri v Italy (Application No 52024/99), inadmissibility decision of 5th July 2001..."

130

In view of the above discussion, we hold as under:

- a) Section 3(2) of the unamended 1988 Act is declared as unconstitutional for being manifestly arbitrary. Accordingly, Section 3(2) of the 2016 Act is also unconstitutional as it is violative of Article 20(1) of the Constitution.**
- b) In rem forfeiture provision under Section 5 of the unamended Act of 1988, prior to the 2016 Amendment Act, was unconstitutional for being manifestly arbitrary.**
- c) The 2016 Amendment Act was not merely procedural, rather, prescribed substantive provisions.**
- d) In rem forfeiture provision under Section 5 of the 2016 Act, being punitive in nature, can only be applied prospectively and not retroactively.**
- e) Concerned authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act, viz., 1.11.2016. As a consequence of the above declaration, all such prosecutions or confiscation proceedings shall stand**

quashed.

f) As this Court is not concerned with the constitutionality of such independent forfeiture proceedings contemplated under the 2016 Amendment Act on the other grounds, the aforesaid questions are left open to be adjudicated in appropriate proceedings.

22. The perusal of the paras quoted above not only makes a reference of the amended provisions but also deals with the issues over the constitutional validity of the provisions of the Act of 1988 and the Amending Act of 2016. The conclusions thereupon were drawn by the Apex court in para 130 quoted above. The benami transaction prior to the Amending Act 2016 were not to be touched in reference to the amended provisions.

23. It is not in doubt that benami transaction prior to the amendment is to be governed by Judgement of the Apex Court and for it, certain provisions of the Amending Act, which includes even provision of forfeiture would not apply. It would, however, be relevant to find out whether benami transaction is of a period prior to the amendment or even subsequent to it also.

24. For the aforesaid, we need to reiterate the definition of “Benami Transaction.” It not only refers in the transfer of property but also its holding and thereby, if somebody is holding the

benami properties subsequent to the amendment, it would come in the sweep of “benami transaction”.

25. If it is a case of transfer of property prior to the amendment in the definition of “Benami Transaction” and such property is not held by the benamidar as on the date of the amendment or subsequent to it, then the Amending Act of 2016 would not be applicable to such a transaction.

26. In other case, where though transfer of the property is prior to the Amending Act 2016, but it is still held by the benamidar even subsequent to the amendment, it would be a “benami transaction” under the Amending Act, 2016.

27. The clarity of the issue has been made in the light of the contest by the respondents for the first time and accordingly, we hold that the Judgement of Apex court in the case of Ganpati Dealcom Private Limited (Supra) would apply taking into consideration whether the benami transaction falling under section 2 (9) is of a period prior to the Amending Act, 2016 or it is even subsequent to it.

28. The learned counsel for the appellant has made reference of the judgement of the Apex Court in the case of Commissioner of Wealth Tax, (CWT) Versus Suresh Seth, (1981) 2 SCC 790.

29. It was submitted that once the transfer of property took place prior the Amending Act 2016, then subsequent holding of the property cannot be considered to be a continuance offence.

30. Reference of para 11 of the Judgement (Supra) was given to submit that a wrong or a default of any nature would not continue after its completion and accordingly it was urged that the case in hand involves a transaction prior to the Amending Act, 2016.

31. The learned counsel has made a further reference of the Judgement of the Apex Court in the case of C.I.T Vs. Vatika Township Private Limited (2015) (1) SCC (1).

It is to submit that the legislation is presumed to be

prospective in nature unless it is made retrospective.

The idea behind the rule is that current law should govern current activities. The law passed today cannot apply to the event of the past.

32. The learned counsel for the appellant has given reference of the Judgement dated 08.03.2022 of Telangana High Court in the case of Nexus Feeds Limited & Others Versus The Assistant Commissioner of Income Tax in Writ Petition No. 14695 of 2021. There, the Division Bench of the High Court dealt with the similar issue. The High Court recorded its findings in reference to section 2 (9) (A) of the Act of 1988. It was in relation to transfer of shares between the Companies. It was held that the Amendment of 2016 would not apply retrospectively being prospective in nature.

33. Reference of para 29, 32.6, 68, 69, 69 , 69.1, 70, 71, 73 and 93 of the said judgement was given. It was submitted that the controversy before the Division

Bench of the High Court was similar to what is involved

in this case. The High Court examined the issue minutely and held that any transfer of share prior to the amendment by the Amending Act of 2016 would not be governed by the amended provision. A transaction was not an offence in the year prior to the amendment by the Act of 2016 would not be an offence as per section 2 (9) (A) and (C) of the Amending Act.

34. We have considered the submissions made aforesaid. To analyse the issue, we have gone through the judgements referred to above.

35. If the facts of this case are taken into consideration, the transfer of shares of B.I.L in favour of Companies, M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited started after the year 2013. The fact, however, remains that those shares are still held by the appellant Companies and it was not only on the date of amendment by the Amending Act of 2016 but even at the time of survey by the Income Tax

Department for the year 2018.-19.

36. The appellants were holding the shares on the date of initiation of action and it could not be disputed by the appellants. The perusal of the definition of “Benami Transaction” not only makes a reference of transfer of property to fall in the definition of “Benami Transaction” but even its holding section 2 (9) (A) of Amending Act, 2016 has two parts to consider a transaction to fall within the purview of Benami Transaction, as defined under section 2 (9) (A) of the Act. The first is about the transfer of the property to a person of which consideration was paid or provided by another person. The second part has been separated from first part by putting word “or” in between. Under the second part of definition, if the property is held by a person whose consideration has been provided or paid by another person then also it would be a “Benami Transaction”.

37. The appellant has referred to the definition only by taking the first part, i.e. transfer of shares ignoring

the second part of the definition regarding holding of property. If a person is holding a property as on the date of the amendment or subsequent to it, whose consideration was paid or provided by another person, then it will fall under the definition of “Benami Transaction”. The consideration of definition of “Benami Transaction” by dividing it into two parts was not made earlier.

38. In the case of Nexus Feeds Limited & Others (Supra), we do not find a specific argument in reference to holding of property by a person of which consideration was paid or provided by another person.

39. For the aforesaid purpose, we refer para 69, 69.1, 70, 71, 73 and 93 of the said judgement and are quoted here under.

69. We have already noted above as to how the definition of benami transaction as finding place in the unamended 1988 Act has undergone a qualitative change post the [Amendment Act](#) of 2016. Under [Section 2 \(a\)](#) of the unamended 1988 Act, benami transaction was defined to mean any transaction in which property is transferred to one person for a consideration paid or provided by another person. Thus, for a transaction to come within the ambit of benami transaction under the unamended 1988 Act, it must be a transaction in which property is transferred; such property must be transferred to one person by another person; and such transfer of property must be for a consideration paid or provided by the transferor. [Under the](#)

Amendment Act of 2016, the definition of benami transaction has been expanded which we have already dealt with in paragraphs 49 and 50 of this judgment. Since the specific allegation and finding of the respondents against the petitioners is that the transaction entered into by the petitioner with the third respondent on 14.12.2011 is a benami transaction within the meaning of **Section 2 (9) (A)** read with **Section 2 (9) (C)** of the 1988 Act as amended by the **Amendment Act** of 2016, we may once again analyze the said provisions.

69.1 Admittedly, these two provisions were not in the statute either on the date when the 1988 Act was enacted or when the transaction took place on 14.12.2011. It has been brought into the statute book vide the **Amendment Act** of 2016. Question for consideration is whether the aforesaid definitions can be applied to the above transaction which took place on 14.12.2011?

70. As per **Section 2 (9) (A)**, a benami transaction would mean a transaction or an arrangement - (a) where a property is transferred to or is held by a person and the consideration for such property has been provided or paid by another person; and (b) the property is held for the immediate or future benefit, direct or indirect of the person who has provided the consideration barring the four exceptions carved out with which we may not be concerned.

71. Thus, as per **Section 2 (9) (A)**, there must be a transaction or an arrangement; as per such transaction or arrangement, a property is transferred to or is held by a person; the consideration for such property is provided or paid by another person. Pausing here for a moment, on a comparative analysis of this definition with the definition of benami transaction under the unamended 1988 Act, we find that there is a subtle but significant difference in the later definition even at this stage itself. As per the amended definition, the property need not be transferred by 'another person'.

The property can be transferred to by any person or held by a person on behalf of any person. But the consideration for such property is provided or paid by the 'another person'. The amended definition proceeds further; such transferred property must be held for the immediate or future benefit of the person who has provided the consideration and such benefit may be direct or indirect. It is equally significant to note that under the unamended 1988 Act there was no definition of 'benamidar' and 'beneficial owner'. These two expressions are defined under the **Amendment Act** of 2016 and must be read in conjunction with the new definition of benami transaction as provided in **Section 2 (9)**. Benamidar is the person, real or fictitious, in whose name the benami property is transferred or who holds such benami property; this would include a person who lends his name to such transfer or holding of benami property. Again, beneficial owner means, the person for whose benefit the benami property is held by a benamidar, whether his identity is known or not.

73. From the above analysis, it is beyond any doubt that **Section 2 (9) (A)** and **Section 2 (9) (C)** are substantive provisions, inasmuch as if a transaction or an arrangement comes within the ambit of the aforesaid two provisions, then it would be a benami transaction which is not only prohibited under Sub-Section (1) of Section (3) but is also an offence punishable under Sub-Sections (2) and (3) thereof as well as under **Section 53** of the 1988 Act as amended. It is interesting to note that under Sub-Section (2) of Section (3), the penalty for the offence of benami transaction is imprisonment which may extend to three years or with fine or with both. However, Sub-Section (3) of Section (3) clarifies that whoever enters into any benami transaction after coming into force of the **Amendment Act** of 2016 i.e., after 01.11.2016, shall be punished in accordance with **Section 53** notwithstanding anything contained in Sub-Section (2) which provides for a stiffer penalty of rigorous imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine which may extend to twenty five percent of the fair market value of the property. We may, even at the cost of repetition, mention that it is not the case of the respondents that the transaction in question is a benami transaction within the meaning of **Section 2 (a)** of the unamended 1988 Act. If it is a benami transaction under **Section 2 (a)** of the unamended 1988 Act, then it would attract the lesser penalty under **Section**

3(2). But if it is a benami transaction under **Sections 2 (9) (A) and 2 (9) (C)** of the 1988 Act as amended by the **Amendment Act** of 2016, then it will attract the stiffer penalty under **Section 3 (3)**.

93. From the conspectus of the discussions made above, it is apparent that **Section 2 (9) (A) and Section 2 (9) (C)** are substantive provisions creating the offence of benami transaction. These two provisions are significantly and substantially wider than the definition of benami transaction under **Section 2 (a)** of the unamended 1988 Act. Therefore, **Section 2 (9) (A) and Section 2 (9) (C)** can only have effect prospectively. Central Government has notified the date of coming into force of the **Amendment Act** of 2016 as 01.11.2016. Therefore, these two provisions cannot be applied to a transaction which took place prior to 01.11.2016. Admittedly, in the present case, the transaction in question is dated 14.12.2011. That being the position, we have no hesitation to hold that the show cause notice dated 30.12.2019, provisional attachment order dated 31.12.2019 and the impugned order dated 30.03.2021 are null and void being without jurisdiction. Consequently, the impugned order is set aside and quashed.

40. The Hon'ble High Court, no doubt propounded a ratio of prospective operation of the Amending Act of 2016 and even refers to the definition of "Benami Transaction". But, the specific argument in reference to holding of the property by a person whose consideration was paid or provided by another person was not raised rather emphasis was in regard to the transfer of the property prior to the amendment by the Amending Act of 2016. The specific argument aforesaid was not raised even before us in any of the appeals decided by this Tribunal earlier rather the decision therein was based on the admission of the counsel for the respondents that Benami Transaction involved therein was of the period prior to 01.11.2016. The orders were passed on the admission of the parties that Benami Transaction is prior to 01.11.2016.

41. In the instant case, a contest was made by the counsel for the respondents who submitted that if anyone is holding a property after the amendment by the Amending Act, 2016 though transfer of property is prior to 01.10.2016, such a transaction would fall in the definition of “Benami Transaction” as given under section of 2 (9) (A) of the Act of 2016.

42. We find force in the arguments of the learned counsel for the respondents. The Tribunal or for that even a court cannot ignore the statutory provision and for that to miss any word used in the statute. The word “held” has to be given true meaning and that too after proper reading of the definition, otherwise we would be giving interpretation to the provision going contrary to the definition of “Benami Transaction”. It can be explained by an illustration for clarity of the issue.

43. If a property is transferred to a person whose consideration was paid or provided by a person prior to

01.11.2016 and such a property is not held by the person on date or subsequent to the amendment then such a Benami Transaction would not be affected by the Amending Act 2016.

44. However, if transfer of property took place prior to 01.10.2016 and property is “held” by the person even subsequent to the date aforesaid who has not paid the consideration, rather it was paid or provided by another person, then irrespective of the date of transfer of the property, its holding would be a “Benami Transaction”.

45. We cannot ignore the word, “held” for giving proper interpretation of the definition of “Benami Transaction”. Accordingly, while we rely upon the Judgement of Hon’ble Apex Court in the case of Ganpati Dealcom Private Limited (Supra) but with clarity that if a person holds the property even after the amendment then even if transfer was prior to 01.11.2016, such a

transaction would be a Benami Transaction under the

Amending Act of 2016 and it would apply to such a transaction.

46. In the case of Nexus Feeds Limited & Others, the Division Bench of Telangana High Court has recorded admission of the respondents about the Benami Transactions of a period prior to the Amending Act 2016.

47. The perusal of para 71 otherwise makes it clear that if the property is transferred to any person or held by a person on behalf of any other person of which consideration was provided or paid by another, then it would fall under the definition of “Benami Transaction”. The emphasis was made even in regards to the transfer of the property held immediately or for future benefit of the person who has provided the consideration. It would also fall in the definition of “Benami Transaction”.

48. According to the Division Bench of the High Court, the two expression words, “transfer” and “held” under the amended provision need to read in conjunction and conclusions have been drawn in para 71 in the case (Supra) that “Benamidar” is a person,

real or fictional, in whose name the Benami property is transferred or who holds such Benami property.

49. The conclusion therein are against the appellants who referred subsequent paras, which are literally based on the admissions of the party where it was agreed that the Benami Transaction was of the period prior to the amendment by the Amending Act, 2016. That being the position, the judgement supra, does not support the appellant.

50. The appellants have referred to the judgement of the Apex Court in the case of Suresh Seth (Supra). It is to submit that there cannot be a continuous offence. If the offence is committed on a particular day, it ends on the same day. The arguments have been made in the ignorance of the facts in the case of Suresh Seth. If an offence is complete in all respect on a particular day or days, then obviously the judgement in the case Suresh Seth (Supra) would apply. It would however depend on the nature of the offence and even the provision. In the instant case, the definition of “Benami Transaction” has two parts. One is on the transfer of the property and another on its holding. The use of the word “held” under

section 2 (9) (A) (a) is of significance and would make a transaction to be a Benami Transaction, if a person holds a property even on the date of amendment or subsequent to it of which consideration has been provided or paid by another person prior to the amendment.

We have given illustration for the aforesaid to hold that if a property was transferred prior to the amendment by the Amending Act, 2016 and is not held by the transferee as on the date of the amendment, then the amended provision would not apply but after transfer of the property prior to the amendment if it is held by the Benamidar as on the date of the amendment or subsequent thereto, it would fall within the definition of “Benami Transaction” and registration of case for that would not be considered to be a continuous offence but becoming an offence in reference to the amended definition of “Benami Transaction”. Accordingly, the judgement in the case of Suresh Seth (Supra) would not apply to the case.

51. The first issue is accordingly decided against the appellant and in the favour of the respondents because property was “held” even after the amendment by the Amending Act of 2016.

52. The learned counsel for the appellant has filed written arguments wherein issues have been raised even in reference to the facts of this case. The learned counsel submitted that no evidence was brought by the respondents to show any Benami Transaction in the hands of the appellant Companies and involvement of Suresh Bhageria, the other appellant.

53. It alleged that side opposite has failed to prove that the finance brought in M/s Prism Scan Express Pvt. Ltd. and also in M/s Futurage Corporate Care Private Limited was by the appellant Suresh Bhageria.

54. The respondent failed to show that the corporate capital brought in the appellant Companies, was at the instance or by Suresh Bhageria.

55. It was also stated that M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited were not holding majority share of BIL, rather it was only 4% to 5% of the total share of the B.I.L. It is also that they purchased shares of other Companies also other than of B.I.L.

56. In view of the above, the respondents failed to prove Benami transaction in the hands of any of the appellants and thereby the Initiating Officer had drawn conclusions based on surmises and conjectures.

57. Merely for the reason that the email ID for the bank accounts of the appellant Companies were the same and having reference of “Bhageria” therein could not have resulted in a conclusion about Benami transaction. It could not have been even in reference to the employees of B.I.L to be the Directors of the appellant companies and thereby the learned Initiating Officer failed to conduct a fair, impartial and proper investigation in the matter.

58. The appellant has even alleged violation of principle of natural justice in passing the Provisional Attachment Order. It is for the reason that initially the attachment was initiated in reference to section 2 (9) (C) and (D) of the Act of 2016 but finally, they invoked section 2 (9) (A) and (C) of the Act of 2016 without a

notice for it. Thus, principle of natural justice was violated.

59. It is also stated that no reason to believe under section 24 (1) of the Act of 1988 was recorded by the Initiating Officer. It is despite a mandate of the statute. If the reasons to believe were recorded then it was not supplied to the appellant with the show cause notice. The facts aforesaid has been admitted by the respondent in their reply. Failure to furnish reason to believe is not only a violation of provisions of Act but also principle of natural justice. Thus, on the aforesaid grounds also, the impugned order deserves to be set aside.

60. It is lastly contended that the respondent have even failed to follow the procedure given under Rule 5 of Prohibition Of Benami (Property Transactions) Rules, 2016. The rule provides manner of the attachment. However, in the present case, it was not followed and

therefore the attachment of the bank accounts and

demat suffers from illegality and accordingly the impugned order deserves to be set aside.

61. We have considered the arguments made by the appellant in reference to the facts though while making oral arguments, none of those issues were raised. However, it has been raised in the written arguments and accordingly we would be dealing with it.

62. It is submitted that a case of “Benami Transaction” could not be proved by the respondent. The findings have been recorded based on inferences. The Initiating Officer based on his own imagination found that the benamidar Companies were working at the behest of Shri Suresh Bhageria, promoter of M/s B.I.L.

63. We find that aforesaid factual aspects were considered by the Adjudicating Authority. It was found that the two appellant companies, namely, Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Pvt.

