



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Revision Petition No. 273/2019

Shyam Sunder Singhvi S/o Shri Kastoor Chand Singhvi, R/o 301-N-1 Road, Bhupalpura, Udaipur (Raj.)

-----Petitioner

Versus

Union Of India Through Uma Nand Vijay, Assistant Director, Enforcement Directorate, Second Floor, Jeevan Nidhi-Ii, L.i.c. Bhawan, Bhawani Singh Road, Jaipur 302005

-----Respondent

Connected With

S.B. Criminal Revision Petition No. 275/2019

Dr.Ashok Singhvi S/o Dr.A.M. Singhvi, R/o 7 Hospital Road, C Scheme, Jaipur.

-----Petitioner

Versus

1. Union Of India, Through PP.
2. Umanand Vijay, Assistant Director, Enforcement Directorate, Second Floor, Jeevan Nidhi II, LIC Office, Bhawani Singh Road, Jaipur 302005.

-----Respondents

S.B. Criminal Revision Petition No. 1061/2019

Tamanna Begum Widow Of Late Mohammad Sher Khan, R/o Khwaja Bagh Vill. Saba Ps Shambhupura Dist. Chittorgarh

-----Petitioner

Versus

Assistant Director Enforcement Directorate, 2nd Floor Jeevan Nidhi 2nd LIC Bhawan Bhawani Singh Road Jaipur

-----Respondent

S.B. Criminal Miscellaneous (Petition) No. 2872/2019

Tamanna Begum Widow Of Late Mohammad Sher Khan, R/o Khwaja Bagh, Village Saba, Ps Shambhupura, District Chittorgarh, Raj.

-----Petitioner

Versus



Enforcement Directorate, Through Its Assistant Director Umanand Vijay, 2nd Floor, Jeevan Nidhi 2nd, LIC Bhawan, Bhawani Singh Road, Jaipur, Raj.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 4770/2019

Pushkar Raj Ameta S/o Shri Indra Lal Ameta, R/o 13, New Ashok Vihar, Chand Badi, Khara Kuan, Udaipur, Raj. 313001.

----Petitioner

Versus

Union Of India, Through Umanand Vijay, Assistant Director, Directorate Of Enforcement, Second Floor, Jeevan Nidhi II, Jeevan Beema Nigam Bhawan, Bhawani Singh Road, Jaipur, Raj.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 4771/2019

Pankaj Gehlot S/o Shri Ishwar Singh Gehlot, R/o A 204, Dharendra Apartment, New Navrat Complex, Udaipur, Raj. 313001.

----Petitioner

Versus

Union Of India, Through Umanand Vijay, Assistant Director, Directorate Of Enforcement, Second Floor, Jeevan Nidhi II, Jeevan Beema Nigam Bhawan, Bhawani Singh Road, Jaipur, Raj.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 5426/2019

Dr. Ashok Singhvi S/o Dr. A.m. Singhvi, R/o 7, Hospital Road, C Scheme, Jaipur.

----Petitioner

Versus

Umanand Vijay, Assistant Director Enforcement Directorate, Second Floor, Jeevan Nidhi-II, L.I.C. Office, Bhawani Singh Road, Jaipur, Raj. 302005.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 5427/2019

Shyam Sunder Singhvi S/o Shri Kastoor Chand Singhvi, R/o 301-N-1 Road, Bhupalpura, Udaipur, Raj.

----Petitioner

Versus





Union Of India, Through Shri Uma Nand Vijay, Assistant Director, Enforcement Directorate, Second Floor, Jeevan Nidhi II, L.I.C. Bhawan, Bhawani Singh Road, Jaipur.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 5430/2019

Mohammad Rashid Sheikh S/o Shri Akbar Deen Sheikh, R/o Nayi Abadi Khajodpur, Village Sava, Police Station Shambhupura, District Chittorgarh, Raj.

----Petitioner

Versus

Umanand Vijay, Assistant Director, Enforcement Directorate, Second Floor, Jeevan Nidhi II, L.I.C. Building, Bhawani Singh Road, Jaipur 302005, Raj.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 5524/2019

Dheerendra Singh @ Chintoo S/o Shri Surya Baksh Singh, R/o 48F, Rishabh Nagar, Kalka Mata Road, Udaipur Rajasthan 313001.

----Petitioner

Versus

Umanand Vijay, Assistant Director, Directorate Of Enforcement, 2nd Floor, Jeevan Nidhi II, LIC Building, Bhawani Singh Road Jaipur 302005.

----Respondent

For Petitioner(s)	: Mr. A.K. Sharma, Sr. Adv. assisted by Mr. Mohit Khandelwal, Adv. & Mr. Deepak Chauhan, Adv., Mr. Rajendra Prasad, Sr. Adv. assisted by Mr. Karan Tibrewal, Adv., Mr. Vivek Raj Singh Bajwa, Adv. Mr. S.S. Hora, Adv., Mr. Shobhit Tiwari, Adv., Mr. Vikas Kabra, Adv., Mr. Peush Nag, Adv., Mr. Vikas Jain, Adv., Mr. Suresh Kumar Sahni, Adv. with Mr. R.M., Sharma, Adv., Mr. Amol Vyas, Adv.
For Respondent(s)	: Mr. R.D.Rastogi, ASG with Mr. Akshay Bhardwaj, Adv., Mr. Aneesh Khandelwal, Adv. & Mr. Devesh Yadav, Adv., Mr. Anand Sharma, Adv., Mr. Ashish Kumar, Adv.



HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Judgment

Judgment Reserved on : 29th November, 2019

REPORTABLE

Date of Pronouncement : 24th January, 2020

By the Court:



The present order will decide two sets of cases i.e. Revision Petitions filed under Section 397 read with Section 401 Cr.P.C. challenging the order dated 21.01.2019 passed by the Special Sessions Court, Jaipur (Prevention of Money Laundering Act, 2002) – Special Court (Communal Riots Cases), Jaipur Metropolitan, Jaipur, whereby cognizance has been taken for offence punishable under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 (hereinafter shall be referred as 'PMLA, 2002') & arrest warrants have been issued to secure the presence of the accused persons.

2. The other set of cases are Criminal Miscellaneous Petitions filed under Section 482 Cr.P.C. challenging order of the Trial Court wherein it has refused to convert arrest warrants of the petitioners into bailable warrants by not exercising power under Section 70(2) Cr.P.C.

(Revision Petitions)

3. This Court has taken note of the facts from the file of S.B. Criminal Revision Petition No. 273/2019 (Shyam Sundar Singhvi Vs. Union of India), which is treated as the lead case. The facts, in nutshell, are that Anti Corruption Bureau, Jaipur on 19.09.2015 registered an FIR bearing No.251/2015 under Sections 120-B & 409 IPC and under Sections 7, 8, 9, 10, 12, 13(1)(a)(c)(d), 13(2) & 14 of Prevention of Corruption Act against Sanjay Sethi, Shyam Sundar Singhvi-petitioner, Dheerendra Singh @ Chintu, Mohd.



Sher Khan, Mohd. Rashid Sheikh, Dr. Ashok Singhvi, Pankaj Gehlot & Pushkar Raj Ameta.

4. The main allegation in the FIR was with regard to misuse of official position of the accused and to hatch criminal conspiracy to cause loss of revenue to the State Exchequer. The prosecution also alleged that acts of the accused amounted to criminal breach of trust and they were involved in making huge money for their personal gains.

5. The Anti Corruption Bureau (in short 'ACB') after registration of FIR commenced investigation and filed charge-sheet on 04.11.2015 against the accused persons vide charge-sheet No.276/2015 for offences punishable under Sections 7, 8, 9, 10, 12, 13(1)(a)(c)(d), 13(2) & 14 of Prevention of Corruption Act and Section 120-B and 409 IPC.

6. The ACB in the charge-sheet found that the accused Sanjay Sethi was engaged in the business of mining and he was a tout of the Department of Mines and used to identify businessmen engaged in the mining business anywhere in the State of Rajasthan, with the help of officers of the Department of Mines. The accused Sanjay Sethi, because of his close association with the co-accused Dr. Ashok Singhvi, the then Principal Secretary, Department of Mines, used to get instructions to close the mines of the businessmen for one or another reason and thereafter he used to contact the businessmen and after striking out the deal with the officers of the Department of Mines, got their mines reopened while imposing minor penalty in collusion with the officers of the Department of Mines and in lieu of the said transaction, he used to collect huge amount of money from the businessmen.



7. The ACB also found, after keeping the cell phone of Sanjay Sethi on surveillance, that six mines of co-accused Mohd. Sher Khan were closed on the ground of unsafe mining and other irregularities, only for the purpose of extracting illegal gratification from him for the official functionaries of the Department of Mines.

It was further revealed to the ACB that in order to get the mines reopened, Mohd. Sher Khan contacted Sanjay Sethi and Pankaj Gehlot, through their Chartered Accountant Shyam Sunder Singhvi for the purpose of reopening of mines. It was found by the ACB that the bribe amount was fixed to the tune of Rs.2.50 Crores and it was alleged that Sanjay Sethi had informed Dr. Ashok Singhvi that deal was finalized at Rs.1.25 Crores and out of which Rs.1 Crore was for Dr. Ashok Singhvi and Rs.25 Lakhs was for others and Dr. Ashok Singhvi had given his consent for the said deal. It was further found by the ACB that Rs.2.60 crores was withdrawn from different bank accounts and Mohd. Rashid Sheikh was to handover the amount of Rs.2.55 crores and in pursuance thereof Rs.2.55 crores were handed over by Shyam Sunder Singhvi to Sanjay Sethi and his associate Dheerendra Singh @ Chintu on 16.09.2015. The ACB team visited the office of Shyam Sunder Singhvi and seized the amount of Rs.2.50 crores from Sanjay Sethi and Dheerendra Singh and Rs.5 lakhs was kept with Shyam Sunder Singhvi, as commission, paid to Shyam Sunder in the deal.

8. The Directorate of Enforcement, after the charge-sheet being filed by the ACB, registered an Enforcement Case Information Report (ECIR) on 30.10.2015 against eight accused persons i.e. Sanjay Sethi, Dr. Ashok Singhvi, Pankaj Gehlot, Pushkar Raj Ameta, Shyam Sunder Singhvi, Mohd. Rashid Sheikh, Dheerendra Singh @ Chintu and Tamanna Begum on the allegations of money





laundering under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 which involved 'proceeds of crime' amounting to Rs.2.55 Crores, as the offences punishable under Sections 120-B IPC and Sections 7, 8, 9, 10 & 13 of Prevention of Corruption Act, were specified under Paragraph-1 & Paragraph-8 respectively of Part-A of the scheduled offences under PMLA, 2002.