Ltd. were not having any funds till 2013-14 and after the companies were acquired, funds have been infused for making investments in financial year 2014-15. The sources of funds in both companies are by way of share capital on high premium. The same was infused by paper companies which were not having any business activity. The Directors of the two appellants were the employees of M/s B.I.L. According to the appellant, finance in the companies was induced after the year 2013-14 but failed to show the source for it.

64. The statements of the Directors of the two companies namely Rohit Vinod Lohiya and Sapna Lohiya were recorded. They had no knowledge of the business activities of the appellant Company and admitted that no benefit from the Company was drawn. They were signing the documents on the instructions. They accepted themselves to be 'Dummy'. The same was the position for M/s Futurage Corporate Care Private Limited because its Director was also employee of B.I.L. and had no knowledge about business activity of the Company.

65. Rohit Vinod Lohia of M/s Prism Scan Express Pvt. Ltd. admitted that he is working as Manager, Sales in B.I.L. and was getting salary of Rs. 56,000/- per month. In the same manner, Shri Murari Lal Gupta, Director of M/s Futurage Corporate Care Private Limited had admitted himself to be the Manager, Sales in B.I.L. and was getting salary of Rs. 53,000/- per month. He was not getting any benefit from M/s Futurage Corporate Care Private Limited rather used to sign the documents on the instructions having no knowledge about the business.

66. Another Director, Sunita Gupta of M/s Futurage Corporate Care Private Limited admitted that she is not drawing any financial benefit from the company and used to sign the documents on the instruction.

67. Registered address of M/s Prism Scan Express Pvt. Ltd. is the residential address of the directors Shri Rohit Lohiya and Ms. Sapna Lohiya and there was no evidence of any business activity at the premises. Similarly, the registered address of Futurage Corporate Care Pvt. Ltd. is the residential address of Shri Murarilal Gupta and

Ms. Sunita Gupta, directors and there was no evidence

of any business activity being carried on from the premises.

68. M/s Accelerate Tradestar Private Limited also induced funds in the appellant Company. The Director, Girish Bhatt had denied any knowledge about the Company. He was in fact not knowing that he is a Director of the Company. He was not getting any benefits from the Company. He was signing the documents as and when asked by Mr. Pakesh and in lieu of that, he was getting an amount of Rs. 25,000/- per annum.

69. The another Director of the said company Tej Singh Ramola was from a very poor background. He denied knowledge about his Directorship or shareholding in the company. He was not getting any financial benefit from the company except Rs. 25,000/- cash per annum. Mr. Rajkumar Saraf was the Director of M/s Wayforward Trade Private Limited had admitted that he has no knowledge about M/s Wayforward Trade Private

Limited. The statement of Ms. Manju Rajkumar Saraf,

Director of Wayforward Trade Private Limited was also recorded. She was the housewife and having no income.

70. The statement of Rakesh Bhageria, the Sales Head of Bhageria Industries Ltd were also recorded. He did not comment on the statements of Director of M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited. The same was the position of Suresh Bhageria. Thus, in their statements recorded during the survey, the Directors of the two appellant companies and other connected persons admitted that they were working on the instructions of Shri Suresh Bhageria. The another connecting material was the email I.D. having name of Bhageria Industries though M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited were shown to be the separate Companies.

71. The Companies were shown to have offices at the residences. The Adjudicating Authority recorded certain facts to show brief financial profiling of Benamidar

Companies and following common features were found which are as under :-

- *Both companies are managed and controlled by Shri Suresh Bhageria.*
- *Both benamidar companies have directos who are employees of beneficial (employee of Mr. Suresh Bhageria) were appointed in March 2014.*
- *Neither of the companies had any funds till FY 2013-14 , and after acquisition of these companies, funds have been infused for making investment from FY 2014-15.*
- *The sources of funds in both the companies are by way of share capital on huge premium from corporate shareholders.*
- *The persons providing consideration in both the companies are same that is corporate shareholders.*
- *Both benamidar companies have applied the funds received into investment in share mainly listed companies whose promoter is Shri Suresh Bhageria.*
- *Same Authorized Representative has represented for both benamidar companies.*
- *The submissions and the clarification to the statement on oath filed by the both companies are similar.*

72. The Adjudicating Authority further considered that Directors in their statement stated about the investment by others. The summons were issued to all those who said to have contributed for the financials

of the Companies, but none appeared to make statement, rather details of entities were found to be incorrect for service of summons. It was thus recorded that funds in two benamidar companies, i.e. M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited Companies was brought at the instance of appellant, Suresh Bhageria. Eleven companies induced money in two appellant company on higher premium having no business activity. Those companies were summoned but only one responded. The shares on higher premium was to generate money for purchase of shares of BIL.

73. Detailed finding on each issue has been given. Thus, it is not correct to state that the respondent failed to prove benami transaction rather it is the appellant Companies failed to show and prove the financial sources or the source of inducement of finances after the year 2013-2014 other than by co-appellant.

74. It is also submitted that appellant Companies rightfully invested in the shares of B.I.L. and otherwise they were investing in other shares also. The argument aforesaid was made without clarifying as to from where the finance came in the Companies because inducement of finance in the Companies in rightful manner could not be proved by the appellants to show their innocence, but they utterly failed in doing so. A company having no business activity could get corporate finance on higher premium. M/s Futurage Corporate Care Private Limited has shown wholesale business but had no activity of purchase and sale for wholesale to carry out the activities. No expenses were shown to have incurred towards salaries/wages, payment of indirect taxes, electricity, rent etc. They were mere paper companies.

75. The clear conclusion from the survey and subsequent investigation was that control over the two appellant companies was acquired in the year 2014-15

and finances were infused into the companies at the

instance of Shri Suresh Bhageria for the purpose of engaging in benami transactions in the shares of B.I.L. and other group companies of the Bhageria group. In fact, the two companies had no activity other than investment in B.I.L. and other Bhageria group companies.

76. In view of the above, we do not find the respondent failed to prove Benami transaction as per the provision of PBPT Act.

77. The counsel for the appellant further submitted that inducement of finances in the two Appellant Company could not have been questioned once they were assessed by the Income Tax Department. The Corporate shareholding and share premium on a higher rate was disclosed in the Income Tax Return of 2015-2016 and 2016-2017 and the specific question, “whether the funds received in the form of share premium are from disclosed sources and have been correctly offered for Tax” has been decided.

78. The appellant had disclosed the sources with relevant information and was accepted by the Tax Authorities. Thus, inducement of funds said to be in the shape of corporate shares on a higher premium could not have been questioned.

79. We find that assessment of income by the income tax authority remain on different footing. They remain concerned about the income and tax payment. The Tax Authorities conducted survey subsequently to detect benami transaction. The assessment of income does not regularize benami transaction, rather it will take its own course. If income of someone is assessed and thereupon found to be out of benami transaction, the action under the Act of 1988 can be taken.

80. All the facts on record are surrounding and pointing towards active role of Suresh Bhageria to first induce the funds into the Companies and then to get

purchase of shares of B.I.L. apart from other

companies of the group and thereby, it could not be inferred that Initiating Officer was predetermined to make out a case.

81. The appellant had further referred to the statement of Director of Erstwhile shareholder of the company during course of survey. It was submitted by the counsel for the appellant that they ceased to be shareholder at the time of survey in December, 2018. Thus, their statements could not have been relied upon.

82. According to the appellant, the statement of Erstwhile shareholder was irrelevant whereas, we find it be relevant. It is to find out the financials of the two appellant Companies from the year 2013-2014 onwards and to draw conclusion about the Benami Transaction. The statements of the then Directors were relevant and rightly relied by the respondents.

83. In fact, the material available on record and perused by us is sufficient to show close connection

between Suresh Bhageria, the promoter of B.I.L. group with M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited and reason of investment in shares of B.I.L. and other companies as benamidars. The appellant has failed to show any business activities of the appellant companies in the year 2013-14 and subsequently to get corporate shareholders on premium. The inducement of funds was itself through Benami Transactions, otherwise Corporate Share would not have been given on higher premium of a Company having no business activity. The money induced therein was used to purchase shares of BIL and other Companies.

84. In the light of the aforesaid, we are unable to accept the argument of the appellant that the inferences have been drawn on extraneous consideration.

85. The another argument pressed while referring to the written arguments was as to whether proceedings

could have been initiated for alleged Benami transaction under two sub section (A) and (C) of Section 2(9) of the Act of 2016. The argument was even that section 2 (9) (A) (C) are in conflict with each other and therefore entire action became illegal. The argument has been raised without going through the provision and the facts available on the record. Section 2 (9) (A) (a) was attracted in view of holding of shares as on the date of amendment by the Amending Act of 2016 and even subsequent to it and so far as section 2 (9) (C) is concerned, it would be attracted when the transaction or arrangement in respect of the property is denied by the owner of the property or he denies knowledge of such ownership.

86. The initial notice and even show cause notice was in reference to section 2 (9) (B) (C), however, the order was passed in reference to section 2 (9) (A) and (C) of Amending Act of 2016. It needs to be clarified that even if the initial show cause notice was not given in

reference to section 2 (9) (A) of the Amending Act of

2016, the respondents were not precluded from passing the order in reference to provision attracted on the facts of the case. It is necessary to add that mere reference of an incorrect provision of law would not frustrate the proceeding if a case is made out on facts and under the relevant provision. We otherwise find that section 2 (9) (C) applies to the facts of case even independent for which notice was earlier served. The transaction or an arrangement in respect of the property where the owner of the property is not aware of or denies knowledge of such ownership on the date of survey or a show cause notice, even if the transfer of property is prior in time. It is the settled law of land that proceedings can be initiated in reference to two different provisions if a case is made out in reference to the individual provision.

87. In the instant case, there was transfer of shares prior to the Amending Act of 1916, but such shares were held by the appellant Companies even after the

amendment and therefore it would fall within the definition of “Benami Transaction”.

88. In the instant case, the Director of appellant Company, i.e. M/s Prism Scan Express Pvt. Ltd. and M/s Futurage Corporate Care Private Limited have denied knowledge about their shareholding or even interest in the Company and thereby the respondent have rightly applied section 2 (9) (A) (C) of the Act. At this stage, it was submitted that initially show cause notice was not issued in reference to sub-section A rather it was under sub-section (B) and (C) of section 2 (9).

89. The show cause notice can be given by referring to a particular provision but after appropriate proceedings, if a case is made out under other provision then an order passed thereupon would not be illegal.

90. Thus, we do not find any substance in any of the arguments.

91. It is further submitted that despite a mandate of section 24 (1) of the Act of 1988, the reasons to believe recorded in writing was not supplied to the appellant. We have gone through the record and find that a copy of the reasons to believe was not only supplied to the appellant but it has been enclosed with the appeal. In view of the above, the argument for alleged violation of Act is not made out.

92. The argument has been raised that Rule 5 of Rules, 2016 was not complied for attachment. It provides the manner of attachment.

93. We find arguments to be of no substance as the attachment of the property was made after following the rules and therefore the appellant failed to specify specific rule, alleged to have violated for attachment of the property. Thus, even the last argument raised by the appellant cannot be accepted.

94. In view of the discussion made above, we do not find any force in the appeals and accordingly the same are dismissed.

(Justice Munishwar Nath Bhandari)
Chairman

(V. Anandarajan)
Member

New Delhi,
15/12/2023
'M'

**APPELLATE TRIBUNAL FOR SAFEMA, FEMA, PMLA, NDPS, PBPT Act
AT NEW DELHI**

Date of Decision: 26.03.2019

**MP-PBPT-163/MUM/2019(Stay)
FPA-PBPT-206/MUM/2018**

Shri Akashdeep ... Appellant
Initiating Officer and Dy. Commissioner of
Income Tax (Benami Prohibition) Unit-2
Mumbai

Versus

M/s. Manpreet Estates LLP ... Respondent No. 1
Mumbai

M/s. RKW Developers Pvt. Ltd. ... Respondent No. 2
Mumbai

Advocates/Authorized Representatives who appeared

For the Appellant : Shri Manpreet Singh Arora,
Advocate
Shri Rahul Sinha, I.O.

For the Respondents : Shri Ashwani Taneja, Advocate
Shri Rahul Rai, Advocate

CORAM
JUSTICE MANMOHAN SINGH : CHAIRMAN

JUDGEMENT
FPA/PBPT/206/2018/MUM

1. The Appellanthas filed an appeal against impugned order dated 24.10.2018 passed under Section 26(3) of the PBPT Act arising out of Reference No. 198/17 filed by the Initiating Office upon informationreceived from Investigation Directorate, Mumbai as the I.O, Mumbai, BPU-2, on the basis of information received from Investigating Directorate, Mumbai proceeded with reference whereby it was contended

that the respondent no.1 is benamidar as actual benefits from the immovable property held by it accrued or would accrue to the respondent no. 2.

2. As per the case of appellant, Manpreet Estates LLP is the Benamidar and RKW Developers Private Limited is the beneficial owner.

3. The brief facts are that the respondent No 1 purchased ten residential flats at New Urmila CHS Limited, 19th Road Khar West, Mumbai for total consideration of Rs. 95.25 Crores. All of these ten flats are part of one single building i.e. Urmila CHS Ltd. which was constructed on land measuring 608.64 Sq. Mtrs. and 656.11 Sq. Mtrs. and situated at plot of land bearing C.T.S. No. D/900/A/3 Survey No. 637/638 of Suburban Scheme VII (Khar), Khar (West), Mumbai. The said properties have been purchased by the respondent no. 1 from ten persons on 17.01.2017 consisting of 5 individuals and 5 companies.

4. It is alleged by the appellant that these 5 individuals and the Directors of these 5 companies are dummy directors of these companies and dummy owner of the properties. The individuals and directors of these companies are employees of the respondent no. 2. They were not aware of any details, transactions or day to day functioning of the companies, though they are the directors of the said companies, which were handled by Mr. Sachin Pathak and Mr. Hemant Bhatia, who are in turn the accountants of M/s RKW Developers Private Limited and related concern. Both Mr. Sachin Pathak and Mr. Hemant Bhatia are employees of Wadhawan Group and are managing and controlling these companies on

the instruction of Mr. Hiten Sakhuja, a relative of the promoters and directors of the Wadhawan Group companies.

5. It is admitted on behalf of the appellant that the entire transaction of purchase of properties by the respondent no.1 from the aforementioned ten parties has been funded by M/s Dewan Housing Finance Limited (DHFL). The respondent no. 2 and DHFL are related to each other by means of common promoters and directors and also have common office addresses. The properties were purchased/registered by the respondent no. 1 on 17.01.2017 and whereas the loan was sanctioned to it by DHFL on 18.01.2017. The funds received by the ten parties as consideration for sale of the properties were immediately transferred directly or through intermediates to different concerns which were controlled and managed either directly by respondent no. 2 or through its related entities.

6. It is argued that though the reference forwarded by DDIT(Inv.)-8(1), Mumbai stated 10 original owners, who sold the properties to respondent no. 1, as benamidar & respondent no. 2 as beneficial owner, the IO is not bound by the reference and has to form his own belief under PBPT Act, 1988. It is submitted that on the basis of the information and material available the I.O. formed a reason to believe that the respondent no.1 is benamidar as actual benefits from the property accrued or would accrue to the respondent no. 2 only and accordingly recorded reasons before the issue of notice u/s 24(1) of the PBPT Act, 1988.

7. It is stated on behalf of the appellant that the respondent no. 1 has been purchased from the erstwhile partners of partnership firm on 13.12.2016 i.e. only about a month before the purchase of the properties and taken over by Shri Rajen Dhruv and Shri Kishore Parekh as partners. It

is alleged that Benamidar had no major assets or business. It is stated that though DHFL is listed having 60% of public holding, the key factor remains that day to day management is under the control of the members of the Wadhwan family, who are the main persons in decision making and also are involved in the management of the respondent no. 2 and the other group companies. The respondent no. 2 was involved in the scheme of purchase of flats by the respondent no 1 for redevelopment since beginning as evident from the fact that even the fees for filing forms with RoC with respect to change in the partnership agreement and the appointment of present partners in the respondent no. 1 was paid by the respondent no. 2. Mere approvals in the name of benamidar do not prove in any way that the benefits from the property are actually enjoyed by it and not by the beneficial owner as there is an active financial relationship between the respondents as evident from the bank statement as even after availing loan from DHFL, the respondent no. 1 received huge amounts of money from respondent no. 2 which it used for the development of property, thereby establishing that the respondent no. 2 is directly involved in the development of project in order to derive future benefits arising out of the same. The person providing the consideration i.e. DHFL and person reaping the benefits of such transaction i.e. respondent no. 2 are same as they are linked to each by means of common directors and promoters

8. It is submitted on behalf of appellant that the benefits to the beneficial owner arising out of property held in the name of the benamidar need not be direct and immediate and that indirect and future benefits are also covered under the definition of a benami transactions under section 2(9)(A) of the PBPT Act, 1988, therefore, the Adjudicating Authority thus erred in setting aside on merits the order u/s 24(4) of the PBPT Act' 1988

passed by the IO holding respondent no 1 as the benamidar and respondent no 2 as beneficial owner. There being a statutory power vested with the adjudicating Authority by virtue of Section 11 PBPT Act, the strict rules of evidence may not apply, whilst the Authority needs to weigh and shift the material placed before it with preponderance of probabilities coupled with circumstances, motives (if any) and object of undertaking a benami transaction.

9. It is alleged that the burden of proving, that a particular property is Benami or a person is Benamidar/beneficial owner/interested party, is upon the Initiating Officer alleging the same and such burden has to be strictly discharged based on legal evidence. Hon'ble Supreme Court and High Courts have consistently held that the burden of proving that a particular property is Benami and apparent purchaser is not the real owner always rests on the person who asserts it to be so. The reliance has been placed on **JaydayalPoddarVs. BibiHazra AIR, 1974 SC 171** and **Bhim Singh &Anr. Vs. Kan Singh 1980 AIR 727, 1980 SCR(2) 628** and **Binapani Paul Vs. PratimaGhosh&Ors. on 27th April, 2007 Appeal (Civil)8098 of 2004.**

10. But, the above mentioned case laws have been laid in relating to Benami Property are prior to the enactment of the Prohibition of Benami Property Transactions Act, 1988, as amended by Act No. 43 of 2016. The saidcase laws have been decided in civil matters in respect of the title owner and the real owner of the property prior to amendment.

11. The subject matter of the reference was the transaction for the purchase of piece and parcel of land, admeasuring 608.64 sq. mts. and 656.11 sq. mts. bearing CTS No. D/900/A/3 and Survey No. 637/638 of Suburban Scheme VII, Khar West, Mumbai (hereinafter referred to as the “said Property”).