9. On 16.07.2018, on the basis of the aforesaid allegations against the aforesaid accused persons, the Assistant Director, Directorate of Enforcement filed a prosecution complaint under Section 45(1) of the PMLA, 2002 before the Special Court (Communal Rights Cases), Jaipur.

10. The said prosecution complaint was registered as Criminal Complaint No.10/2018 by the Special Court (Prevention of Money Laundering Act). The criminal complaint was initially lodged in English and thereafter a Hindi translation of the same was also submitted by the Enforcement Directorate.

11. The Special Judge, after hearing submissions of Enforcement Directorate, proceeded to take cognizance against the accused persons including the petitioner for the offence under Section 4 of the PMLA, 2002 and also ordered to secure the presence of all the accused persons through execution of arrest warrants vide order dated 21.01.2019.

12. All the petitioners have pleaded in their Revision Petitions that the Special Court, has proceeded to take cognizance against them for offence under Section 4 of PMLA, 2002 in disregard of the fact that essential ingredients of the offence under Section 3 of PMLA, 2002 defining the offence of money laundering, do not stand disclosed even prima-facie. The petitioners have pleaded





that Special Judge further perpetuated gross abuse of process of court by directly issuing arrest warrants to secure the presence of the accused persons.

13. Mr.Vivek Bajwa, learned counsel appearing for the accused Shyam Sunder Singh has made following submissions:-

13.1 The impugned order of taking cognizance has been passed in a mechanical manner without applying due judicious mind as the punitive ingredients of the offence under Section 3 of PMLA, 2002 are not spelt out in the present case, on the bare perusal of the criminal complaint filed by the Enforcement Directorate.

13.2 The offence of money laundering, as defined under Section 3 & penalized under Section 4 of PMLA, 2002, requires that proceeds of crime are concealed or possessed or acquired or used for the purpose of projecting or claiming it to be untainted property. The proceeds of crime is a property which is derived directly or indirectly by a person as a result of criminal activity relating to a scheduled offence. Counsel argued that the entire case of the Enforcement Directorate is founded on the version given out by the ACB in their charge-sheet for the scheduled offence and the charge-sheet submitted by the ACB does not make out a case under Section 3 of the PMLA, 2002. The facts of the case did not reflect that even the illegal gratification was accepted or obtained by any of the public servants, much less after obtaining the same, they had projected or claimed the same to be untainted property.





13.3 The basic requirement of committing offence under Section 3 of PMLA, 2002 was not fulfilled as there has to be placement, layering and integration of proceeds of crime.

13.4 The amendments in Section 3 of PMLA, 2002 are punitive in nature and as such they are prospective.

13.5 The accused persons have participated during enquiry and no arrest was demanded at any point of time and as such while taking cognizance of the offences, arrest warrants ought not to have been issued.

14. Mr.A.K.Sharma, learned Senior Advocate appearing for the accused Dr.Ashok Singhvi has made following submissions:-

14.1 There is no allegation against the petitioner and in absence of any specific allegation of committing offence under Section 3 of the PMLA, 2002, the cognizance order is vitiated.

14.2 The entire charge-sheet, filed under the provisions of the Prevention of Corruption Act, and the complaint filed under the provisions of PMLA, 2002 nowhere show demand or receipt of any money by the petitioner and even there is no attempt on the part of the petitioner to connect him with the commission of offence under Section 3 of the PMLA, 2002.

14.3 The proceeds of crime, as defined under Section 2(1) (u) of the PMLA, 2002 and explanation added to the said definition, nowhere establishes that the petitioner had any role in receiving the proceeds of crime.

15. Mr.S.S.Hora, learned counsel appearing for the accused Sanjay Sethi has made following submissions:-





15.1 The ingredients of Section 3 of PMLA, 2002 have not been even prima-facie established against the petitioners as there has been no placement, layering and integration of proceeds of crime.

15.2 The proceeds of crime were converted in Fixed Deposits and the same have been deposited in the Court and as such it cannot be said that any offence has been committed.

16. Mr.Rajendra Prasad, learned Senior Advocate appearing for the accused Tamanna Begum has made following submissions:-

16.1 The petitioner Tamanna Begum is not involved in commission of any crime. The application under Section 451 Cr.P.C. was filed by the petitioner Tamanna Begum being wife of Mohd. Sher Khan for return of money which was seized for committing the alleged scheduled offence.

16.2 When the husband of the petitioner Mohd. Sher Khan cannot be punished for the scheduled offence, the petitioner Tamanna Begum cannot be made accused under the provisions of PMLA, 2002.

16.3 There has been no allegation of any kind of activity undertaken by the petitioner Tamanna Begum, which can become an offence either under the PMLA, 2002 or the Prevention of Corruption Act. Counsel placed reliance on the judgment passed by the Karnataka High Court dated 13.03.2017 in the case of **Obulapuram Mining Co.Pvt.Ltd. & Ors. Vs. Jt.Director, Directorate of Enforcement & Ors. [Writ Petition Nos.5962, 11442 & 11440-11441 of 2016]**; judgment passed by the Jharkhand High Court dated 19.02.2013 in the case of **Binod Kumar Sinha @ Binod Kumar Vs. State of Jharkhand [Writ Petition (Crl.)**





No.257/2012 with Crl.Rev.No.920/2012 & Crl.Rev.No.699/2011]; judgment passed by the coordinate Bench of this Court dated 23.04.2019 passed in the case of **Kanhaiyalal & Anr. Vs. State of Rajasthan & Anr. [S.B.Crl.Misc.Petition No.2381/2019].**

17. Mr.Peush Nag & Mr.Suresh Kumar Sahni, learned counsel appearing for the other accused petitioners have also reiterated the same submissions.