12. The brief facts as per respondent no. 1 (for short R-1) are as under:-

- a) Mr. Rajen Dhruv is one of the partners of **R-1** and is also the promoter of Midcity Group which is known for its quality of construction and completing projects within timelines. Mr. Dhruv is the CEO and MD of Midcity Group and controls key departments viz. legal, corporate planning, land acquisition, construction, marketing and finance, etc. Mr. Dhruv looks after the finance of the Midcity Group as he is well acquainted with various financial institutions, including Altico Capital India Private Limited, India Bulls Housing Finance Limited, India Infoline Finance Limited, Punjab National Bank, Union Bank of India, Kotak Mahindra Bank, Punjab & Maharashtra Co-operative Bank Ltd. and DHFL, as he has in the past raised funds from them for his other projects, in the ordinary course of business.
- b) The Midcity Group has over two decades of experience in the Real Estate and Infrastructure space. Midcity Group has completed around 28 projects till date in the City of Mumbai Suburban. Presently there are numerous other ongoing projects with saleable area admeasuring approximately 1.5 million sq. ft.
- c) In or about October 2016, Mr. Dhruv came to know about a property situated at Khar (West) which was available for re-development. Finding the property ideal and feasible, Mr. Dhruv

decided to purchase the flats and initiate re-development on the said Property.

- d) At the relevant time, all the other entities in which Mr. Rajen Dhruv was either a partner/director were the entities/partnership forming part of the Midcity Group and were engaged in redevelopment of various other projects. Therefore, Mr. Dhruv thought that a separate entity, in which Mr. Dhruv and his relative Mr. Kishore Parekh would be partners, would be a suitable entity to undertake development of the said Property after purchasing the same. Mr. Kishore Parekh agreed to the aforesaid arrangement.
- e) Mr. Dhruv had raised funds from DHFL for his other projects also and in November 2016, Mr. Dhruv once again approached DHFL for the purpose of raising funds in order to redevelop the said Property. Since Mr. Dhruv was looking after the finance of the Midcity Group, he approached and negotiated with DHFL for the purpose of raising funds for the said Property. Meetings were held with the representatives of DHFL when the documents/deeds with respect to the said Property and the flats were handed over to them and it was agreed that the loan will have to be secured by creating a charge.
- f) In the meanwhile, Mr. Dhruv through his common friend met Ms. Tabassum Wajeda Mohammed Abid and Mr. Haroon Rasheed who are the erstwhile partners of **R-1 i.e. Manpreet Estates LLP**, when he became aware that the **R-1** was in the business of properties, real estates, developing building, act as contractors, etc. upon discussing the matter with the erstwhile partners, Mr. Dhruv realized that they were desirous of dissolving the **R-1** as they could

not carry on the business for which **R-1** had been incorporated. Further, **R-1** also did not have any other assets /liabilities of its own. Since Mr. Dhruv intended to acquire the said Property in a new entity, he was of the view that it would be appropriate to acquire the same in **R-1** as its objects met with his requirements. Mr. Dhruv also discussed the modalities of taking over **R-1** with a view to acquire the project of redevelopment in the firm. Discussions and negotiations were held with the erstwhile partners and pursuant thereto on 16th December 2016, an agreement was entered wherein Mr. Rajen Dhruv and Mr. Kishor Parekh were inducted as partners of **R-1** with effect from 12th December 2016 and the erstwhile partners retired from **R-1**.

- g) The understanding arrived at between the parties was that **R-1** shall raise money from banks/financial institution for payment of consideration. In order to safeguard the interest of the flat owners, it was also agreed that the physical possession of the flats would be taken only once the cheques are encashed.
- h) During the said period, **R-1** was also in process of complying with the requirements of DHFL with respect to raising a loan and creation of mortgage. It was only after the requisite compliances were followed by **R-1** that on 4th January 2017, DHFL issued its in-principle approval to the loan. It was only on the basis of the in-principle approval that **R-1** proceeded to execute and register the agreements with various flat owners in the building on 13th January 2017 and registered the same on 17th January 2017. All the vendors were paid valuable consideration and requisite stamp duty was also paid on all the agreements. The total consideration paid by **R-1** to all the flat owners and the owner of the land is

approximately about Rs. 111,32,00,000/- (Rupees One Hundred and Eleven Crores Thirty Two Lakhs Only) and the **total amount paid towards stamp duty by R-1 was approximately about Rs. 5,56,60,500/- (Rupees Five Crores Fifty Six Lakhs Sixty Thousand and Five Hundred Only).**

- i) That accordingly, on 19th January 2017, a mortgage deed (appended in the along with reply filed before the authority) was executed and registered by and between this **R-1** (therein referred to as the Mortgagor) and DHFL (therein referred to as the Mortgagee) on the terms and conditions stated therein.
- j) Subsequent to the registration of the documents, **R-1** took following steps towards redevelopment of the said Property:
 - i) On 6th February 2017, **R-1** through its Architect filed an application with the Chief Executive Officer, Slum Rehabilitation Authority and submitted a proposal under regulation 33(14) for acceptance **(Appended in the reply filed before the Adjudicating Authority).**
 - ii) On 7th April 2017, the Chief Executive Officer, Slum Rehabilitation Authority accepted the proposal for S. R. Scheme submitted by **R-1** under Regulation 33(14) (D) read with (E) and (F) subject to certain conditions. **(Appended in the reply filed before the Adjudicating Authority).**
 - iii) On 12th December 2017, Slum Rehabilitation Authority accepted the proposal of clubbing and issued an in principle approval to the scheme in the form of a Letter of Intent.
 - iv. Further, since the project had already received IOD and CC, **R-1** demolished the building and started shore piling work.
- k) Since **R-1** had completed the transactions in a bona-fide manner, it was shocked to receive a show cause notice dated 14th July 2017 under section 24(1) of the Prohibition of Benami Property

Transactions Act, 1988 **(the said Act)**. On the same date, an order was passed by the Dy. Commissioner of Income Tax thereby levying provisional attachment on the said Property. **R-1** states that vide its letter dated 8th August 2017, **R-1** submitted a detailed reply to the show cause notice and the provisional attachment order. Relevant contents of the reply were reproduced in the order of the Adjudicating Authority and is at **Pg. 22-32 of the impugned order (Appeal Set's Pg. No. 33-43)**.

- l) **R-1** states that despite of the aforesaid clear and equivocal facts of the case, the IO in total disregard to the reply given by **R-1** and without furnishing any valid justification whatsoever, passed an order dated 9th October 2017 continuing the provisional attachment.
- m) The IO subsequently also filed in the Adjudicating Authority Reference No. 198/2017 seeking therein the confirmation of its attachment order. **R-1** was arrayed as benamidar in the said reference.
- n) Consequent to the filing of the above reference, Ld. Adjudicating Authority in **a detailed and comprehensive order dated 24.10.2018**, did not confirm the Provisional Attachment Order as passed by the IO, finding the pleadings and grounds taken by **R-1** to be true, valid and genuine.

13. Admittedly, the Adjudicating Authority inter-alia on various reasons disallowed the reference filed by the IO by passing the speak detailed order on the following:-

- i) SCN is not sustainable since no explanation given by IO for changing the character of original reference and hence order u/s 24(3) & 24(4) are also invalid and illegal.
- ii) No explanation was given as to why the Provisional Attachment Order u/s 24(4)(a)(i) was not served to the R-2.
- iii) The IO has miserably failed to discharge the burden of proof cast upon him to prove the transaction as benami.
- iv) Genuine and Bona-fide transaction carried out by R-1 and Failure of the IO to establish connection between DHFL and RKW Developer Pvt. Ltd. (R-2).
- v) Transaction not carried out in stages as alleged as the R-1 has able proved that the land was purchased by it through genuine sources and for re-development.
- vi) The possession, control and enjoyment of the property is totally in the hands of the R-1 and therefore no proof that the property is held for the benefit of R-2 and thus crucial mandatory test to treat the property as benami failed.
- vii) Admission of IO that the funds were not given by the R-2 to R-1 for the purchase of property.

14. The counsel appearing on behalf of **R-1** submits that R-1 is the true and sole owner of the said Property and all the benefits arising out of the said land accrues to **R-1** only and as such no other person is beneficial owner of the said property as is being erroneously projected by the appellant (the IO). The transaction of the purchase of the 10 flats is a

genuine and bona-fide transaction for which consideration was paid by **R-1**.

15. There is no denial that the consideration for all the eleven (11) flats was partly funded out of the loan proceeds as secured from DHFL. The IO has accepted the genuineness of transaction involving the Flat No. 5 purchased by **R-1** for valid consideration, from its joint owners Sh. ManojDhirajlal Shah, Mrs. Rajul D. Shah and Sh. Manoj D Shah. The said flat was also brought on the same date as the other ten (10) flats i.e. 13.01.2017. In fact, the IO had questioned the validity of alleged as benami ten (10) flats, meaning thereby IO admitted and accepted that the purchase of the above-said flat is not a benami transaction, but remaining 10 flats are of benami transaction.

16. **R-1** is a registered LLP whose designated partner Mr. Rajen Dhruv is a promoter of Midcity group. **R-1** is also a part of Midcity group. It has come on record that the Mid-city group has completed many real-estate projects in the past and is in course of developing other projects also. A statement of projects under-taken by mid-city group including the **R-1** is filed and a brief profile of Mid-city group is annexed.

17. It is not denied by the appellant that the Mid-city group has taken loan facilities for its other real-estate projects from DHFL in the past and as recently as November 2016 had availed mortgage loan of Rs. 200,00,00,000/- (**Two Hundred Crores**) for one of its group entity namely Orbit Ventures Developers, which is developing project '**Shikar I-II**'. Therefore for business convenience and prudence, Mr. Rajen Dhruv again approached DHFL and got sanctioned a project loan of Rs. 180,00,00,000/-

(One Hundred and Eight Crores) for **R-1**. In the letter dated 06.04.2018, the lender i.e. DHFL had addressed to the IO that **“the loan to Manpreet Estates LLP (a Midcity group concern) was sanctioned in the normal course of our business for acquisition of project and redevelopment thereof. The subject loan is not the only project loan sanctioned to that group. Earlier also some projects of that group were financed by us”**The said Letter was reproduced in the order of the Adjudicating Authority. Therefore, it is wrongful for the appellant to state that **R-1** did not had the financial capacity to avail loan from DHFL or it has a control over to the financial institution.

18. The appellant has disputed the veracity of the loan agreement as executed between **R-1** and DHFL, and has claimed that **R-2** is exercising control over DHFL. DHFL i.e. Dewan Housing Financial Corporation Ltd. is a listed public company having substantial public holding. Therefore, submission of the appellant cannot be accepted to the effect that it is in control of a public listed company as the loan extended to the R-1 by DHFL was done on **‘arm’s length basis’**. The relevant disclosures for the payment of interest have been made in the Income Tax Return filed for the Assessment Year 2018-19.

19. It is not denied on behalf of the appellant that the designated partners of **R-1 i.e.** Mr. Rajen Dhruv and Mr. Kishore Parekh had given ‘Irrevocable Personal Guarantee’ and therefore stood as guarantors for the loan taken by **R-1**. The sanction letter dated 18.01.2017, from DHFL containing therein names of Mr. Rajen Dhruv and Mr. Kishore Parekh as personal guarantors for the loan sanctioned to **R-1**. In the letter dated

06.04.2018 of DHFL, a copy was also served to the **R-1**, requesting **R-1** to arrange alternative property as **collateral security**.

20. It is admitted by the IO himself that consideration was paid by **R-1** to the 10 (ten) erstwhile owners, and it has been contended that the sale consideration is finally parked with **R-2** and related concerns. The IO has passed order of attachment u/s 24(4)(a)(i), claiming therein that the transaction entered into by **R-1** is covered within the meaning of section 2(9)(A) of the PBPT Act. For a transaction to be covered under section 2(9)(A) of PBPT Act, there must be following two conditions are met:

- i) Consideration for property has been provided or paid by another person; and
- ii) Property is held for immediate or future benefit, direct or indirect, of the person who has provided the consideration.

In view of facts involved in the present case, it cannot be accepted that the R-2 is the beneficial owner, therefore, in the absence of beneficial owner allegation of transaction being benami u/s 2(9)(A) cannot be sustained and were rightly rejected by the Adjudicating Authority.

21. Even the attachment order u/s 24(3) of PBPT Act, has been passed without following the procedure as laid down in the Rule 5 of the PBPT Rules, 2016 which deals with provisions relating to provisional attachment, which read as under:-

“5. Provisional attachment – *For the purpose of sub-section (3) of section 24, the Initiating Officer shall provisionally attach any property in the manner provided in the Second Schedule of Income-tax Act, 1961 (43 of 61)”*

In this case the referred property being immovable, Part-III of Second Schedule of Income-Tax Act, 1961, containing rules dealing with attachment and sale of immovable property are applicable and for ready reference the rules are reproduced below:-

“Attachment

48. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

Service of notice of attachment:

49. A copy of the order of attachment shall be served on the defaulter.

Proclamation of attachment

50. The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

22. Under these mandatory provisions, the IO was duly bound to follow the statutory procedure mandated in above rules. Though order of attachment was passed and served on the **R-1**, the requirement of proclamation of attachment order at some place on or adjacent to the property attached by beat of drum or other customary mode and affixture of copy thereof on a conspicuous part of the property and on the notice board of the office of the Initiating Officer was not done. Certificate of confirmation of affixture of the order on the notice board of the Initiating Officer is also not found enclosed with the reference confirming that said mandatory step was taken at the relevant point of time. Thus, the rules were not followed.

- a) The Hon'ble Supreme Court in the case of **Ronald Wood Mathams v. State of West Bengal (AIR 1954 SC 455)** observed "*But it is essential that rules of procedure designed to ensure justice should be scrupulously followed, and Courts should be jealous in seeing that there is no breach of them*".
- b) On the decision of Hon'ble Punjab & Haryana High Court in the case of **Pal Singh Santa Singh v. The State (AIR 1955 Punjab 18)**, in the matters of proclamation u/s 87 of Criminal Procedure Code, where the Hon'ble High Court has held that attachment without publication is invalid if publication of attachment was required under rules but not made.

23. Thus, the provisional attachment order passed u/s 24(3) as well as order directing its continuation passed u/s 24(4)(a) of the Act was contrary to the rules.

24. In the present case, the beneficial interest in the property is with **R-1**. The Adjudicating Authority has correctly observed that there is nothing to show that the property in question is held by **R-1** for the benefit of R-2.

25. The sale deeds for all the 10 flats has not been challenged by the IO. The erstwhile sellers had entered/executed the sale deed with **R-1**, representing themselves to be the true owners. As per the mandate of Section 91 and Section 92 of the Indian Evidence Act, 1872, If a transfer has been done of an immovable property vide a written documentary evidences in the form of a registered sale deed. The contradictory stand by

way of oral evidence is not available unless the party concerned challenging the written documents are able to prove that those are sham documents and executed between the parties contrary to law.

26. It is correct that after amendment, the onus of proving a benami transaction rests entirely on the shoulders of the respondents. Before amendment, the burden of proof was on the prosecution to prove the guilt of the Benamidar and beneficial owner. Once both are able to discharge their burden of proof as per amended law, then the burden of proof would be shifted to the prosecution. In the present case, the respondents were able to discharge their initial burden of proof by producing the sale deeds and document pertaining to the loan amount and respondent no. 1 was also the promoter of respondent no. 2, no even prima contrary evidence is proved by the appellant. Thus, in the facts of present case and documentary evidence proved, the onus of proving a benami transaction rests entirely on the shoulders of the IO who is making the charge. The burden of proof shall shift to the person who is taking contrary of within the meaning of section 91 and 92 of the Evidences Act, 1972.

27. The authority has also concurred with the submission of R-1 that the IO has miserably failed to discharge such burden of proof. Section 92 of Indian Evidence Act, 1872 talks about the exclusion of evidence of oral agreement. Once the primary evidence is proved by way of written document which is not challenged, no evidence of an oral agreement or statement shall be admitted, the burden shall be shifted to the party who pleaded oral agreement. After the amendment in the Benami Act, if apply as it is, the burden of proof was shifted upon the appellant. In the present case, the IO has failed to discharge such burden and he has merely based

on his personal perception with uncorroborated statements had passed the order without even a single iota of evidence to discharge such a burden of proof once the R-1 was able to prove that his transaction was bona fide for beyond reasonable doubt.

28. Once the burden is shifted upon the IO, the principles of general law available prior to amendment would apply. The following judgements are referred on behalf of respondent no. 1 and 2:-

**a) Valiammal V. Subramaniam,
AIR 2004 SC 4187**

“Circumstances which can be taken as a guide to determine the nature of transaction:-

After saying so, this Court spelt out following six circumstances which can be taken as a guide to determine the nature of the transaction:

- 1. the source from which the purchase money came;*
- 2. the nature and possession of the property, after the purchase;*
- 3. motive, if any, for giving the transaction a benami colour;*
- 4. the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;*
- 5. the custody of the title deeds after the sale; and*
- 6. the conduct of the parties concerned in dealing with the property after the sale.”*

The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another.”

b) Smt. Usha Bhar vs Sanat Kumar Bhar

2004 135 Taxman 526 Cal

“In order to ascertain whether a particular sale is benami and apparent purchaser is not the real owner, the burden lies on the person asserting to prove so, such burden has to be strictly discharged based on legal evidence of definite nature.”

“it is the intention of the parties which is to be ascertained, very often such intention is shrouded in a thick veil. It is not possible to pierce the veil easily. However, such difficulties would not relieve the person who asserts that the transaction is benami, of any part of onus that rests on him. The difficulty would not justify the acceptance of mere conjecture or surmise as a substitute of proof.”

c) Bhim Singh V. Kan Singh AIR 1980 SC 727

“The principle governing the determination of the question whether transfer is a benami transaction or not may be summed up thus:

- (1) The burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction;*
- (2) If it provided that the purchase money came from a person other than the person in whose favour the property is transferred. The purchase is prima-facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary;*
- (3) The true character of the transaction is governed by the intention of the person who has contributed the purchase money and*
- (4) The question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct etc.”*

d) Andalammal V. Rajeswari Vedachallam

AIR 1985 Mad 321

“The next question to which we propose to advert is the issue relating to benami theory. It is by now well-settled that the burden is on the person who sets up the case of benami in the instant case the respondents and that if the burden is not discharged, the ostensible title will prevail. To substantiate a case of benami, the judicial pronouncements have laid down several factors have to be taken into

consideration and on an over all assessment of such factors is the court to render a finding. The relevant factors are:-

- a) The consideration;*
- b) Possession and enjoyment of property;*
- c) Possession of the title deeds;*
- d) Motive; and*
- e) Mutation in the public records.”*

e) Jayadayal Poddar V. Bibi Hazra AIR 1974 SC 171

“The essence of a benami is the intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof.”