18. Per contra, Mr.R.D. Rastogi, learned Additional Solicitor General, has submitted that this case has a chequered history and the petitioners have indulged themselves in several rounds of luxurious litigation because of their affluent economic condition. Learned counsel submitted that Dr.Ashok Singhvi had earlier filed S.B.Criminal Misc. Petition No.2805/2015 before the Principal Seat of this Court at Jodhpur for quashing of the FIR No.251/2015 registered at Police Station ACB, Jaipur under the Prevention of Corruption Act and also challenged the chargesheet No.276/2015 and the entire proceedings in the case pending before the Sessions Judge (Anti Corruption), Udaipur. The said Criminal Misc. Petition was dismissed by the Principal Seat of this Court at Jodhpur vide order dated 23.03.2018. Thereafter, Dr.Ashok Singhvi challenged the order dated 23.03.2018 before the Apex Court in SLP (Criminal) No.7267/2018 and the said SLP came to be dismissed as withdrawn on 24.09.2018.

19. Mr.Rastogi submitted that the petitioners initially filed revision petitions before this Court challenging the order of cognizance seeking conversion of arrest warrants into bailable warrants and when no order was passed by this Court on the revision petitions for converting arrest warrants into bailable





warrants, the petitioners moved applications under Section 70(2) Cr.P.C. before the learned PMLA Court to convert arrest warrants into bailable warrants and since their prayer has been rejected by the learned PMLA Court, they have filed separate criminal miscellaneous petitions for conversion of their arrest warrants into bailable warrants.

20. Counsel further submitted that when the cases were listed before the learned PMLA Court, where files of predicate offences under the Prevention of Corruption Act, were also transferred, the accused persons moved application for seeking exemption from personal appearance on the ground of illness and on the other hand, the arrest warrants issued by the Trial Court under the PMLA, 2002 remained unexecuted for months together, the Trial Court forfeited the bail bonds in offences under the Prevention of Corruption Act and the bail was cancelled on 21.09.2019 and still the accused persons are evading their appearance before the Court.

21. Counsel has further submitted that even two accused persons namely Mohd. Rashid Sheikh and Sanjay Sethi moved bail application but the Trial Court dismissed their application seeking anticipatory bail and as such these petitioners want the relief from this Court which has been denied to them by the Trial Court.

22. Mr.Rastogi has raised following submissions before this court:-

22.1 Power under Sections 397 and 401 Cr.P.C. can be exercised only in exceptional cases and the court is primarily to see the contents of the complaint alone and no other material is to be considered.



22.2 The remedy available under Section 482 Cr.P.C. is not like an appeal and the High Court should not act as an investigating agency in order to exercise powers like an appellate court.

22.3 The conduct of the accused persons is highly objectionable and they do not deserve any relief from this Court.

22.4 The economic offences stand on a different footing and such offences constitute a separate class and they need to be visited with a different approach.

22.5 A person can be prosecuted for an offence of money laundering even if he is not guilty of the scheduled offences and the prosecution can be launched only for the offence of money laundering.

22.6 The Special Court has powers under Section 204 Cr.P.C. to call the accused persons through arrest warrants and in the present matter, the Trial Court has not exceeded or acted beyond its jurisdiction.

23. I have heard learned counsel for the parties and with their assistance perused the material available on record.

24. This Court is required to consider the scope of Sections 397 & 401 Cr.P.C. in respect of the order of taking cognizance passed by the trial court.

25. This court while hearing revision petitions under Sections 397 and 401 Cr.P.C. cannot sit as an appellate Court and re-appreciate the evidence unless the judgment of the trial court suffers from perversity. The material, which is placed before the Magistrate, for taking cognizance, leads to a situation where the Magistrate finds sufficient grounds for proceeding in the case. The





satisfaction of the Magistrate has to be based on the material placed before him.

26. This court finds that in the present facts of the case, the trial court has taken into account the complaint which was filed against the accused persons and after going through the various statements and documents produced by the prosecution, the Sessions Judge found that there are sufficient grounds for taking cognizance against the accused persons and as such after considering contents of the complaint and material, the order of cognizance has been passed.

27. The Apex Court has time and again laid down the parameters where High Court can examine the validity of order of cognizance. The Apex Court has consistently laid down that the power of revision can only be exercised in exceptional cases and if criminal proceedings have been initiated illegally, vexatiously or without jurisdiction, then such power can be exercised by the High Court.

28. This court further finds that the Apex Court has also laid down the law that power of revision has to be exercised by the High Court sparingly with circumspection and in rarest of rare case. The Apex Court has also time and again considered the scope of power of the High Court and such power of High Court is not for considering or going into the merits and demerits of the case at the time of taking cognizance. This court finds that in exercise of revisional power, High Court should not interfere only because it forms a different opinion on the same material. The High Court, unless finds that the order impugned is perverse on face of it and the court below did not exercise its jurisdiction or there is an illegality or irregularity on the face of order impugned, should not interfere with the order passed by the court below



while exercising powers under Sections 397 and 401 Cr.P.C. The satisfaction of the court taking cognizance, if based on the material placed before it, discloses that cognizance of an offence is required to be taken, the said order will not be termed as a perverse order.