29. Counsel for appellant in his written submission has stated that if there are infirmities in the proceedings, then this Appellate Authority is not convinced with the above arguments, it may remand the proceedings back to the Adjudicating Authority for impleading DHFL as an interested party and deciding the matter afresh, rather than dismissing the appeal. I do not agree with the submission of the appellant due to the nature of the present case.

30. In the light of above, this Tribunal is of the view that no ground has been made out by the appellant for any interference. The appeal is dismissed.

31. No costs.

(Justice Manmohan Singh)
Chairman

New Delhi,
26th March, 2019
‘skb’

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA NO. 16821 of 2022

**Krishna Sudama Marketing Private Limited
VS.
Union of India & Ors.**

For the petitioner	:	Mr. Pranit Bag, Ms. Amani Kayan, Mr. Zubeen Pandey, Mr. Debdatta Saha
For the respondents	:	Mr. Vipul Kundalia, Mr. Amit Sharma
Hearing concluded on	:	12.03.2024
Judgment on	:	22.03.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner-Company has challenged summons issued under Section 19 of The Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred as, "the Benami Act") and the provisional order of attachment as well as extension of such order passed under Section 24 of the said Act.
2. The petitioner argues that the respondent-Authorities do not have any jurisdiction to initiate a proceeding under the Benami Act and, as such, the assumption of jurisdiction is required to be quashed under Article 226 of the Constitution of India in its entirety. Summons was issued under Section 19 of the said Act against the petitioner on December 20, 2021 and two replies were given to the same by the

petitioner on January 5, 2021 and January 20, 2022 respectively. Subsequently, show-cause notices were issued under Section 24(1) of the Benami Act on March 28 and March 29, 2022 for 37 sale transactions entered into by the petitioner by separate registered sale-deeds.

3. Learned counsel argues that the basic ingredients for assumption of jurisdiction under the Benami Act are not fulfilled in the present case.
4. It is argued that the petitioner, in its replies, has disclosed the source from where the purchase money came, that is, from loans obtained from other companies. It is contended that, thus, the transactions do not fall within the purview of Section 2(9) of the said Act. The respondents particularly rely on sub-clause (D) of Section 2(9) which provides that a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious is also a benami transaction under the Act.
5. It is argued that the burden of showing that a transfer is benami lies with the person asserting the same which corresponds to Sections 91, 92, 101, 102 and 106 of the Indian Evidence Act, 1872. For such proposition, the petitioners cites *Jaydayal Poddar (Deceased) Through L. Rs and another Vs. MST Bibi Hazra and others*, reported at (1974) 1 SCC 3, *P. Leelavathi (Deceased) Through L. Rs Vs. V. Shankarnarayana Rao (Deceased) Through L. Rs*, reported at (2020) 19 SCC 816 and *Mangathai Ammal (Deceased) Through L. Rs and others Vs. Rajeswari and others*, reported at (2020) 17 SCC 496.

6. It is contended that in the present case, such burden was not discharged by the respondents.
7. Learned counsel for the petitioner next argues that there is no retrospective application of the 2016 Amendment to the Benami Act and cites *Union of India and another Vs. Ganpati Dealcom Private Ltd.*, reported at (2023) 3 SCC 315 for such contention. It is argued that the very texture of the definition of “benami transactions” has been altered, introducing, *inter alia*, sub-clause (D). The funds for purchase of the 37 properties-in-issue have been generated through increase in share capital by issuance of shares at a premium purchase by alleged shell companies according to the respondents, but the respondents have not considered that the transaction was in the financial year 2011-12, thus, much prior to the coming into force of the 2016 Amendment.
8. It is further argued that the transactions-in-question underwent scrutiny before the Income Tax Authority. The assessment order passed for the assessment year 2012-13 on August 6, 2014 would reveal that the increase in share premium from Re. 1/- to Rs. 499/- per share while issuing 5 lakh equity shares of the petitioner-Company was examined and given a clean chit by the Income Tax Authorities.
9. Moreover, the properties-in-issue have been duly disclosed in the balance sheets of the company, which have been annexed to the writ petition. The flow of funds has also been clearly disclosed by the petitioner in its replies to the show-cause notice. The petitioner has

clearly disclosed the names of the companies which paid the loans to the petitioner. A transfer from Rimjhim Construction on April 24, 2018 to the tune of Rs. 2 Cr. and a debit from the account of Rimjhim Construction on the same date are disclosed, along with an account statement of Shakambhari Ispat and Power Limited on January 1, 2019 for Rs. 5 Cr. as well as a transaction from Eloquent Steel Private Limited on June 13, 2018 for a sum of Rs. 4 Lakh. There are similar transactions from Eloquent Steel Private Limited on July 1, 2018 as well. Hence, it cannot be said that the source of the consideration is not traceable.

10. Learned counsel for the petitioner next argues, by placing reliance on *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, reported at AIR 1955 SC 74, that shareholders are not the owners of the company. The respondents contend that jurisdictional facts could be assumed by contending that the shareholding pattern of the petitioner-Company had been changed in the year 2015. It is argued by the petitioner that the change of shareholding pattern can never be contended for assuming jurisdiction under the Benami Act as it is trite law that a shareholder of a company is not an owner of the company.
11. The petitioner next contends that the writ petition is very much maintainable. On similar facts, it is argued that the Rajasthan High Court held so in its judgment of *Shri Kalyan Buildmart Pvt. Ltd. Vs. PCIT*, reported at (2021) 131 Taxmann.com 99 Raj.
12. In the present case, it is argued that the jurisdictional question was raised in the replies of the petitioner. The challenge made to the order

passed under Section 24(4) of the Benami Act is on the basis of the principles of natural justice having not been met. Such jurisdictional issue, it is argued, is required to be decided by the writ court under Article 226 of the Constitution of India.

13. In *Union of India and Anr. Vs. Kunisetty Satyanarayana*, reported at (2006) 12 SCC 28, it is argued that the facts were clearly distinguishable from the present case since in the said case, the show-cause notice was issued regarding obtaining employment on a forged caste certificate where it was held that show-cause notice cannot give rise to the cause of action and cannot tantamount to an adverse order. In contrast, the provisional attachment orders passed in the present case tantamount to adverse orders. Thus, it is argued that the impugned summons and provisional attachment orders ought to be set aside.
14. Learned counsel for the respondents submits that by a letter dated January 5, 2023, the petitioner submitted certain documents in which he relied on charts and sale-deeds, indicating that the 37 properties were purchased from the same source, that is, from loans received as well as refund of advance from several companies including the companies named above. Section 2(8) of the Benami Act defines “benami property” as any property which is the subject matter of a benami transaction and also includes the proceeds from such property. It is argued that a show-cause notice was issued under Section 24 of the Benami Act on March 28, 2022 alleging the petitioner to be a benamidar in respect of the 37 immovable properties

and ultimately provisional attachment orders under Section 24(3) of the said Act were passed on the same date, initially attaching the properties for a period of 90 days from the last date of issuing show-cause notices. Subsequently, the proceedings before the Initiating Officer/respondent no. 3 culminated *vide* orders under Section 24(4) of the Benami Act dated June 20, 2022 whereby the provisional attachment orders were continued till the passing of the order by the Adjudicating Authority under Section 26(3) of the Benami Act.

15. Immediately thereafter, reference was made under Section 24(5) of the Act for adjudication which was forwarded to the Adjudicating Authority on July 4, 2022 by the Initiating Officer. Accordingly, show-cause notices under Section 26(1) of the Act were issued by the Adjudicating Authority on July 25, 2022 and sent through speed post.
16. Hence, the Adjudicating Authority was seized of the matter whilst the Initiating Officer was practically *functus officio* and later transposed to the status of an adversary before the Adjudicating Authority, though he remained duty-bound to carry out such other or further enquiries which may be directed by the Adjudicating Authority, if wanted.
17. The orders under Sections 24(3) and 24(4), it is argued, clearly set out the ground that the petitioner had acquired the 37 properties for a total consideration of Rs. 28.10 Lakh. After analysis of the creditworthiness of the primary shareholders, it was found that the initial primary shareholders and the petitioner were formed in a planned manner ranging within a week of formation of the petitioner-Company and that each allottee had raised capital by issuing shares

at a high premium, having acquired bogus share capital from another set of paper companies with premium only to provide accommodation entries to another set of companies including the petitioner.

- 18.** It is contended that none of the four companies to whom the shares of the petitioner-Company were allotted had any revenue from operations and had filed loss each year since incorporation and these companies had no creditworthiness of their own to enter into such transactions. Those bore characteristics of shell companies which are used as a conduit to introduce unaccounted money in books of accounts.
- 19.** It is argued that the four allottee companies as well as the petitioner-Company filed their returns for the assessment year 2012-13 from the same computer which is evident from the IP Address shown from the Income Tax return acknowledgment, which practice continued in subsequent years, proving that the formation of the allottee companies was controlled and managed by the same persons and those were not genuine business entities.
- 20.** It is argued that the analysis of the shareholding pattern shows that it was changed on March 31, 2014 and the shareholding was taken over by Aahana Housing Limited and Aahana Properties Limited. The entire share allottee companies thus exited the petitioner-Company by selling their shares at throw-away prices, incurring huge fictitious losses in favour of the beneficial owners.
- 21.** It is argued that the above chain of transactions indicates that the petitioner did not have any capability to enter into such high value transactions for acquisition of property and had acted as a conduit or

front entity to channelize consideration paid out of the fund accumulated by a set of shell/paper companies without economic rationale. The ultimate beneficiary, it is argued, could not be traced out, due to which the transactions fall within the purview of Section 2(9)(D) of the Benami Act.

- 22.** It is contended that the authorities have complied with the procedure laid down in the Benami Act. The Act is a Code in itself and specifies all safeguards that were required to be taken.
- 23.** Issuance of provisional attachment order under Section 24(3), it is argued, alongside issuance of show-cause notice under Section 24(1,) requires only the formation of an opinion of the Initiating Officer. There is no mandate in law to first afford a hearing before issuing such provisional order of attachment. The Statute itself stipulates that the upper-limit of the attachment cannot exceed 90 days, which is itself a safeguard.
- 24.** It is contended that the Income Tax assessments and orders do not tie the hands of the Initiating Officer to examine the transactions/financials under the Benami Act.
- 25.** The source of purchase of the 37 properties remains unsatisfactory, for which the impugned actions have been taken by the respondents. However, the order of provisional attachment will attain finality only after the order passed under Section 26(3) by the Adjudicating Authority.
- 26.** The petitioner has relied on judgments by bringing forward only one aspect of benami transactions as envisaged under Section 2(9)(A). the

judgments cited by the petitioner, particularly *Jaydayal Poddar (Deceased) (supra)*, *Mangathai Ammal (Deceased) (supra)* and *Bacha F. Guzdar (supra)* are all based on such limb of argument.

- 27.** The “beneficial owner” in the present case, as defined under Section 2(12) of the Benami Act, is the person/persons whose identity is unknown, for whose benefit the benami property is held by the benamidar.
- 28.** The petitioner, it is argued, can very well challenge the final adjudication by the Adjudicating Authority under the Benami Act itself and cannot stifle the legitimate adjudication process by filing a writ petition.
- 29.** The petitioner relies on *BRC Construction Company Private Limited & Anr. Vs. Union of India & Ors.*, reported at 2017 SCC OnLine Cal 16142, but the courts specifically noticed the significance of Section 2(9)(D) of the Benami Act and found that the benami transaction is defined collectively as an arrangement in respect of a property carried out in a fictitious name, which is applicable here.
- 30.** The respondents also cite *Dinesh Chand Surana v. Deputy Commissioner of Income Tax and Another*, reported at 2018 SCC OnLine Mad 3969, where it was held that a person cannot be said to be aggrieved to prefer a challenge against an order of provisional attachment especially when the Adjudicating Authority has already initiated proceedings under Section 26(3).
- 31.** In *Dinesh Chand Surana Vs. Deputy Commissioner of Income-tax*, reported at [2022] 142 taxmann.com 494 (Madras) a Division Bench

upheld the learned Single Judge's decision in the same case as mentioned above.

32. Learned counsel next relies on *Kailash Assudani Vs. Commissioner of Income-tax*, reported at [2017] 87 taxmann.com 361 (Madhya Pradesh), where it was held that principles of natural justice are codified in terms of Section 26(6) of the Benami Act and the impugned order therein is not subject to judicial review except before the Adjudicating Authority. The order of the Adjudicating Authority can be assailed before the Appellate Tribunal constituted under Section 31 of the Act.
33. In *Great Pacific General Trading Company Vs. Union of India*, reported at [2018] 95 taxmann.com 364 (Rajasthan), the same principle was reiterated.
34. Again, in *Union of India and another Vs. Kunisetty Satyanarayana*, reported at (2006) 12 SCC 28, the Supreme Court found that the writ petition should not be entertained against a mere show-cause notice.
35. By arguing on the strength of the above judgments, the respondents contend that the writ petition should be dismissed.
36. Upon a consideration of the arguments of both parties, it transpires that in *Dinesh Chand Surana (supra)*, the learned Single Judge of the Madras High Court held that no writ petition lies against a notice under Section 24(4) of the Benami Act. Undoubtedly, the said proposition may have its exceptions. The Division Bench of the Madras High Court, while affirming the said judgment, held that only a *prima facie* opinion is formed under Section 24. The proposition which can be culled out from such judgment is that under normal

circumstance there cannot be any challenge under Article 226 against a notice under Section 24(4) of the Benami Act.

37. The learned Single Judge of the Madhya Pradesh High Court in *Kailash Assudani (supra)* laid down the proposition that the principles of natural justice are codified in terms of Section 26(6) of the Benami Act and the order passed by the Adjudicating Authority can be assailed before the Appellate Tribunal.
38. In *Kunisetty Satyanarayana's* case, the Supreme Court was deciding on a challenge against a show-cause notice issued on cancellation of a caste certificate. There, it was held by the Supreme Court that ordinarily a writ petition should not be entertained against a mere show-cause notice or and at that stage the writ petition may be held to be premature. Discretionary jurisdiction should not ordinarily be exercised by quashing a show-cause notice or charge-sheet except in very rare and exceptional cases.
39. The common refrain in all the above judgments is that at the stage of issuance of a show-cause notice, the writ court ordinarily does not interfere. The Supreme Court, however, although in a somewhat different context, has observed that only in rare and exceptional cases such interference is called for.
40. With utmost respect, this Court cannot accept as absolute the view taken by the learned Single Judge in *Kailash Assudani (supra)* insofar as application of the codified principles of natural justice in subsection (6) of Section 26 of the Benami Act to the initial issuance of a show-cause notice under Section 24 of the said Act is concerned.

There cannot be any manner of doubt that Section 26, which provides for adjudication of benami property, amply puts in safeguards to ensure that the principles of natural justice are satisfied.

41. However, if the premise of the challenge to a notice under Section 24 is that the authorities palpably lacked jurisdiction under the Benami Act, it would be unnecessary multiplicity of proceedings and harassment to the petitioner to relegate the petitioner to a subsequent adjudication under Section 26, even if it is palpable *ex facie* that the authorities did not have jurisdiction. However, a strong case of lack of jurisdiction has to be made out in such a situation by the petitioner, to impress upon the court that even on the face of the summons under Section 19 and/or a Notice under Section 24, no case of a benami transaction is made out. Such case, however, has to stand on an extremely sound footing to displace the regular procedure laid down in the statute by the legislature, in its wisdom, to adjudicate such issues.
42. In *Dinesh Chand Surana's* case, both the learned Single Judge and the Division Bench of the Madras High Court proceeded on the premise that a proceeding under Section 24 only requires a recording of *prima facie* opinion and the provisional attachment was purely of an interim nature.
43. The learned Single Judge of the Madras High Court proceeded on the premise that an order passed under Section 24(4), being an order of provisional attachment, the petitioner cannot be said to be aggrieved by such order. However, *per se* such logic would lose meaning if it

can be shown by the petitioner that the authorities have assumed jurisdiction which they do not have in law, which is evident in the teeth of the notice itself or the provisional order of attachment. However, the Division Bench added a further ingredient that while passing such orders as interim measure to protect the interest of revenue, there is no hastiness or procedural violations on the part of the respondents. On such premise, the order of the learned Single Judge was affirmed.

44. Yet, a strong jurisdictional objection can vitiate such exercise at the root. Thus, we are to look into the issue whether there was any palpable and erroneous assumption of jurisdiction in the present case.
45. The respondents have also cited *BRC Construction Company (supra)*, where a learned Single Judge of the this Court held against interdicting a proceeding under the Benami Act qua a private limited company where the dominant shareholders are *de facto* the company itself and it has become necessary to identify the structure and the role of the entities which requires explorations at the appropriate factual level regarding the benami colour.
46. The court proceeded on the premise that on a plain reading, the said fact could not be a sufficient indicator that there was an ingredient of benami transaction, which required a factual consideration and assessment. Hence, in the present case as well, we are to ascertain whether the shareholding pattern or the change in it has any relevant bearing *prima facie* on the allegation of benami.

- 47.** It is evident from the scheme of the Benami Act that the definition of 'benami transaction' has undergone a sea-change after the 2016 Amendment. Sub-clause (D) of Section 2(9) of the said Act labels a transaction as benami if it is a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious. It is the very clause on which the respondents rely in the present case.
- 48.** Under Chapter IV of the Benami Act, Section 24 provides the where the Initiating Officer, "on the basis of the material in his possession" has reason to believe that any person is benamidar in respect of a property, he may after recording reasons in writing issue a notice to the person to show cause.
- 49.** Preceding the said Chapter, Section 19 provides that the authorities are conferred with the powers, *inter alia*, as vested in a civil court under the Code of Civil Procedure, including discovery and inspection, enforcing attendance of any person, compelling production of books of account and other documents, etc, implying the power to issue summons.
- 50.** The subsequent Sections provide for an enquiry, calling for information and the power of the Authority to impound documents if necessary for a limited period.
- 51.** Section 23 empowers the authority to conduct an enquiry. Under the said provision, the Initiating Officer, after obtaining prior approval of the Approving Authority, shall have the power to conduct or cause to be conducted any enquiry or investigation as contemplated therein.

The explanation thereto says that nothing contained in the said Section shall apply and shall be deemed to have ever applied where a notice under sub-section (1) of Section 24 has been issued by the Initiating Officer.

- 52.** Thus, although Section 24 is freed from the influence of Section 29 in a sense, the materials in possession of the Initiating Officer as contemplated in Section 24, furnishing reason to the said Officer for his belief that a person is a benamidar, may or may not be preceded by an exercise under Sections 19 to 23 of the Act.
- 53.** In the present case, summons was issued under Section 19. The next stage was the Initiating officer forming an opinion under Section 24 and issuing a show-cause notice. Sub-section (3) of Section 24 provides that where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may with the previous approval of the Approving Authority pass a written order of provisional attachment for a period not exceeding 90 days. Under sub-section (4) of Section 24, within the said 90 days, after making enquiries and calling for reports or evidence and taking account of all relevant materials, he can extend the order of attachment till the passing of the order by the Adjudicating Authority under sub-section (3) of Section 26.
- 54.** Thus, Section 24 does not contemplate any prior opportunity of hearing being given to the noticee. The reason for such omission can be found in Section 26, under which the Adjudicating Authority, upon

receipt of a reference under Section 24(5), issues a fresh notice to furnish documents, particulars or evidence, etc., and provides for an opportunity of hearing being given to the alleged benamidar under sub-section (3) of Section 26. The Madhya Pradesh High Court, in the judgment of *Kailash Assudani (supra)*, was justified to the extent of laying down the proposition that Section 26 is a self-contained code embodying principles of natural justice.

- 55.** Section 24 is just a precursor of the said exercise in order to provide teeth to the authorities to prevent the disposal of the subject-property of benami transaction till an adjudication takes place under Section 26. Under normal circumstances, no hearing is required to be given to the alleged benamidar at the stage of Section 24 of the Benami Act, since if such a provision is read into Section 24, it will be an additional layer of protection to the alleged benamidar, as, in any event, he gets a right of hearing and sufficient opportunity of representation in an adjudication of benami property under Section 26 by the Adjudicating Authority.
- 56.** However, Section 24(1) contemplates a show-cause notice. The very expression “show cause” implicitly contains a right of the noticee to give a reply in writing disclosing his version of the matter. In the present case, the petitioner got such opportunity and gave as many as two replies to the show-cause notice. Thus, it cannot be said that the petitioner was deprived of such opportunity.
- 57.** Thereafter, the matter has been referred to the Adjudicating Authority who is in seisin of the same now under Section 26 of the Act. The

petitioner definitely has a remedy under Section 26(3) to appear before the Adjudicating Authority and be heard on merits.

58. Hence, to carve into the provisions of Section 24 an innate violation of natural justice or wrong assumption of jurisdiction, the petitioner has to establish an extremely high ground of wrong assumption of jurisdiction. *Audi Alteram Partem* cannot be a strong ground for a challenge under Article 226 to a notice or provisional attachment under Section 24, as in view of the scheme discussed above, such a right of hearing is absent in the Statute. What is available is only a right of reply which has been availed of by the petitioner. Since Section 26 subsequently gives a full-fledged opportunity of hearing, reading a similar provision doubly into Section 24 will be an unnecessary and superfluous additional opportunity to the petitioner, which would only serve the purpose of protracting the proceedings.
59. The Benami Act, as amended in 2016, provides a three-fold bar to benami transactions.
60. Under Section 3, if a person enters into a benami transaction, he is punishable by imprisonment and/or fine, which is in the nature of a penalty.
61. Section 4 prohibits the right to file or defend a suit on the ground of benami.
62. The third bar is incorporated under Section 5 which makes a benami property liable to be confiscated by the Central Government.
63. Chapter IV of the Benami Act provides the procedure leading to such confiscation. Sections 24 and 26 have been discussed above. Section

27 is the culmination of such proceeding which provides that where an order is passed in respect of any property under Section 26(3) holding it to be a benami property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order of confiscating the property held to be a benami property.

- 64.** Thus, two layers of protection are given to the petitioner – a right of hearing under Section 26(3) before declaring the transaction a benami transaction and another right of hearing before confiscation and vesting of the benami property.
- 65.** In fact, a third safety net is provided to the benamidar by way of an appeal under Section 30 read with Section 31 of the Benami Act.
- 66.** In the present case, the petitioner, thus, has ample remedies in law under Sections 26 and 27 as well as by way of an appeal under Sections 30 and 31 and can avail of the same in accordance with law, raising all questions, even including those relating to jurisdiction.
- 67.** However, in patently exceptional cases, where it can be seen from the provisional order of assessment or the notice under Section 24 that the assumption of jurisdiction is erroneous, a small window remains for the writ court to interfere on the ground of jurisdiction.
- 68.** Let us now examine the case made out by the respondents in such context, to ascertain whether *ex facie* it takes the transactions-in-question beyond the jurisdiction of the authorities under the Benami Act.

- 69.** For such purpose, the respondents' case has to be taken as it is, without entering into a factual enquiry, which is best left for the Adjudicating Authority, which is in seisin of the matter now, to decide.
- 70.** The respondents alleged upon an enquiry that the petitioner-Company purchased 37 properties by certain funds. To come within the definition of 'benami transaction' under Section 2(9)(D), a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious has to be made out.
- 71.** In the present case, admittedly the petitioner did not pay for the transactions. It is to be seen whether the consideration can be traceable to a real entity. To come under sub-clause (D), the arrangement has to be where the person providing the consideration is not traceable or is fictitious.
- 72.** The respondents allege that the primary shareholders of the petitioner-Company were floated along with the petitioner within a week of each other. Each allottee had raised capital by issuing shares at a high premium. All the four companies which were the shareholders of the petitioner were shell companies having no revenue from operations. The returns of the four allottee companies and the petitioner were alleged to have been from the same computer, which of course, *ipso facto* does not vitiate the filing. Thus, from an Income Tax point of view, the said filing might be aboveboard. However, from the benami view point, the money trail goes further without being identified. The shareholding pattern of the petitioner-Company changed on March 31, 2015 where the entire shareholding was taken

over by two companies which, as their names suggest, might have been group companies. The earlier allottee companies/shareholders sold their shares at throw-away prices incurring huge losses in favour of the beneficial owners. Thus, the petitioner apparently did not have any capability to enter into the high value transactions, nor did it have the required creditworthiness to have obtained loans to be invested in purchase of the 37 subject properties.

- 73.** By relying on *Bacha F. Guzdar (supra)*, the petitioner has raised an issue as to whether the shareholders can be equated with the company insofar as ownership of assets are concerned. The proposition of *Bacha F. Guzdar (supra)* ordinarily holds good. However, corporate jurisprudence has evolved over the years, honing the concept of piercing the corporate veil sharper, by widening its scope to different spheres of financial activity.
- 74.** Seen from such perspective, if the entire body of shareholders comprises of only four entities which are shell companies having no business operation, the company itself is virtually owned by those companies. To add further, the said shares were totally taken over by only two companies at a huge premium. The premium was enhanced by a quantum leap from Re. 1/- per share to Rs. 499/- per share. By virtue of such transactions, it does not leave anything to guesswork to come to the conclusion that a money-trail emerges, which is open-ended at the source.
- 75.** Seen in proper perspective, the primary shareholders, who were shell companies, could not have funded the share capital of the petitioner

or lend sufficient creditworthiness to the petitioner for the purchases unless there were other entities behind them. After the subsequent transfers of the shares through a string of shell companies, it remains blurred as to who was the ultimate provider of the consideration.

- 76.** The respondents say that the statement of Entry Operator, one Mr. Munka, recorded by the DDIT Investigation, Kolkata reveals that he had provided accommodation entries such as bogus unsecured loans, bogus sale of unlisted investments, etc. through various groups including various companies of the Shakambhari Group including the petitioner-Company and has given the details of the *modus operandi* of the petitioner. Upon analysis of the financial data of the petitioner, it has been revealed that the fund raised as share capital initially was invested in the form of unlisted equities but once the company was taken over by one Agarwal Group, there has been sale of unquoted shares and gradually the amount so realized has been utilized for investments/loans and advances into the group companies. The group has allegedly sold the bogus investment and introduced unaccounted cash into the books of company under the garb of sale of unquoted shares.
- 77.** Since Shakambhari was one of the major providers of the consideration used for purchasing the 37 properties, as admitted by the petitioner, the alleged finance by the Shakambhari Group, which is itself suspect in view of the investigations going on, takes the colour of an undisclosed source of finance. If the petitioner itself was owned by shareholders whose creditworthiness was nil, there would not be

any basis of repayment of advances or payment of any loan to the petitioner-Company, due to its utter lack of credit worthiness. Hence, the petitioner obviously acted as a conduit, being owned by shareholders which were none other than shell companies having fictitious existence, for channelizing money from undisclosed sources, shown to have been advanced by Shakambhari and others, into tangible properties by the 37 purchases which are in issue. Taking a broad view of Section 2(9)(D), the purchase of the properties through consideration which came from fictitious sources squarely attracts the said provision to the present transactions. It is to be noted that sub-clause (D) does not merely restrict itself to non-traceable sources of consideration but also to “fictitious” sources of consideration. Hence, there is sufficient *prima facie* material to indicate that the transactions-in-question were arrangements in respect of properties where the person providing the consideration is fictitious.

- 78.** Hence, this Court does not find that there is *ex facie* erroneous assumption of jurisdiction by the Investigating Authority or the Adjudicating Authority under the Benami Act sufficient to displace the legitimate opinion formed in writing by the Investigating Authority, which justifies the reference to the Adjudicating Authority after issuance of notice and passing of provisional assessment order, which was continued subsequently.
- 79.** For an adjudication of merits on the issues involved in the present case as indicated above, a full-fledged enquiry on factual assessments based on appreciation of evidence is required, which is entirely

unwarranted at the instance of the writ court, since a comprehensive procedure is provided in Section 26 of the Benami Act, which is, as the Madhya Pradesh High Court held, in the nature of a self-contained code.

- 80.** Thus, I do not find any ground to interfere with the impugned notice under Section 24 or the provisional orders passed therein, particularly, since the matter has already been referred to the Adjudicating Authority and is under consideration before it within the contemplation of Section 26 of the Benami Act. The appropriate remedy before the petitioner is to participate in the said proceedings, and to have its defence vindicated there. In any event, even thereafter, the petitioner has two stages of remedies – one, a hearing before confiscation and the other by way of an appeal under Sections 30 and 31 of the Benami Act, if aggrieved by the decision of the Adjudicating Authority.
- 81.** In the above circumstances, WPA No. 16821 of 2022 is dismissed on contest without any order as to costs.
- 82.** However, it is made clear that the above findings are of a tentative nature only to *prima facie* explore whether the jurisdictional facts were sufficiently indicated by the respondents. The Adjudicating Authority, while deciding the issue, shall act independently in accordance with law without being influenced in any manner by any of the observations made hereinabove. The above observations are without prejudice to the rights and contentions of the parties in the proceeding under Section 26 of the Benami Act.

- 83.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

CASE NO.:
Appeal (civil) 8098 of 2004

PETITIONER:
Binapani Paul

RESPONDENT:
Pratima Ghosh & Ors

DATE OF JUDGMENT: 27/04/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

One Dr. Ashutosh Ghosh (Dr. Ghosh), a Physician practising at Rangoon was a prosperous person. He purchased two immovable properties in Calcutta in the year 1927 situate at 79/3-A and 79/3-B, Lower Circular Road, Calcutta, in his own name. Suprovabala was his wife. They at the relevant time had seven daughters, including the appellant herein and a son named, Amal. Respondent Nos. 1 and 2 are his wife and daughter. Suprovabala intended to purchase the premises situate at No. 24, Convent Road, Calcutta belonging to the estate of Late Edwin St. Clair Vallentine. She executed a power of attorney in favour of one Atul Chandra Ghosh, brother of Dr. Ghosh, the relevant portion whereof reads as under:

"\005Whereas I have decided to purchase premises No.24, Convent Road, Calcutta, belongings to the Estate of Late Mr. Edwin St. Chair Vallente at the price of Rs.26000/- (Rupees Twenty Six thousand only) but the agreement for sale has not yet been entered into with the Administration General of Bengal as Administrator to the Estate of Edwin St. Clair Vallente now therefore know. Yet that I hereby appoint Atul Chandra Ghosh of 79/3-A, Lower Circular Road, Calcutta my attorney to do and execute for me and in my name and all acts, matters and things that may be necessary in order to complete the said purchase and particularly the following: \005

In witness whereof I set and subscribe my hand and seal at Rangoon this 23rd day of September 1935 in the presence of

Date: 23.09.1935

No.1986

Date of Registry: 17.10.1935

Sd/- K.N. Ganguli
Advocate High Court & Councilor
Corporation of Rangoon
Sd/- S.N. Ganduly, Advocate, High Court
Sd/- Ashutosh Ghosh M.B. (Cal)
Medical Practitioner\005"

Sd/- Smt. Supravabla Ghosh

The said power of attorney, however, was preceded and followed by two telegrams of Dr. Ghosh addressed to his brother in relation to execution thereof as also purchase of the said property. The said power of attorney was executed before a Magistrate at Rangoon. Dr. Ghosh was an attesting witness therein. Interestingly, Suprovabala described herself as daughter of Babu Rangalal Ghosh and not the wife of Dr. Ghosh therein. A registered indenture was executed on 16.11.1935 by the Administrator General of Bengal to the estate of Edurn St. Clair Vallentine in favour of Suprovabala for a sum of Rs. 26,000/-. Indisputably, during the life time of Dr. Ghosh,

the name of Suprovabala was mutated. She had all along been in possession of the said property. Dr. Ghosh died in Rangoon in the year 1940. Suprovabala continued to reside in the suit premises. She died on 26.05.1942 leaving, as indicated hereinbefore, seven daughters and son Amal. Amal was married to Respondent No. 1 herein in 1946.

In the year 1958, the daughters of Suprovabala got their names mutated in place of their mother. Amal objected thereto, but his objection was rejected. Marriage of four sisters of Amal took place in the suit premises during the period 1944 to 1970. Although initially all the sisters and the brother were living together in the said house, inter alia, after their marriage the daughters of Suprovabala started living at their respective husbands' places. However, three sisters allegedly continued to live in the said house till May, 1958 but they had to leave it because of ill-treatment of Amal and his wife. It appears that in the year 1964, two unmarried daughters of Suprovabala who had been living there were also compelled to leave the house. They filed a suit for maintenance with liberty to claim their right to take appropriate legal action to recover their share of the said premises at an appropriate time, which was allowed by the High Court. Three out of the seven daughters of Dr. Ghosh filed a suit for partition against Amal on 19.09.1973 claiming 3/7th share of the property of their mother, a final decree for partition as also a decree for accounts.

Amal in his written statement filed in the suit inter alia contended that Suprovabala was benamdar of Dr. Ghosh. Suprovabala, therefore, had only a limited interest under the Hindu Women's Right to Property Act, 1937 and on her death Amal became the absolute owner. Amal died during pendency of the suit whereupon Respondent Nos. 1 and 2 were substituted in his place.

Before the learned Trial Judge, plaintiff - Binapani examined herself as PW-3. A common relation of the parties being Chandi Charan Ghosh examined himself as PW-4. Respondent No. 1 did not examine herself. Putul Ghosh, daughter of Amal who was born only in 1954 examined herself as DW-1.

The learned Trial Judge decreed the suit holding that Dr. Ghosh intended to purchase the said property for the benefit of his wife. The Trial Court in its judgment opined that if Dr. Ghosh wanted to purchase the property for himself, there was no necessity for execution of power of attorney by Suprovabala in favour of Atul Chandra Ghosh. It was noticed that the power of attorney had been attested by Dr. Ghosh which is a pointer to show that the property was purchased by him for the benefit of his wife. Circumstances surrounding the same, it was held, also led to the said conclusion. It was, therefore, not held to be a case of benami transaction. A first appeal was preferred thereagainst before the High Court by Respondent Nos. 1 and 2. A Division Bench of the High Court although completed hearing of the appeal on 25.01.2002, delivered judgment after 19 months, i.e., on 29.07.2003.

The High Court opined that:

- (i) it was for the plaintiff to prove that Dr. Ghosh purchased the property for the benefit of his wife;
- (ii) purchase by Suprovabala through an attorney does not negative the nature of transaction being a benami one;
- (iii) mutation of names of all the heirs of Suprovabala was of no consequence.
- (iv) Dr. Ghosh could not have gifted the property in favour of his wife being impermissible under the Dayabhaga School of Hindu Law.

Mr. S.B. Sanyal, learned senior counsel appearing on behalf of the appellant, submitted that the High Court committed a manifest error in passing the impugned judgment insofar:

- (i) the onus of proof had wrongly been placed upon the plaintiff;

- (ii) the defendant had not been able to show any motive for the benami purchase.
- (iii) the presumption that an apparent state of affairs is the real state of affairs has not been rebutted by adduction of any cogent evidence.
- (iv) contribution of purchase money is only one of the factors for proving benami transaction but intention also plays a significant role in relation thereto which was required to be determined having regard to the surrounding circumstances, the relationship of the parties, the motive governing their action and the subsequent conduct of the parties.
- (v) Putul Ghosh (DW-1) cannot be said to have any knowledge about the transaction and there was no reason as to why her mother Pratima Ghosh did not examine herself as a witness.

Mr. Devadatt Kamat, learned counsel appearing on behalf of Respondent Nos. 4 to 7 supplemented the argument of Mr. Sanyal stating that the High Court cursorily dealt with the question of intention in relation to the transaction in question. Our attention has also been drawn to Section 5 of the Power of Attorney Act, 1882.

Mr. Bhaskar P. Gupta, learned senior counsel appearing on behalf of Respondent Nos. 1 and 2, on the other hand, would submit that:

- (i) the suit property having been acquired in the year 1935, as purchases of property in the benami name of wives being prevalent at the relevant time, the case was required to be considered from that angle.
- (ii) a transaction in benami may be entered into for no apparent reason.
- (iii) doctrine of advancement has no application in India.
- (iv) Benami Transactions (Prohibition) Act, 1988 has no retrospective effect. The source of money being an important factor for determining benami nature of transaction, the onus lay on the plaintiffs.
- (v) the parties being governed by the Dayabhaga School of Hindu Law, Dr. Ghosh could not have made a gift of immovable property in favour of his wife.

Before embarking upon the rival contentions of the parties, we may also notice that Dr. Ghosh had a life insurance. Suprovabala was his nominee and after his death, the entire amount of insurance was received by her.

A question as to whether a transaction evidences a benami nature thereof is always difficult to answer. It is a case where despite some evidence brought on records by the plaintiffs that Suprovabala paid the consideration amount or at least a part of it, we may proceed to determine the issues between the parties on the premise that the amount of consideration was provided by Dr. Ghosh. A person may for various reasons intend to purchase a property in the name of his wife. It may be for one reason or the other. There may or may not be a practice in respect thereto. A purported prevalent practice in this behalf, as was observed by the Judicial Committee, in *Sura Lakshmiah Chetty and Others v. Kothandarama Pillai* [AIR 1925 PC 121] and *Gopeekrist Gosain v. Gungapersaud Gosain* [(1854) 6 Moore's Indian Appeals 53], is in our opinion not of much importance. A court of law is required to determine such a question. Without anything more, it cannot determine the same on the basis of such an alleged practice only.