29. This court finds that initially ACB had registered FIR and later on filed charge-sheet against the accused persons for the offences of Prevention of Corruption Act. The Directorate of Enforcement thereafter registered an Enforcement Case Information Report (ECIR) against the accused persons on the allegations of money laundering under Sections 3 and 4 of the PMLA, 2002 involving proceeds of crime and on the basis of this said allegations, the Assistant Director, Directorate of Enforcement later on filed prosecution complaint under Section 45(1) of the PMLA, 2002. This court finds that the trial court, after analyzing the material placed before it, found that the allegations levelled against the accused persons require that cognizance should be taken of the offences and further the case needs to be tried by holding a regular trial.

30. The submission of the learned senior counsel on behalf of petitioners that the basic ingredients of offences under Section 3 of the PMLA, 2002 are not made out in the present case and as such, this Court is required to see even prima facie case is not made out against the accused persons, this court finds that analyzing the evidence and giving finding with respect to merits of the matter at the present stage, will not be an appropriate stage to consider merits of the case. The Investigating Agency has considered the various statements given by different persons and also collected the evidence to connect the accused persons with



the commission of offence under the PMLA, 2002 and right to defend an accused person is available during the trial and interference at the initial stage, after taking cognizance, will not be an appropriate exercise of power by the High Court at this stage.

31. The submission of the learned counsel for the petitioners that the entire case of Enforcement Directorate is founded on the version given out by the ACB in their chargesheet for the scheduled offences and as such no case is made out under Section 3 of the PMLA, 2002, this Court finds that the investigation by the authorities, statement recorded and material collected, if prima facie establish that proceeds of crime are projected to be untainted property, in any manner, no fault can be found with the order of taking cognizance by the competent court.

32. This court finds that the Legislature has enacted the PMLA, 2002 with object to prevent money-laundering and connected activities, as it posed a serious threat not only to the financial systems but also to the integrity and sovereignty of the Country. This court finds that if offence of money laundering, as defined in Section 3 of the PMLA, 2002, is to be alleged against the accused persons, the Investigating Agency is required to look into the basic ingredients for commission of such offence. The very purpose of the PMLA, 2002 is to nab the activities, which ultimately result into money laundering.

33. The submission of learned counsel for the petitioners that in absence of basic requirement of Section 3 of the PMLA, 2002 like placement, layering and integration of proceeds of crime, no offence is made out, this court finds that the words "placement, layering and integration of proceeds of crime" are in fact





interpretation in a judgment passed by the Delhi High Court in the case of **M/s.Mahanivesh Oils & Foods Pvt. Ltd. Vs. Directorate of Enforcement** reported in **2016 (1) High Court Cases (Del) 265**. The said judgment passed by the Delhi High Court and observation made therein has been stayed by the Division Bench in LPA No.144/2016 [Directorate of Enforcement Vs. M/s. Mahanivesh Oils & Foods Pvt. Ltd.] vide order dated 30.11.2016 while observing as follows:-

"We have observed that while allowing the writ petition by the order under appeal, certain findings were recorded by the learned Single Judge with regard to the enforcement of the Prevention of Money Laundering Act, 2002 on interpretation of the provisions of the said Act.

We make it clear that the findings so recorded by the learned Single Judge shall not be construed as conclusive and binding precedent until further orders."

34. This court even while going through the complaint under Section 45(1) of the PMLA, 2002 finds that the Investigating Agency has also mentioned that the seized amount was tried to be layered and integrated being proceeds of crime in main economy and further efforts were made to integrate the proceeds of crime with the mainstream economy by showing the sale proceeds of some mines of Umar village and claimed the same to be untainted property. This court without making any comments on the findings recorded by the Investigating Agency, however, finds that the objection with regard to placement, layering and integration of proceeds of crime, have been mentioned by the prosecuting agency.

35. The submission of learned counsel for the petitioners that the court below has not taken into account the requirement of basic ingredients for commission of offence under Section 3 of the





PMLA, 2002 and same being not spelt out even from the bare perusal of the criminal complaint filed by the Enforcement Directorate, this court, after considering the various provisions contained in PMLA, 2002 with respect to "proceeds of crime" as defined under Section 2(u), "property" as defined under Section 2(v) and Section 3 of the PMLA, 2002, finds that for making out an offence under Section 3 of the PMLA, 2002, the court is required to consider that any person who involves himself directly or indirectly with any process or activity connected with the proceeds of crime and projects the same to be untainted money, can very well be prosecuted under Section 3 of the PMLA, 2002. The court below, if after considering the allegations against the petitioners and after analysing the material placed before it, has come to the conclusion that cognizance is required to be taken, and no fault can be found with such an order.

36. The submission of learned counsel for the petitioners is that the amendment in Section 3 of the PMLA, 2002 by adding explanation to it, has been brought by way of Finance Act No.2 of 2019 w.e.f. 01.08.2019 and as such the amendment being declaratory in nature and the provision been punitive in nature, has to be applied with prospective effect.

37. Mr.Bajwa, learned counsel submitted that considering the definition of "offence of money laundering" as per Section 3 of the PMLA, 2002, no offence, against the accused petitioners, is made out as the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming as tainted property, was not prima facie proved against the accused petitioners. Counsel submitted that the subsequent explanation added by way of amendment has defined the activities like





concealment or possession or acquisition or use or claiming or projecting as untainted property, by considering any of such activity to be committing, an offence. Counsel has argued that prior to addition of explanation, all the ingredients, defining money laundering, were required to be alleged for charging a person for commission of offence under Section 3 of the PMLA, 2002 and only by virtue of explanation, specifying any of the activities, offence can be committed by a person.

38. Counsel has placed reliance on the judgment passed by the Apex Court in the case of **Popular Muthiah Vs. State represented by Inspector of Police** reported in **JT 2006 (6) SC 332** and **Nikesh Tarachand Shah Vs. UOI & Ors.** reported in **2017 (13) Scale 6098** and a judgment of this court dated 09.05.2018 passed in the case of **Pushya Mitra Singh Deo & Anr. Vs. UOI [S.B.Crl.Misc. Petition No.2097/2018]**.

39. Mr.R.D.Rastogi, learned Additional Solicitor General, on the contrary, has argued that the amendment brought by the Finance Act, 2019 was merely clarificatory and being clarificatory in nature, the same has to be retrospective, as the principal Act was not amended but only the intent of the Legislature was clarified which was already there in the principal Act. Mr.Rastogi has placed reliance on the judgment rendered by the Apex Court in **Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Pvt.Ltd.** reported in **(2015) 1 SCC 1** and the judgment passed by Division Bench of the Madras High Court dated 04.10.2019 in the case of **M/s.VGN developers Pvt.Ltd. Vs. The Deputy Director, Directorate of Enforcement (Crl.O.P.No. 9796/2019 and Crl.M.P.No.5129/2019)**.





40. This court before dealing with the issue in hand, would like to reproduce the original Section 3 of the PMLA Act, 2002 and explanation added, by way of amendment, as follows:-

"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 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."

41. This court finds that reading of Section 3 of the PMLA, 2002 reveals that the offence of money laundering is an offence regarding indulging in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and further projecting and claiming the same to be untainted property. The said definition given in Section 3 of the PMLA, 2002 was later on clarified by adding explanation and as such it does not change the basic ingredients which were required to be alleged against a person for committing an offence under





Section 3 of the PMLA, 2002. The clarification which has been added in fact was for removal of doubts, may be due to somewhat ambiguous definition inserted in the main provision of Section 3 of the PMLA, 2002. Thus, the Legislature if by way of amendment adds explanation for removal of doubts, it cannot be said that a punitive provision has been inserted in the definition and the same has to be given effect from a prospective date. This court further finds that explanation which is added by way of amendment may not be of any assistance to the accused petitioners and as far as allegations of committing offence against the accused petitioners under Section 3 of the PMLA, 2002 are concerned, the prosecution has leveled allegations of money laundering against the accused petitioners, as per the definition given under Section 3 of the PMLA, 2002.

42. The submission of the learned senior counsel Mr.A.K.Sharma that allegation against the accused petitioner-Ashok Singhvi nowhere connects him with commission of offence under Section 3 of the PMLA, 2002 or as per the explanation provided under Section 2(1)(u), this court finds that the prosecution has leveled allegations against all the accused petitioners that proceeds of crime, which were obtained from the scheduled offences, are involved and accused persons by way of their acts have committed offence under Section 3 of the PMLA, 2002 and receiving proceeds of crime itself may not be the relevant consideration for forming the opinion of involvement of accused in commission of crime.

43. The submission of learned counsel for the petitioner Mr.Hora that since proceeds of crime were converted into fixed deposits, it cannot be said that any offence has been committed under the PMLA, 2002, this court has noted the said argument to be





rejected. The proceeds of crime, if later on, after recovery made by the police, have been converted into fixed deposits, the same can amount to an offence having been committed under Section 3 of the PMLA, 2002.

44. The submission of learned Senior Advocate Mr.Rajendra Prasad that the petitioner Tamanna Begum cannot be punished for the scheduled offences and as such she cannot be made accused under the provisions of PMLA, 2002 and her no activity can become an offence either under the PMLA, 2002 or under the provisions of Prevention of Corruption Act, this court finds that for the purpose of Sections 3 and 4 of the PMLA, 2002, a person accused under the PMLA, 2002 may not have committed the scheduled offence and such person can be prosecuted for the offence of money laundering even if such person is not guilty of the scheduled offences.

45. Mr.R.D.Rastogi. learned Additional Solicitor General has placed reliance on a judgment passed by the Division Bench of the Gujarat High Court in **Rakesh Manekchand Kothari Vs. UOI [Special Criminal Application (Direction) No.4496/2014]** dated 16.01.2015 and on the strength of the said judgment submitted that PMLA, 2002 applies to the person who is connected with the criminal activity relating to the scheduled offences but may not be an offender of the scheduled offences.

46. This court finds that the court below after considering the law on the subject has come to the conclusion that the petitioner Tamanna Begum is also involved in commission of offence under Section 3 of the PMLA, 2002 and as such this court does not find any reason to take a different view on the issue of involvement of the petitioner Tamanna Begum in the present case.





47. This court finds that position of law which emerges is that offence of money laundering under Section 3 of the PMLA, 2002 is an independent offence and money laundering is a stand alone offence under the PMLA, 2002.

48. Accordingly, this court finds that the order passed by the court below of taking cognizance dated 21.01.2019 does not require any interference by this court and all the revision petitions are dismissed.

Misc. Petition (Section 482 Cr.P.C.)