Dr. Ghosh was a prosperous person. He must be a medical practitioner of repute. He had purchased two very valuable properties in Calcutta in quick succession being situate at 79/3-A and 79/3-B, Lower Circular Road, Calcutta, which is a very prime area in the town of Calcutta. The property in question was purchased in 1935. Admittedly, renovations were made in the year 1938. He died in the year 1940 at Rangoon. At that point of time, none of his children was married. He had seven daughters. In

1935, Hindu Women's Right to Property Act, 1937 did not come into force. He, therefore, might have been of the opinion that in case of his early death, which appears to have been his premonition, something should be kept apart for his wife and daughters. When a person develops such an intention, it would be opposed to the essential characteristics of a benami transaction. He furthermore was not a debtor. He was not required to avoid any liability. He had no apparent motive for entering into a benami transaction. The plaintiffs' case that he had done so for the benefit of his wife, therefore, must be considered from that angle.

Amal appears to be the eldest amongst the children. When a son is the eldest amongst the children, expectation of a father will always be that on his death, he would look after his mother and sisters. Son would perform his duties not only by providing maintenance to the daughters, to which they were otherwise entitled to, but also they were to be married. Dr Ghosh's eagerness to purchase the property is evidenced by two telegrams dated 20th and 24th September, 1935.

Mr. Gupta's submission that the said telegrams are relevant to show Dr. Ghosh's personal involvement in the transaction may not be of much significance. They were at Rangoon. Negotiations for purchase were to be held with the Administrator General of Bengal. Earnest money was to be deposited. The deed was to be drawn up. In those days, a Hindu wife was supposed to maintain some 'purdah'. We do not know whether she knew English or not. She, therefore, was not expected to draft a telegram and go to post office for the purpose of transmission thereof. But, the power of attorney executed by her plays an important role. The power of attorney must have also been drafted at the behest of Dr. Ghosh. Ordinarily, Suprovabala would be described as the wife of Dr. Ghosh. She was not. She was described as the daughter of Babu Rangalal Ghosh. Dr. Ghosh himself was an attesting witness. He being in the position of husband and if we accept the case of the defendants \026 respondents that he intended to have a benami transaction, ordinarily, he would not get his wife described as daughter of somebody instead of his own wife. Such unusual step on the part of Dr. Ghosh leads to one conclusion that he intended to purchase the property for the benefit of his wife. The recitals made in the power of attorney are also of much significance. It was categorically stated that it was Suprovabala who had decided to purchase the said property and it was she who was appointing her husband's brother as her attorney.

In Tara Sundari Sen v. Pasupati Kumar Banerjee & Ors. [1974 CLJ 370], it was observed:

"\005The only purpose of Nagendra Nath Ganguly having been a signatory to the said document must have been to represent to the world at large that the property was being acquired by Sm. Shantabala as her absolute property and that her husband had no right, title or interest in the same\005"

It was further observed therein:

"The significance and value of these indisputable facts have to be carefully assessed. It is common case that the ultimate source of the money was the income and savings of Nagendra Nath Ganguly. The plaintiff contends that Nagendra Nath made a gift of the money of his wife Shantabala to enable her to acquire the properties. If that be so, the properties were Shantabala's Ajoutuka Stridhana. That Nagendra made gift out of his funds does not in any way prejudice the plaintiff's case. Once the gift was made, if it was made at all, the money belonged absolutely to Shantabala and the

properties she purchased were hers and hers alone. That Nagendra engaged a contractor or a supervisor for construction of a structure on the land purchased by Shantabala or that he made payments to the contractor or the supervisor will not by itself be any evidence of his ownership. The husband of a Hindu lady living in a common matrimonial home usually manages and maintains her properties. The Court can and ought to take judicial notice of the fact that ordinarily in a Hindu household the husband deals with strangers and trademen. Therefore, the fact that payments were made by Nagendra Nath Ganguly is not inconsistent with the case that the premises belonged to Shantabala absolutely."

In a given situation, execution of a power of attorney may not be of importance but then the backdrop of events and the manner in which the power of attorney was drafted as well as the very fact that Dr. Ghosh himself became an attesting witness thereto, the same plays very significant role. If in the light of the so-called practice as then existed, i.e., to purchase property in the name of his wife, Dr. Ghosh intended to enter into a benami transaction, his intention, therefor, would have been clear and unambiguous or in any event, the same would have been explicit from the surrounding circumstances. They were not. Moreover, immediately after the purchase, the name of Suprovabala was mutated. She started paying tax. There is no evidence to show that Dr. Ghosh took an active role except providing for the amount in regard to the construction of the house. Evidence on records clearly show that Suprovabala had also been looking after the constructions of the house along with Chandi Charan Ghosh (PW-4).

The fact, which we have noticed hereinbefore, viz., that an insurance was also made in her name is also a pointer to show that Dr. Ghosh intended to provide sufficient money at the hands of his wife. [See Ext. A (13)] Ordinarily, a son would be made a nominee. We must place on record the social condition as thence prevailing, viz., a son under the law was bound to maintain his family and, therefore, the entire property at the disposal of the father would be given to the son.

We do not have any direct evidence of conclusive nature in this regard before us. We must, therefore, deal with the matter on reasonable probabilities and legal inferences.

Dr. Ghosh indisputably was a person having a superior knowledge and understanding. He was holding a responsible position in the society. He was in a noble profession. When he made attestation of the deed of the power of attorney keeping in view the fact that he was the husband there cannot be any doubt that he fully understood in regard to the nature of the transaction as also the contents and merits thereof.

We may at this juncture also notice a Constitution Bench decision of this Court in *Kanakarathanammal v. V.S. Loganatha Mudaliar* [AIR 1965 SC 271 : (1964) 6 SCR 1] wherein this Court had an occasion to deal with the question of providing money to the wife, the purpose for purchase of the property vis-à-vis a transaction which was benami in nature. For the purpose of inferring acknowledgement and/ or admission by husband that the property was purchased by his wife, this Court, upon taking into consideration the provisions of Mysore Hindu Law Women's Rights Act (10 of 1933), opined:

"12. We have carefully considered the arguments thus presented to us by the respective parties and we are satisfied that it would be straining the language of Section 10(2)(b) to hold that the

property purchased in the name of the wife with the money gifted to her by her husband should be taken to amount to a property gifted under Section 10(2)(b). The argument about the substance of the transaction is of no assistance in the present case, because the requirement of Section 10(2)(b) is that the property which is the subject-matter of devolution must itself be a gift from the husband to the wife. Can we say that the property purchased under the sale deed was such a gift from the husband to his wife? The answer to this question must clearly be in the negative. With what funds the property is purchased by the female is irrelevant for the purpose of Section 10(2)(d); so too the source the title to the fund with which the said property was purchased. All that is relevant to enquire is: has the property been purchased by the female, or has it been gifted to her by her husband? Now, it seems clear that in deciding under which class of properties specified by clauses (b) & (d) of Section 10(2) the present property falls, it would not be possible to entertain the argument that we must treat the gift of the money and the purchase of the property as one transaction and hold on that basis that the property itself has been gifted by the husband to his wife. The obvious question to ask in this connection is, has the property been gifted by the husband to his wife, and quite clearly a gift of immovable property worth more than Rs 100 can be made only by registered deed. The enquiry as to whether the property was purchased with the money given by the husband to the wife would in that sense be foreign to Section 10(2)(d) gift of money which would fall under Section 10(2)(b) if converted into another kind of property would not help to take the property under the same clause, because the converted property assumes a different character and falls under Section 10(2)(d). Take a case where the husband gifts a house to his wife, and later, the wife sells the house and purchases land with the proceeds realised from the said sale. It is, we think, difficult to accede to the argument that the land purchased with the sale-proceeds of the house should, like the house itself, be treated as a gift from the husband to the wife; but that is exactly what the appellants argument; will inevitably mean. The gift that is contemplated by Section 10(2)(b) must be a gift of the very property in specie made by the husband or other relations therein mentioned. Therefore, we are satisfied that the trial court was right in coming to the conclusion that even if the property belonged to the appellants mother, her failure to implead her brothers who would inherit the property along with her makes the suit incompetent. It is true that this question had not been considered by the High Court, but since it is a pure point of law depending upon the construction of Section 10 of the Act, we do not think it necessary to remand the case for that purpose to the High Court\005"

Mr. Gupta made an endeavour to distinguish the said decision on fact of the matter submitting that therein the father wrote a large number of letters which included a discussion of the wife's will where he had acknowledged the wife's title to the property, but we have to consider the

crux of the matter to understand the underlying principle laid down therein.

Acceptance of acknowledgement of title comes in various forms. It may be before the transaction is entered into and may be subsequent thereto. The court has to gather the intention of the concerned parties on the basis of the circumstances surrounding the transaction and not from the conduct of the parties only at a subsequent stage. It may be true that ipso jure acknowledgement of title would mean the same should be only after the title is acquired, but, whether addressing ourselves to a question of this nature, viz., as to whether Dr. Ghosh intended to enter into a benami transaction in the name of his wife, either surrounding circumstances leading to the inference that he had no such intention must be gathered from the totality of the circumstances both preceding and subsequent to the transaction in question or if the intention of the person providing for the fund for purchasing the property has a major role to play, how it was given also assumes some significance. Apart from the fact that Dr. Ghosh himself was keen to see that the property is purchased for the benefit of his wife, we must notice that it was also mutated in her name. When a mutation takes place with the knowledge of the husband, although not conclusive, would provide for a link in the chain.

To decipher the intention of the parties, this Court must go back to the societal situation as was prevailing in 1935. Dr. Ghosh as a man of ordinary prudence wanted to make provision to protect and insure the welfare of his seven daughters and wife. In a case of this nature, the answer to such a question has to be in the affirmative. Question of intention is always relatable and peculiar to the facts of each case. [See Nawab Mirza Mohammad Sadiq Ali Khan and Others v. Nawab Fakr Jahan Begam and Another AIR 1932 PC 13]

In Chittaluri Sitamma and another v. Saphar Sitapatirao and others [AIR 1938 Madras 8], it was held:

"\005The mere suspicion that the purchases might not have wholly been made with the lady's money will certainly not suffice to establish that the purchases were benami, nor even the suspicion that moneys belonging to Jagannadha Rao whether in a smaller measure or a larger measure, must have also contributed to these purchases. Even in cases where there is positive evidence that money had been contributed by the husband and not by the wife, that circumstance is not conclusive in favour of the benami character of the transaction though it is an important character\005"

The learned counsel for both the parties have relied on a decision of this Court in Thakur Bhim Singh (Dead) By LRs and Another v. Thakur Kan Singh [(1980) 3 SCC 72] wherein it has been held that the true character of a transaction is governed by the intention of the person who contributed the purchase money and the question as to what his intention was, has to be decided by:

- (a) Surrounding circumstances
- (b) Relationship of the parties
- (c) Motives governing their action in bringing about the transaction and
- (d) Their subsequent conduct.

All the four factors stated may have to be considered cumulatively. The relationship between the parties was husband and wife. Primary motive of the transaction was security for the wife and seven minor daughters as they were not protected by the law as then prevailing. The legal position obtaining at the relevant time may be considered to be a relevant factor for proving peculiar circumstances existing and the conduct of Dr. Ghosh which is demonstrated by his having signed the registered power of attorney.

This aspect of the matter has been considered by this Court in Jaydayal Poddar (Deceased) Through L.Rs. and Another v. Mst. Bibi Hazira and Others [(1974) 1 SCC 3], wherein this Court held:

"\005The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale."

Source of money had never been the sole consideration. It is merely one of the relevant considerations but not determinative in character. [See Thulasi Ammal v. Official Receiver, Coimbatore AIR 1934 Madras 671]

In Protimarani Debi and Anr. v. Patitpaban Mukherjee and Ors. [60 CWN 886], the Calcutta High Court observed:

"The correct proposition was stated in Official Assignee of Madras vs. Natesha Gramani (1) (A.I.R. 1927 Madras 194). There is no presumption that when a property stands in the name of a female the Court will immediately jump to the conclusion without any proof that it really belongs to the husband of the female. Before such a presumption is raised or attracted it is necessary for the person who wants to make out that the property is not the property of the female, in whose name the document stands, to establish the fact that the consideration money for the purpose had come from the husband."

It will be useful at this juncture to notice a judgment of the Calcutta High Court in K.K. Das, Receiver and others v. Sm. Amina Khatun Bibi and another [AIR 1940 Cal 356], wherein it was held that where a husband provides for the money for construction of a building on a land which is in the name of his wife, he did not intend to reserve any right in the structures raised therein.

In 1935, the appellant herein was a minor. Whether she was aged 9 years or 14 years, thus, is immaterial. She, however, had the occasion to know something about the property from her mother or father. Dr. Ghosh expired only in 1940 and Suprovabala died in 1942. If the children had no knowledge about the title of her mother, there would not have been any occasion for them to make any application for mutation of their names. Amal was married in 1946. Allegedly, he and his wife started mal-treating the sisters. Three of them, as noticed hereinbefore, were yet to be married. The dispute between the parties rose to such a pass that three of the sisters had to leave the house. They had to seek for a shelter somewhere else. So long as the relationship between the parties was good, evidently, no problem arose. The mutation in the name of the daughters, therefore, assumes considerable significance. It is not a coincidence that three daughters had to leave the house and an application for mutation was filed in the year 1958. Amal objected thereto and it would not be a matter beyond anybody's comprehension that he had fought out the same bitterly. He must have done it and despite the same mutation was done in the name of all. Only a suggestion was given to PW-4 that the name of all the co-sharers was mutated only because husband of one of the sisters was in Calcutta Municipal Corporation. If that be so, it was expected of Amal to prefer an appeal thereagainst. It was expected that he would file a suit for declaration to assert his own title as he did in the suit.

Mr. Gupta has relied upon a decision of the Patna High Court in Shahdeo Karan Singh and others v. Usman Ali Khan [AIR 1939 Patna 462] wherein it was held that obtaining mutation of names do not establish a gift. This may be so. But, however, in this case, we are concerned with the conduct of the parties.

The fact that Amal allowed the order of mutation to attain finality, thus, would also be a pointer to suggest that despite such bitter relationship between the parties he accepted the same; more so, when mutation of one's name in the Municipal Corporation confers upon him a variety of rights and obligations. He had rights and obligations in relation thereto because, according to him, in relation to the said property vis-à-vis Calcutta Municipal Corporation, he was residing with his wife, he allegedly inducted tenants and had been realizing rent from them.

Tenants could have denied his title. He would not have been given permission to make any additions or alterations. He, in absence of an order of mutation, might not be given other amenities, if he had filed such an application in his own name. He, therefore, knew that mutation of names of all the parties in the Calcutta Municipal Corporation may bring forth to him many obstacles in future in the enjoyment of the property. At least he could have taken such a step even after the suit filed by two of the sisters for maintenance. The suit was decreed. Even in the said suit, the right to claim partition in the properties had been kept reserved.

We have seen hereinbefore that the appellant examined herself as a witness. The wife of Amal even did not do so. An adverse inference should be drawn against her.

In *Tulsi and Others v. Chandrika Prasad and Others* [(2006) 8 SCC 322], this Court observed:

"Before the courts below, the Appellant No. 1 did not examine herself. The Respondents categorically averred in the plaint that the mortgage amount was tendered to her as also to her husband. Having regard to the peculiar facts and circumstances of this case, we are of the opinion that she should have examined herself to deny such tender.

In *Sardar Gurbakhsh Singh v. Gurdial Singh*

and Another [AIR 1927 PC 230], the Privy Council emphasized the need of examination of the parties as witnesses. [See also Martand Pandharinath v. Radhabai, AIR 1931 Bom 97 and Sri Sudhir Ranjan Paul v. Sri Chhatter Singh Baid & Anr., Cal LT 1999(3) HC 261]"

Daughter of Respondent No. 1 (Respondent No. 2) who was born in 1954 examined herself as DW-1. She evidently had no knowledge about the transaction. She could not have any. At least it was expected that Respondent No. 1 might have gathered some knowledge keeping in view the conduct of her husband vis-à-vis the sisters in relation to the property. Even otherwise, she was a party to the suit. No evidence, worth the name, therefore, had been adduced on behalf of Respondent No. 1.

Interestingly, Amal pleaded ouster. If ouster is to be pleaded, the title has to be acknowledged. Once such a plea is taken, irrespective of the fact that as to whether any other plea is raised or not, conduct of the parties would be material. If, therefore, plea of ouster is not established, a' fortiori the title of other co-sharers must be held to have been accepted.

In T. Anjanappa and Others v. Somalingappa and Another [(2006) 7 SCC 570], it was held:

"12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property."

It was further held:

"21. The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise\005"

[See also See also Govindammal v. R. Perumal Chettiar & Ors., (2006) 11 SCC 600 and P.T. Munichikkanna Reddy & Ors. v. Revamma and Ors., Civil Appeal No. 7062 of 2000 decided on 24th April, 2007]

Amal, therefore, could not have turned round and challenged the title

of the appellant and other respondents. [See Syed Abdul Khader v. Rami Reddy and Others (1979) 2 SCC 601]

PW-3 in her evidence made three significant statements:

- (i) The property was purchased for the benefit of the mother without keeping any financial interest;
- (ii) During the life time of her father, her mother used to exercise right, title and interest of the property and she continued to do so even after her father's death.
- (iii) Her mother used to say that the property belonged to her.

PW-4 Chandi Charan Ghosh is a common relation. According to him, Dr. Ghosh acknowledged the title of his wife before him. We may not rely on his evidence in its entirety but we intend to emphasise that at least some evidence has been adduced on behalf of the appellant whereas no evidence, worth the name, has been adduced on behalf of the defendants \026 respondents. DW-1, as noticed hereinbefore, having born in 1954, could not have any personal knowledge either in regard to the transaction or in regard to the management of the property by Suprovabala whatsoever. She was even only four years old when the name of all co-sharers was mutated in the records of the Calcutta Municipal Corporation. She, however, admitted that there are two other houses standing in the name of Dr. Ghosh. She even could not say anything about the power of attorney. She accepted that the suit house was in the name of Suprovabala till 1958. She accepted that her father objected to the mutation but the same was granted and no further step had been taken. Although she claimed that she had been looking after the affairs, she could not give any details about the purported litigations as against the tenants initiated by her father.

Reliance placed by Mr. Gupta on Hindu Women's Right to Property Act, 1937 is misplaced as the property was purchased in the year 1935. The said Act had no application at that point of time. There, however, cannot be any doubt whatsoever in regard to the legal position that in respect of other properties of Dr. Ghosh, she had a limited interest.