49. The petitioners, in this set of cases, have filed misc. petition under Section 482 Cr.P.C. feeling aggrieved due to issuance of arrest warrants against them, after order of taking cognizance was passed by the court below. The petitioners have sought prayer from this court that arrest warrants, issued against them, be converted into bailable warrants and power given under Section 70(2) Cr.P.C. may be exercised by this court. All the petitioners had approached the Sessions Court for converting non-bailable warrants into bailable warrants, however, such prayer was declined by the court below by passing the orders on following different dates:-

- a. Crl.Misc.Petition No.2872/2019 dated 30.03.2019
- b. Crl.Misc.Petition No.4770/2019 dated 11.04.2019
- c. Crl.Misc.Petition No.4771/2019 dated 11.04.2019
- d. Crl.Misc.Petition No.5426/2019 dated 17.08.2019
- e. Crl.Misc.Petition No.5427/2019 dated 17.08.2019
- f. Crl.Misc.Petition No.5430/2019 dated 04.04.2019
- g. Crl.Misc.Petition No.5524/2019 dated 19.08.2019

50. Counsel for the petitioners have submitted that the court below has committed illegality in rejecting the prayer of converting





non-bailable warrants into bailable warrants and it ought to have exercised its power under Section 70(2) Cr.P.C. Counsel for the petitioners argued that the court below has assigned wrong reasons for not entertaining the applications of the petitioners for converting the non-bailable warrants into bailable warrants by treating the said power to be a review power of the criminal court and the same not being available to the court below, as such this court needs to set aside such orders passed by the court below.

51. Counsel for the petitioners have argued that no separate findings have been given by the court below while rejecting their applications and power to convert non-bailable warrants into bailable warrants is an independent power of the competent Criminal Court and such court was not denuded of its power to consider the case of the petitioners for issuance of bailable warrants. Counsel for the petitioners have argued that the petitioners had appeared before the Enforcement Directorate, after they were called for recording the statement and at no point of time the Investigating Agency, sought to arrest the petitioners and in view of full cooperation extended by the petitioners, their appearance in the court by way of non-bailable warrants, after arresting them was not justified in the facts of the case.

52. Counsel for the petitioners have argued that statement of the petitioners were recorded under Section 50 of the PMLA, 2002 and whatever information/document was required by the prosecuting Agency, the same exercise having been undertaken, there remains no reason to summon the petitioners by way of non-bailable warrants.

53. Counsel for the petitioners have argued that the Apex Court time and again has laid down the law that resort to non-bailable





warrant, at the first instance without availing other methods to secure/summon the accused by way of summon and bailable warrant, should not be adopted by the courts. Counsel argued that the law laid down by the Apex Court in the case of **Inder Mohan Goswami Vs. State of Uttranchal** reported in **(2007) 12 SCC 1** still holds the field and the accused petitioners ought not to have been summoned by way of arrest warrants. Counsel placed reliance on the judgment of this Court dated 11.10.2017 passed in **Surendra Kumar Sharma & Anr. Vs. Ms. Annupama Saxena [S.B.Crl.Misc. Petition No.5068/2017]** and judgment of this Court dated 17.12.2018 passed in **Pushpendra Agrawal Vs. Mukesh Kumar Meena [S.B.Crl.Misc. Petition No.7892/2018]**.

54. Counsel for the petitioners have argued that even in the complaint, which was filed by the Enforcement Directorate under section 45(1) of the PMLA, 2002, it was nowhere prayed for issuing non-bailable warrants and on the contrary, specific prayer was made only to take cognizance and issue process of trial for punishment of the accused persons and further prayer was also made for confiscation of the properties, involved in the money laundering or which was used for the commission of offence of money laundering.

55. Per contra, Mr. Rastogi, learned Additional Solicitor General has submitted that the court below has rightly dismissed the applications filed by the petitioners under Section 70(2) Cr.P.C. after applying its mind to the facts of the present case and has further assigned cogent reasons for not summoning the accused petitioners by way of bailable warrants. Counsel argued that a bare reading of the order passed by the court below nowhere





reflects that relevant considerations were not kept in mind and further it is not only refusal to exercise power by terming the same as review power but also independent and separate reasonings have been given for not allowing the prayer of the accused petitioners to convert their non-bailable warrants into bailable warrants.

56. Mr.Rastogi has submitted that the court below has kept in mind the parameters for issuing non-bailable warrants in the present case. The entire facts of the case, nature of allegation, severity of punishment and impact of offence on the society as a whole, have been kept in mind while passing the impugned orders refusing to convert the non-bailable warrants into bailable warrants. Mr.Rastogi has further submitted that the court below has exercised power under Section 204 Cr.P.C. and it has discretion to call all the accused persons through non-bailable warrants and as such court below has rightly exercised its jurisdiction. Counsel argued that the High Court may not exercise its power under Section 482 Cr.P.C. even if there is a wrong exercise of jurisdiction by the trial court. Counsel has further argued that the prayer for converting non-bailable warrants into bailable warrants is like granting anticipatory bail and placing reliance on the case of Inder Mohan Goswami (supra) by the petitioners is totally misplaced. Counsel further argued that after rejection of their applications, filed under section 70(2) Cr.P.C. the accused persons may have different remedy like seeking regular bail before the trial court and granting relief of bail under section 482 Cr.P.C., is not warranted.