Reliance by the High Court upon Mulla's Hindu Law for the proposition that husband could not give immovable property as stridhan to his wife, in our opinion, is wholly misplaced. Mulla has relied upon a decision of the Madras High Court in Venkata Rama Rau v. Venkata Suriya Rau and Another [ILR (1877) Madras 281 at 286]. What Mulla in fact says is that any gift or immovable property under Dayabhaga law would not become wife's stridhan. It is, however, not in dispute that the amount necessary for purchasing an immovable property can be a subject matter of gift by a person in favour of his wife. [See K.K. Das (supra)]

We are also really not concerned with such a situation as the situation had undergone a sea change after coming into force of the Transfer of Property Act. The Transfer of Property Act prescribes that any clog on transfer of property right to transfer would be void. Dayabhaga does not prohibit gift of immovable property in favour of his wife by her husband. It merely says that Dayabhaga did not recognize it to be her stridhan. It was only for the purpose of inheritance and succession. The same has nothing to do with the Benami Transaction of the Property and to determine the nature of transaction.

Burden of proof as regards the benami nature of transaction was also on the respondent. This aspect of the matter has been considered by this Court in Valliammal (D) By LRS. v. Subramaniam and Others [(2004) 7 SCC 233] wherein a Division Bench of this Court held:

"13. This Court in a number of judgments has held

that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Refer to Jaydayal Poddar v. Bibi Hazra, Krishnanand Agnihotri v. State of M.P., Thakur Bhim Singh v. Thakur Kan Singh, Pratap Singh v. Sarojini Devi and Heirs of Vrajilal J. Ganatra v. Heirs of Parshottam S. Shah. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

- (1) the source from which the purchase money came;
- (2) the nature and possession of the property, after the purchase;
- (3) motive, if any, for giving the transaction a benami colour;
- (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;
- (5) the custody of the title deeds after the sale; and
- (6) the conduct of the parties concerned in dealing with the property after the sale. (Jaydayal Poddar v. Bibi Hazra, SCC p. 7, para 6)

14. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia.

18. It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff to examine the relevant witnesses completely demolishes his case."

For the reasons aforementioned, the impugned judgment cannot be

sustained which is set aside accordingly. The judgment of the Trial Court is restored. The appeal is allowed. In the peculiar facts and circumstances of this case, however, there shall be no order as to costs.

JUDICIALS

Thakur Bhim Singh (Dead) By Lrs And Anr. vs Thakur Kan Singh on 21 December, 1979

Equivalent citations: AIR1980SC727, (1980)3SCC72, [1980]2SCR628, 1979()WLN788, AIR 1980 SUPREME COURT 727, 1980 (3) SCC 72

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, P.N. Shinghal

JUDGMENT

E.S. Venkataramiah, J.

1. These two cross appeals by certificate arise out of a suit for possession of a house situate in Bikaner and for damages for use and occupation thereof filed in Civil Original Case No. 17 of 1957 on the file of the District Judge, Bikaner. The plaintiffs in the suit are the appellants in Civil Appeal No. 626 of 1971 and the defendant is the appellant in Civil Appeal No. 629 of 1971. The genealogy showing the relationship between the parties is given below:

S	u	r		S	i	n	g	h				
				Gad Singh	Bharat Singh	Bhim Singh	Kan Singh		Died in (p.I.) (Deft.)		Sept.	
				1955)								
				Singh Singh	Singh							Himmat Dalip Singh
				Singh (P.2.)	(Died in Sept.	56)						

2. Gad Singh, Bharat Singh, Bhim Singh (plaintiff No. 1) and Kan Singh (defendant) are the sons of Sur Singh. Bharat Singh died unmarried in September, 1955. Gad Singh died thereafter leaving behind him three sons, Duley Singh, Dhaney Singh and Deep Singh. Dalip Singh, the second son of plaintiff No. 1 died in September, 1956. Bharat Singh and the defendant were residing in the house which was the subject matter of the suit. After the death of Bharat Singh, the plaintiffs Bhim Singh and Himmat Singh filed the suit out of which this appeal arises against Kan Singh, the defendant for recovery of possession of the suit house and other ancillary reliefs. In the plaint, they pleaded that the suit house belonged to them by virtue of a patta dated July 12, 1940 issued in their names; that the defendant who was the brother of plaintiff No. 1 and uncle of plaintiff No. 2 was living in a part of the house with their consent; that plaintiff No. 2 and his younger brother Dalip Singh were also living in the house till the year 1956: that the defendant had refused to receive a notice issued by them in the month of September, 1957 calling upon him to hand over possession of the house to the plaintiffs; that the defendant had done so on account of personal ill will and that the plaintiffs were,

therefore, entitled to recover possession of the suit house and damages from the defendant. These were briefly the allegations made in the plaint. On the above basis, the plaintiffs prayed for a decree for the reliefs referred to above.

3. In the written statement, the defendant did not admit the existence of the patta on the basis of which the plaintiffs claimed title to the suit house. He denied the allegation that the plaintiffs were the owners in possession of the suit house. He claimed that he was the exclusive owner of the suit house, and in support of the said claim stated as follows:

4. There was a partition amongst the sons of Sur Singh in the year 1929. At that partition, Gad Singh and plaintiff No. 1 became separated and they were given all the family properties which were situated in their village, Roda. As Bharat Singh and the defendant had been educated at the expense of the family, they were not given any share in the property. Bharat Singh and he settled in Bikaner and lived together as members of joint Hindu family. Bharat Singh died on September 2, 1955 leaving the defendant as a surviving coparcener. On his death, the defendant became the owner of the properties of Bharat Singh 'as a member of joint Hindu family'. He further pleaded that from the year 1928, Bharat Singh and he who were working as the Aid-de-Camp and Private Secretary respectively of the Maharaja of Bikaner were living in the suit house which then belonged to the Maharaja. The defendant filed an application for purchasing the house. The proceedings had not terminated when the defendant left the service of the Maharaja and went to Banaras for higher studies. On his return from Banaras, he joined the service of the Maharaja in the civil department of Bikaner. After a long time on account of the joint efforts of Bharat Singh and the defendant, the sale of the house was sanctioned. Bharat Singh who was living jointly with him paid the consideration for the sale on November 4, 1939 'out of the joint income.' Thus according to the defendant, Bharat Singh and he became its owners from the date of payment of the consideration. He further pleaded that 'if the patta of the property had been granted in the names of the plaintiffs due to some reasons, political and other surrounding circumstances and for the safety of the property, it cannot affect the right of the defendant'. It was also stated that Bharat Singh and the defendant had not executed any sale deed in favour of the plaintiffs and so they could not become owners of the suit house. In another part of the written statement, the defendant pleaded thus:

The plaintiffs have taken the entire ancestral property of the village. Still they are harassing the defendant due to avarice. The defendant and Thakur Bharat Singh had been doing Government service. So there was always danger of removal or confiscation of the property. Even if Thakur Bharat Singh might have written or given his consent for entering the names of the plaintiffs in the patta in this view, it is not binding. The plaintiffs are at the most 'benami' even though the patta which is not admitted might be proved.

5. It is thus seen that the defendant put forward a two fold claim to the suit house one on the basis of the right of survivorship and another on the basis of a joint purchase along with Bharat Singh. Even though in one part of the written statement, he declined to admit the existence of the patta, in paragraph 13 of the written statement which is extracted above, he put forward the plea that the plaintiffs were at the most holding the property as benamdars. He, however, did not claim that he

was entitled to the property as an heir of Bharat Singh alongwith plaintiff No. 1 and Gad Singh who would have inherited the estate of Bharat Singh on his death being his nearest heirs.

6. In the reply, the plaintiffs denied that the defendant was entitled to the suit house as a surviving coparcener on the death of Bharat Singh. They, however, pleaded that plaintiff No. 1 had purchased the suit house out of his income; that Bharat Singh used to love plaintiff No. 2 'as his son' and was thinking of adopting him but he died all of a sudden and that the defendant had not disclosed in his written statement the special political circumstances under which the names, of the plaintiffs were entered in the patta. They denied that the defendant had any interest in the suit house.

7. On the basis of the oral and documentary evidence produced before him, the learned District Judge who tried the suit held that Bharat Singh had secured the house from the Government of Bikaner for the plaintiffs with their money; that the patta of the house had been granted by the Patta Court in favour of the plaintiffs; that the plaintiffs were in possession of the suit house till September, 1956 and that the defendant being their close relative was living in the house not on his own account but with the plaintiffs' permission. The learned District Judge also held that the defendant had failed to prove that the suit house had been acquired by him and Bharat Singh with their joint fund. Accordingly he decreed the suit for possession of the house in favour of the plaintiffs and further directed that the defendant should pay damages for use and occupation at the rate of Rs. 50 per month from September 20, 1956 till the possession of the house was restored to them. Aggrieved by the decree of the trial court, the defendant tiled an appeal before the High Court of Rajasthan in Civil First Appeal No. 31 of 1960. The High Court rejected the case of the plaintiffs that the consideration for the house had been paid by Bharat Singh out of the funds belonging to them and also the case of the defendant that the house had been purchased by Bharat Singh with the aid of joint family funds belonging to himself and the defendant. The High Court held that the house had been purchased by Bharat Singh out of his own money in the names of the plaintiffs without any intention to confer any beneficial interest on them. It further held that the suit house belonged to Bharat Singh and on his death, Gad Singh, plaintiff No. 1 and the defendant succeeded to his estate which included the suit house in equal shares. Accordingly in substitution of the decree passed by the trial court, the High Court made a decree for joint possession in favour of plaintiff No. 1. The rest of the claim of the plaintiffs was rejected. Dissatisfied with the decree of the High Court, the plaintiffs and the defendant have filed these two appeals as mentioned above.

8. The principal issue which arises for consideration relates to the ownership of the suit house. It is admitted on all hands that though Bharat Singh and the defendant were living in the suit house from the year 1928, it continued to be the property of the Maharaja of Bikaner till the date on which the patta (Exh. 4) was issued by the Patta Court of Bikaner and that on the issue of the patta, the State Government ceased to be its owner. It is also not disputed that the patta constituted the title deed in respect of the suit house and it was issued in the names of the plaintiffs on receipt of a sum of Rs. 5,000. On January 11, 1930, the defendant had made an application, a certified copy of which is marked as Exhibit A-116 to the Revenue Minister of the State of Bikaner making enquiry about the price of the suit house on coming to know that the State Government intended to sell it. After the above application was made, the defendant left the service of the State of Bikaner and went to Banaras for studies. Bharat Singh who was also an employee of the State Government was working

as the Aid-de-Camp of the Maharaja in 1939. At the request of Bharat Singh, an order was made by the Maharaja on May 4, 1939 sanctioning the sale of the suit house for a sum of Rs. 5,000. Exhibit A-118 is the certified copy of the said order. Exhibit A-120 is a certified copy of the order of Tehsil Malmandi showing that a sum of Rs. 5,000 had been deposited on behalf of Bharat Singh towards the price of the suit house. It also shows that Bharat Singh was asked to intimate the name of the person in whose favour the patta should be prepared. Presumably, the patta was issued in the names of the plaintiffs as desired by Bharat Singh and Exhibit A-121 shows that it was handed over on September 30, 1940. The patta was produced before the trial court by the plaintiffs.

9. By the time the patta was issued in the names of the plaintiffs, the mother of plaintiff No. 2 had died. He was about eight years of age in 1940 and he and his younger brother, Dalip Singh were under the protection of Bharat Singh who was a bachelor. They were staying with him in the suit house. The defendant also was residing in it. The plaintiffs who claimed title to the property under the patta in the course of the trial attempted to prove that the sum of Rs. 5,000 which was paid by way of consideration for the patta by Bharat Singh came out of the jewels of the mother of plaintiff No. 2 which had come into the possession of Bharat Singh on her death. The plaintiff No. 2 who gave evidence in the trial court stated that he had not given any money to Bharat Singh for the purchase of the house but he had come to know from his father, plaintiff No. 1 that it had been purchased with his money. Jaswant Singh (P.W. 2) and Kesri Singh (P.W. 3) to whose evidence we will make a reference in some detail at a later stage also stated that they had heard from Bharat Singh that the jewels of the mother of plaintiff No. 2 were with him suggesting that they could have been the source of the price house. Plaintiff No. 1 who could have given evidence on the above question did not enter the witness box. It is stated that he was a person of weak mind and after the death of Bharat Singh was behaving almost like a mad man. The defendant stated in the course of his evidence that the mother of plaintiff No. 2 had gold jewels weighing about 3-4 tolas only. In this state of evidence, it is difficult to hold that the plaintiffs have established that the consideration for the suit house was paid by them. The finding of the trial court that the house had been purchased by Bharat Singh for the plaintiffs with their money cannot be upheld. The case of the defendant that the price of the suit house was paid out of the funds belonging to him and Bharat Singh has been rejected both by the trial court and the High Court. On going through the evidence adduced by the defendant, we feel that there is no reason for us to disturb the concurrent findings arrived at by the trial court and the High Court on the above question. We shall therefore, proceed to decide the question of title on the basis that the consideration for the purchase of the house was paid by Bharat Singh out of his own funds.

10. It was contended by the learned Counsel for the defendant that since the plaintiffs had failed to establish that they had contributed the price paid for the suit house, the suit should be dismissed without going into the question whether Bharat Singh had purchased the suit house with his money in the names of the plaintiffs for the benefit of plaintiff No. 2. The plaint does not disclose the name of the person or persons who paid the sale price of the suit house. The suit is based on the patta standing in the names of the plaintiffs. In the written statement of the defendant, there was an allegation to the effect that even though the patta was standing in the names of the plaintiffs, they were only benamidars and the real title was with Bharat Singh and the defendant. The particulars of the circumstances which compelled Bharat Singh or the defendant to take the patta in the names of

the plaintiffs were not disclosed although it was stated that it had been done owing to some political and other surrounding circumstances and for the safety of the property. From the evidence led by the parties, we are satisfied that they knew during the trial of the suit that the question whether the transfer effected under the patta was a benami transaction or not arose for consideration in the case. Even in the appeal before the High Court, the main question on which arguments were addressed was whether the transaction was a benami transaction or not. Merely because the plaintiffs attempted to prove in the trial court that the money paid for purchasing the house came out of their funds, they cannot in the circumstances of this case be prevented from claiming title to the property on the basis that even though Bharat Singh had paid the consideration therefore. plaintiff No. 2 alone was entitled to the suit house. Reference may be made here to the decision of this Court in *Bhagwati Prasad v. Shri Chandrainaul* where the Court observed as follows:

There can be no doubt that if a party asks for a relief on a clear and specific grounds, and in the issues or at the trial, no other ground is covered either directly or by necessary implication, it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new.... But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it?

11. After holding that the parties to the said case were not taken by surprise, the Court granted the relief prayed for by the plaintiff on the basis that defendant was a licensee even though the plaintiff had pleaded in his plaint that the defendant was tenant. In the above case, the Court distinguished the decision in *Trojan and Co. Ltd. v. RM. N.N. Hagappa Chettiar* [1953] S.C.R. 789 on which much reliance was placed by the learned Counsel for the defendant before us. In the case of *Trojan and Co. Ltd. (supra)*, this Court came to the conclusion that the alternative claim on which relief was sought was not at all within the knowledge of the parties in the course of the trial. The case before us is not of the nature.

12. In *Ismail Mussajee Mookerdum v. Hafiz Boo* 33 I.A. 86 the plaintiff laid claim to a property which had been transferred in her name by her mother alleging that she had paid the purchase money to her mother. The court came to the conclusion that she had failed to prove that she had paid the consideration. Still a decree was made in her favour holding that she had become the owner

of the property by virtue of the transfer in her favour even though consideration had not been paid by her since it had been established in the case that her mother intended to transfer the beneficial interest in the property in her favour. This is borne out from the following passage at page 95:

In her evidence, which was very confused, she tried to say that she paid that purchase-money to her mother. This was clearly untrue: as both Courts have found. The fact, therefore, remains that the properties purchased by the sale proceeds were purchased no doubt in Hafiz Boo's name, but were purchased out of funds emanating from her mother's estate. This circumstance no doubt, if taken alone, affords evidence that the transaction was benami, but there is, in their Lordships' opinion, enough in the facts of the case to negative any such inference.

13. Moreover no plea was raised on behalf of the defendant before the High Court in this case contending that the High Court should not go into the question whether the transfer under the patta was a benami transaction or not. We, therefore, reject the above contention and proceed to examine whether the High Court was right in arriving at the conclusion that the plaintiffs were only benamidars holding the property for the benefit of its real owner, Bharat Singh as the consideration therefore had emanated from him.

14. Under the English law, when real or personal property is purchased in the name of a stranger, a resulting trust will be presumed in favour of the person who is proved to have paid the purchase money in the character of the purchaser. It is, however, open to the transferee to rebut that presumption by showing that the intention of the person who contributed the purchase money was that the transferee should himself acquire the beneficial interest in the property. There is, however, an exception to the above rule of presumption made by the English law when the person who gets the legal title under the conveyance is either a child or the wife of the person who contributes the purchase money or his grand child, whose father is dead. The rule applicable in such cases is known as the doctrine of advancement which requires the court to presume that the purchase is for the benefit of the person in whose favour the legal title is transferred even though the purchase money may have been contributed by the father or the husband or the grandfather, as the case may be, unless such presumption is rebutted by evidence showing that it was the intention of the person who paid the purchase money that the transferee should not become the real owner of the property in question. The doctrine of advancement is not in vogue in India. The counterpart of the English law of resulting trust referred to above is the Indian law of benami transactions. Two kinds of benami transactions are generally recognized in India. Where a person buys a property with his own money but in the name of another person without any intention to benefit such other person, the transaction is called benami. In that case, the transferee holds the property for the benefit of the person who has contributed the purchase money, and he is the real owner. The second case which is loosely termed as a benami transaction is a case where a person who is the owner of the property executes a conveyance in favour of another without the intention of transferring the title to the property thereunder. In this case, the transferor continues to be the real owner. The difference between the two kinds of benami transactions referred to above lies in the fact that whereas in the former case, there is an operative transfer from the transferor to the transferee though the transferee holds the property for the benefit of the person who has contributed the purchase money,

in the latter case, there is no operative transfer at all and the title rests with the transferor notwithstanding the execution of the conveyance. One common feature, however, in both these cases is that the real title is divorced from the ostensible title and they are vested in different persons. The question whether a transaction is a benami transaction or not mainly depends upon the intention of the person who has contributed the purchase money in the former case and upon the intention of the person who has executed the conveyance in the latter case. The principle underlying the former case is also statutorily recognized in Section 82 of the Indian Trusts Act, 1882 which provides that where property is transferred to one person for a consideration paid or provided by another person and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration. This view is in accord with the following observations made by this Court in *Meenakshi Mills. Madurai v. The Commissioner of Income-Tax, Madras* [1956] S.C.R. 691 at p. 722.:

In this connection, it is necessary to note that the word 'benami' is used to denote two classes of transactions which differ from each other in their legal character and incidents. In one sense, it signifies a transaction which is real, as for example when A sells properties to B but the sale deed mentions X as the purchaser. Here the sale itself is genuine, but the real purchaser is B, X being his benamidar. This is the class of transactions which is usually termed as benami. But the word 'benami' is also occasionally used, perhaps not quite accurately, to refer to a sham transaction, as for example, when A purports to sell his property to B without intending that his title should cease or pass to B. The fundamental difference between these two classes of transactions is that whereas in the former there is an operative transfer resulting in the vesting of title in the transferee, in the latter there is none such, the transferor continuing to retain the title notwithstanding the execution of the transfer deed. It is only in the former class of cases that it would be necessary, when a dispute arises as to whether the person named in the deed is the real transferee or B, to enquire into the question as to who paid the consideration for the transfer, X or B. But in the latter class of cases, when the question is whether the transfer is genuine or sham, the point for decision would be, not who paid the consideration but whether any consideration was paid.

15. In *Mohammad Sadiq All Khan v. Fakhr Jahan Begum and Ors.* 59 I.A. 1 the facts were these: A Mahemmodan bought an immovable property taking the conveyance in the name of his daughter who was five years of age. The income was credited to a separate account, but it was in part applied to purposes with which she had no concern. Upon her marriage, the deed was sent for the inspection of her father-in-law. After the death of the donor it was contended that the property was part of his estate, the purchase being benami. The Judicial Committee of the Privy Council held that there was a valid gift to the daughter because there was proof of a bona fide intention to give, and that intention was established. In the course of the above decision, it was observed thus:

The purchase of this property was a very natural provision by Baqar Ali for the daughter of his favourite wife, and though there may be no presumption of

advancement in such cases in India, very little evidence of intention would be sufficient to turn the scale. The sending of the deed for the inspection of the lady's father-in-law, which the Chief Court held to be established, was clearly a representation that the property was hers, and their Lordships agree with the learned Judges in the conclusion to which they came.

16. In *Manmohan Dass and Ors, v. Mr. Ramdei and Anr.* A.I.R. 1931 P.C. 175. Lord Macmillan speaking for the Judicial Committee observed:

In order to determine the question of the validity or invalidity of the deed of gift in question it is of assistance to consider.

'the surrounding circumstances, the position of the parties and their relation to one another, the motives which could govern their actions and their subsequent conduct.' *Dalip Singh v. Nawal Kanwar* 35 LA. 104 (P.C.) always remembering that the onus of proof rests upon the party impeaching the deed.

17. The principle enunciated by Lord Macmillan in the case of *Manmohan Dass and Ors.* (supra) has been followed by this Court in *Jayadaya Poddar (deceased) through his L. Rs. and Anr. v. Mst. Bibi Hazara and Ors.* Sarkaria, J. observed thus:

It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any between the claimant and the alleged benamidar; (5) the custody of the title deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale.

18. The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus: (1) The burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) if it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct etc.

19. Now we shall refer to the facts of the present case. When the suit house was purchased from the Maharaja of Bikaner, Bharat Singh was a bachelor and he did not marry till his death in the year 1955. The wife of Bhim Singh had died before 1939 leaving behind her two young children. Plaintiff No. 2 was about eight years old in the year 1939 and his younger brother Dalip Singh was about two years old. These two children were living with Bharat Singh. Bhim Singh, plaintiff No. 1 was almost in indigent condition. The defendant had by then acquired a degree in law and also had practised as a lawyer for some time. It is stated that the defendant had again been employed in the service of the State of Bikaner. The patta was issued in the names of plaintiffs 1 and 2 at the request of Bharat Singh. Even though the defendant stated in the written statement that the patta had been taken in the names of the plaintiffs owing to certain political circumstances, he had not disclosed in the course of his evidence those circumstances which compelled Bharat Singh to secure the patta in the names of the plaintiffs, though at one stage, he stated that it was under his advice that Bharat Singh got the patta in the names of the plaintiffs. Bharat Singh had no motive to suppress from the knowledge of the public that he had acquired the property. It was suggested in the course of the arguments that he had taken the patta in the names of the plaintiffs because he was in the service of the State. We do not find any substance in this submission because the property was being purchased from the State Government itself and there was no need for him to shield his title from the knowledge of the State Government. It appears that Bharat Singh acquired the suit house for the benefit of plaintiff No. 2 for the following circumstances: The first circumstance is that the original patta had been handed over by Bharat Singh to plaintiff No. 2 on his passing B.Sc. Examination. This fact is proved by the evidence of plaintiff No. 2 and it is corroborated by the fact that the patta was produced by the plaintiffs before the Court. In the course of his evidence, the defendant no doubt stated that the patta had been stolen by plaintiff No. 2 from the suit house during the twelve days following the death of Bharat Singh when the keys of Bharat Singh's residence had been handed over to plaintiff No. 2 by the defendant. It is difficult to believe the above statement of the defendant because of two circumstances (i) that the defendant did not state in the written statement that the patta had been stolen by plaintiff No. 2 and (ii) that within a month or two after the death of Bharat Singh, plaintiff No. 2 wrote a letter which is marked as Exhibit A-124 to the defendant stating that the rumour which the defendant was spreading that plaintiff No. 2 had stolen some articles from the suit house was not true since whenever plaintiff No. 2 opened room or any of the almirahs of Bharat Singh in the suit house, Devi Singh, the son of the defendant was keeping watch over him. That letter has been produced by the defendant and there is no reference in it to a false rumour being spread about the theft of the patta by plaintiff No. 2. Plaintiff No. 2 however, while asserting

his claim to the suit house in the course of that letter stated that he had seen that the patta had been executed in his favour; and that the patta contained his name. The defendant does not appear to have sent any reply to Exhibit A. 124 nor did he call upon the plaintiffs to return the patta to him. He did not also file a complaint stating that the patta had been stolen by plaintiff No. 2. We are of the view that there is no reason to disbelieve the evidence of plaintiff No. 2 that the patta had been handed over to him by Bharat Singh on his passing the B.Sc. examination. This conduct of Bharat Singh establishes that it was the intention of Bharat Singh when he secured the patta from the State Government in the names of the plaintiffs that plaintiff No. 2 whom he loved should become the owner. It is no doubt true that the name of plaintiff No. 1 is also included in the patta. It may have been so included by way of abundant caution as plaintiff No. 2 was a minor when the patta was issued. The above circumstance is similar to the one which persuaded their Lordships of the Privy Council in the case of Mohammad Sadiq All Khan (*supra*) to hold that the property involved in that case belonged to the person in whose favour the conveyance had been executed.

20. The second circumstance which supports the view that Bharat Singh intended that plaintiff No. 2 should become the owner of the suit house is proved by the declarations made by Bharat Singh regarding the title to the suit house. Jaswant Singh (P.W. 2) was a former Prime Minister of the State of Bikaner. His wife was a cousin of plaintiff No. 1, Bharat Singh and the defendant. Being a close relative of Bharat Singh who was also the Aid-de-Camp of the Maharaja of Bikaner, he was quite intimate with Bharat Singh who used to discuss with him about Ms personal affairs. P.W. 2 has stated in the course of his evidence that Bharat Singh thought it proper to purchase the house in the name of plaintiff No. 2 and that he intended to make plaintiff No. 2 his heir and successor. He has also stated that Bharat Singh had expressed his desire to give all his property to plaintiff No. 2 by a will and that he had told Kesri Singh (P.W. 3) just a day prior to his (Bharat Singh's) death that a will was to be executed. This statement of Jaswant Singh (PW. 2) is corroborated by the evidence of Kesri Singh (P.W. 3) whose wife was also a cousin of Bharat Singh, plaintiff No. 1 and the defendant. The relevant portion of the deposition of Kesri Singh (P.W. 3) reads thus:

I came from Jaipur to Bikaner by train one day before the death of Bharat Singh and when I was returning after a walk I found Bharat Singh standing at the gate of his house. I asked Bharat Singh to accompany me to my house to have tea etc. Bharat Singh came with me to my house. Bharat Singh told me at my house that he was not quite all right and that he might die at any time. He wanted to execute a will. He further told me that his house really belonged to Himmat Singh. It has been purchased in his name. He wanted to give even other property to Himmat Singh.... By other property which Bharat Singh wanted to give to Himmat Singh was meant Motor car, bank balance and the presents which he had. The house regarding which my talk took place with Bharat Singh at my house was the house in dispute.

21. There is no reason to disbelieve the evidence of these two witnesses. Their evidence is corroborated by the deposition of Dr. Himmat Singh (D.W. 6) who was the Secretary of a Club in Bikaner of which Bharat Singh was a member. He was examined by the defendant himself as his witness. In the course of his cross-examination, Dr. Himmat Singh (D.W. 6) referred to what Bharat Singh had told him a few months prior to his death. The substance of his deposition is found in the

judgment of the trial court, the relevant portion of which reads thus:

D.W. 6 Dr. Himmat Singh is the Secretary of the Sardul Club, Bikaner. He is the Senior Eye-Surgeon in the Government Hospital, Bikaner. He has stated that Bharat Singh was the member of Sardul Club. A sum of Rs. 42S/6/-remained outstanding against him till the year 1955. This amount was received on 28-10-1955. He has said that he does not know who deposited this amount. On the merits of the case, he has stated that he intimately knew Bharat Singh and members of his family. Bhim Singh and his sons Himmat Singh and Dalip Singh used to live in this house. Bharat Singh took this house for Bhim Singh and Himmat Singh. Four months before his death, Bharat Singh told the witness that he had already taken the house for Bhim Singh and Himmat Singh and that whatever else would remain with him shall go to them. Dr. Himmat Singh refutes the defendant's stand and supports the plaintiff's case.

22. It was argued on behalf of the defendant that there is some variation between the deposition of Dr. Himmat Singh (D.W. 6) and the above passage found in the judgment of the trial court and that the evidence of D.W. 6 should not be believed as he had turned hostile.

23. The deposition of Dr. Himmat Singh (D.W. 6) was read out to us. It was also brought to our notice that an application had been made by the defendant to treat D.W. 6 as hostile and that it had not been granted by the trial court. Even though there is a slight variation between what is stated by D.W. 6 and what is contained in the judgment of the trial court with regard to certain details, we do not feel that the said variation is of any substantial nature. The evidence of D.W. 6 suggests that Bharat Singh was of the view even during his life time that the suit house belonged to plaintiffs and not to himself. Even though an application had been made by the defendant to treat D.W. 6 as hostile, we feel that this part of the evidence of D.W. 6 cannot be rejected on that ground since it is consistent with the evidence of Jaswant Singh (P.W. 2) and Kesri Singh (P.W. 3).

24. It is seen from the judgment of the High Court that the effect of the statement of Kesri Singh (P.W.3) in his deposition that Bharat Singh had told him that the suit house was the property of plaintiff No. 2 has not been considered. The High Court while dealing with the evidence of Jaswant Singh (P.W. 2) and Kesri Singh (P.W. 3) laid more emphasis on those parts of their evidence where there was a reference to the alleged utilisation of the jewels or moneys belonging to the plaintiffs by Bharat Singh for the purpose of acquiring the suit house. The High Court has also observed in the course of its judgment that neither of them had stated that Bharat Singh had told them that he was purchasing or had purchased the suit house as a gift to Bhim Singh and Himmat Singh. The above observation does not appear to be consistent with the evidence of Kesri Singh (P.W. 3) discussed above.

25. It was, however, contended on behalf of the defendant that the statement made by Bharat Singh in the year 1955 could not be accepted as evidence in proof of the nature of the transaction which had taken place in the year 1940. It was contended that the question whether a transaction was of a benami nature or not should be decided on the basis of evidence about facts which had taken place at or about the time of the transaction and not by statements made several years after the date of the

transaction. In support of the above contention, the learned Counsel for the defendant relied on the decision of the House of Lords in *Shephard and Anr. v. Cartwright and Anr.* [1955] A.C. 431. The facts of that case were these: In 1929, a father, with an associate, promoted several private companies and caused a large part of the shares, for which he subscribed, to be allotted in varying proportions to his three children, one of them being then an infant. There was no evidence as to the circumstances in which the allotments were made. The companies were successful and in 1934 the father and his associate promoted a public company which acquired the shares of all the companies. The children signed the requisite documents at the request of their father without understanding what they were doing. He received a cash consideration and at various times sold, and received the proceeds of sale of, their shares in the new company. He subsequently placed to the credit of the children respectively in separate deposit accounts the exact amount of the cash consideration for the old shares and round sums in each case equivalent to proceeds of sale of the new shares. Later he obtained the children's signatures to documents, of the contents of which they were ignorant, authorising him to withdraw money from these accounts and without then knowledge he drew on the accounts, which were by the end of 1936 exhausted, part of the sums withdrawn being dealt with for the benefit of the children but a large part remaining unaccounted for. He died in 1949. In the action filed against his executors, it was contended by them that the subsequent conduct of the father showed that when the shares were got allotted by him in the names of the children in 1929, he did not intend to make them the real owners of the shares and that the presumption of advancement had been rebutted. This contention was met by the plea that the subsequent conduct of the father in dealing with the shares as if they were his own could not be relied upon either in his favour or in favour of his representatives, executors and administrators to prove that he had no intention to create any beneficial interest in his children in the shares in question when they were obtained. On these facts, the House of Lords held that the subsequent acts and declarations of the father could not be relied upon in his favour or in favour of his executors to rebut the presumption of advancement. Viscount Simonds in the course of his judgment observed thus:

My Lords, I do not distinguish between the purchase of shares and the acquisition of shares upon allotment, and I think that the law is clear that on the one hand where a man purchases shares and they are registered in the name of a stranger there is a resulting trust in favour of the purchaser; on the other hand, if they are registered in the name of a child or one to whom the purchaser then stood in loco parentis, there is no such resulting trust but a presumption of advancement. Equally it is clear that the presumption may be rebutted but should not, as Lord Eldon said, give way to slight circumstances: *Finch v. Finch* (1808) 15 Ves. 43.

It must then be asked by what evidence can the presumption be rebutted, and it would, I think, be very unfortunate if any doubt were cast (as I think it has been by certain passages in the judgments under review) upon the well settled law on this subject. It is, I think, correctly stated in substantially the same terms in every text book that I have consulted and supported by authority extending over a long period of time. I will take, as an example, a passage from *Snell's Equity*, 24th ed., p. 153, which is as follows:

The acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration.... But subsequent declarations are admissible as evidence only against the party who made them, and not in his favour.

26. The above passage, we are of the view, does not really assist the defendant in this case. What was held by the House of Lords in the case of Shephard and Anr. (supra) was that the presumption of advancement could be displaced only by a statement or conduct anterior to or contemporaneous to the purchase nor could any conduct of the children operate against them as admissions against their interest as they acted without the knowledge of the facts. In the instant case, we are concerned with the conduct and declarations of Bharat Singh subsequent to the transaction which were against his interest. The evidence regarding such conduct and declarations is not being used in his favour but against the legal representative of Bharat Singh i.e. the defendant who would have become entitled to claim a share in the suit house if it had formed part of his estate. Such conduct or declaration would be admissible even according to the above decision of the House of Lords in which the statement of law in Snell's Equity to the effect 'but subsequent declarations are admissible as evidence only against the party who made them, and not in his favour' is quoted with approval. The declarations made by Bharat Singh would be admissible as admissions under the provisions of the Indian Evidence Act being statements made by him against his proprietary interest under Section 21 and Section 32(3) of the Indian Evidence Act.

27. The defendant cannot also derive any assistance from the decision of this Court in Bibi Saddiqa Fatima v. Saiyed Mohammad Mahmood Hasan . The question before the Court in the case of Bibi Siddiqa Fatima (supra) was whether a property which had been purchased by a husband in his wife's name out of the fund belonging to a waqf of which he was a Mutawalli could be claimed by the wife as her own property. This Court held that the wife who was the ostensible owner could not be treated as a real owner having regard to the fact that the purchase money had come out of a fund belonging to a waqf over which her husband who was the Mutawalli had no uncontrolled or absolute interest. In reaching the above conclusion, this Court observed thus:

We may again emphasize that in a case of this nature, all the aspects of the benami law including the question of burden of proof cannot justifiably be applied fully. Once it is found, as it has been consistently found, that the property was acquired with the money of the waqf, a presumption would arise that the property is a waqf property irrespective of the fact as to in whose name it was acquired. The Mutawalli by transgressing the limits of his power and showing undue favour to one of the beneficiaries in disregard to a large number of other beneficiaries could not be and should not be permitted to gain advantage by this method for one beneficiary which in substance would be gaining advantage for himself. In such a situation it will not be unreasonable to say-rather it would be quite legitimate to infer, that it was for the plaintiff to establish that the property acquired was her personal property and not the property of the waqf.

28. It was next contended that the defendant had spent money on the repairs and reconstruction of the building subsequent to the date of the patta and that therefore, he must be held to have acquired some interest in it. We have gone through the evidence bearing on the above question. We are satisfied that the defendant has not established that he had spent any money at all for construction and repairs. Even if he has spent some money in that way with the knowledge of the actual state of affairs, it would not in law confer on the defendant any proprietary interest in the property.

29. It is also significant that neither Gad Singh during his life time nor his children after his death have laid any claim to a shard in the suit house which they were entitled to claim alongwith the defendant if it was in fact a part of the estate of Bharat Singh. Their conduct also probabalises; the case of the plaintiffs that Bharat Singh did not intend to retain for himself any interest in the suit house.

30. On the material placed before us, we are satisfied that the transaction under which the patta was obtained was not a benami transaction and that Bharat Singh had acquired the suit house with his money with the intention of constituting plaintiff No. 2 as the absolute owner thereof. Plaintiff No. 2 is, therefore, entitled to a decree for possession of the suit house.

31. The trial court passed a decree directing the defendant to pay damages for use and occupation in respect of the suit house at the rate of Rs. 50/- per month from September 20, 1956 till the possession of the house was delivered to the plaintiffs. The operation of the decree of the trial court was stayed by the High Court during the pendency of the appeal before it. In view of the decree passed by the High Court, the defendant has continued to be in possession of the suit house till now. Nearly twenty years have elapsed from the date of the institution of the suit. In the circumstances, we are of the view that the defendant should be directed to pay mesne profits at the rate of Rs. 50/- per month till today and that an enquiry should be made by the trial court under Order 20, Rule 12 of the CPC to determine the mesne profits payable by the defendant hereafter till the date of delivery of possession.

32. In the result, the decree passed by the High Court is set aside and a decree is passed directing the defendant to deliver possession of the suit house to plaintiff No. 2 and to pay mesne profits to him at the rate of Rs. 50/- per month from September 20, 1956 till today and also to pay future mesne profits as per decree to be passed by the trial court under Order 20, Rule 12 of the CPC.

33. For the foregoing reasons, Civil Appeal No. 626 of 1971 is accordingly allowed with costs throughout. Civil Appeal No. 629 of 1971 is dismissed but without costs.