57. This court deems it proper to refer the relevant paragraphs of the judgment rendered by the Apex Court in **Inder Mohan**



Goswami Vs. State of Uttranchal reported in (2007) 12 SCC

1, which are as follows :-

"6. According to the appellants, time was the essence of the contract and respondent no.3 had failed to pay the balance amount by Rs.10,10,650/-. The Sabha had sent a legal notice dated 3.4.1999 (first legal notice) to respondent no.3 to fulfill his contractual obligations under the sale agreement and informing that if he failed to do so, the agreement to sell would stand cancelled and the amount paid as earnest money would be forfeited. In reply to the said notice, respondent no.3 vide his reply dated 5.5.1999 stated that he had not defaulted in payment of the remaining amount. He stated in the reply that as per the agreement the land had to be measured and that he was ready to pay the balance amount once that was done.

7. Pt. Mohan Lal Sharma, the President of the Sabha, expired on 30.8.1999. On 5.1.2000, both the parties i.e. the representative of the Sabha and the representatives of M/s Ahuja Builders met at the site of the disputed land in the presence of Patwari (Revenue Official). The land of old Khasra No.140 and new Khasra Nos.61, 62, 63, 64, 65, 66, 67, 68 and part of 89, 90 was measured by the Patwari. The balance land, after adjusting the land given in lieu of construction of the Ghat, came out to be 11.19 Bighas. The total sale consideration for this land worked out to be Rs.15,10,650/-. Respondent no.3 had already paid Rs.4,00,000/- as earnest money out of this amount. He had paid a further sum of Rs.1,00,000/- on 21.3.1997. On the request of respondent no.3, the Sabha reduced the amount owed of Rs.1,50,000/- to him in view of the existence of a passage on the said land. Out of the balance of Rs.8,60,650/-, a further concession of Rs.60,650/- was given to Respondent no.3. He thus had to pay the balance amount of Rs.8,00,000/-. The said measurement sheet was endorsed by respondent nos.3 and 4 and the representatives of the Sabha on 19.3.2000.

8. The general power of attorney executed by late Mohan Lal Sharma, President of the Sabha, had ceased to be in effect after his death. Therefore, the need of a fresh power of attorney was felt and respondent no.3 desired that the fresh Power of Attorney be executed in the name of his son, Suresh Ahuja (respondent no.4 herein) for the very same 13.5 Bighas of land in regard to which earlier Power of Attorney dated 13.12.1996 had been given. Accordingly, General Secretary of the Sabha, appellant no.1 herein, executed a fresh General Power of Attorney on 15.1.2000 in respect of 13.5 Bighas of land situated in part of Old Khasra No.140 (new Khasra Nos. 61, 62, 63, 64, 65, 66, 67, 68 and part of 89, 90) in Village Haripur Kalan, Rishikesh, Dehradun, in favour of Suresh Ahuja (respondent no.4) as per the request of respondent no.3.





12. Having committed breach of his contractual obligations, respondent no.3 filed a criminal complaint to the SHO of Raiwala, Rishikesh police station on 23.4.2003 against the appellants and three other persons alleging that he had been cheated by the appellants in connivance with other persons by selling a portion of his land to a third party and by cancelling the General Power of Attorney. After examining the matter, the SHO arrived at the conclusion that no cognizable offence had been committed and the dispute in question was of civil nature for which the civil remedy is available in law.

13. Respondent no.3 filed another complaint on the same day, i.e. 23.4.2003, to the Senior Superintendent of Police, Dehradun and got the FIR registered against the appellant and three other persons. The allegation of respondent no.3 was that the appellants in connivance with other persons had sold the part of land situated in Old Khasra No.140 and new Khasra No.89 which had been transferred to them by way of General Power of Attorney. The FIR was registered on 23.4.2003 as Case No.26 of 2003 under sections 420, 467 and 120-B IPC.

14. It may be pertinent to mention that on 27.5.2003, respondent no.3 filed a civil suit in the court of Civil Judge (Senior Division) against the Sabha bearing Original Suit No.302 of 2003 titled Himmat Rai Ahuja v. Sanatan Dharam Pratinidhi Sabha. In this suit, respondent no.3 prayed for cancellation of sale deed executed by the Sabha in favour of Sunil Kumar and for permanent injunction against the appellants herein restraining them from interfering in his alleged property. Thus, the issues relating to ascertaining the right, title of the land in dispute and also the issue of correct demarcation of land in Khasra No.140 are pending adjudication in a competent civil court.

16. Aggrieved by the filing of the false and incorrect charge-sheet in the court of Special Judicial Magistrate, Rishikesh in Criminal Case No.1728 of 2003 titled State v. Inder Mohan Goswami & Others, the appellants filed a Criminal Miscellaneous Application No.248 of 2003 in the High Court of Uttaranchal at Nainital under Section 482 Cr.P.C. for quashing the proceedings against them. The High Court was pleased to pass the interim order on 22.10.2003 staying further proceedings. A reply was filed on behalf of the State by Shri Dinesh Kumar Sharma, SHO, Raiwala Police Station, in which two points were raised:

1. That, appellant no.1 has wrongly cancelled the General Power of Attorney given to respondent no.4; and
2. That, appellant no.1 has wrongly and illegally executed the sale deed of land comprising in Khasra No.140 (New Khasra Nos.61 to 68, 89 and 90) without returning the earnest money of respondent Nos.3 and 4.

17. The High Court by order dated 16.7.2004 dismissed the petition under Section 482 Cr.P.C. filed by the appellants on





the ground that the records show that the allegations in the FIR constitute an offence as alleged by the complainant. The said order is challenged in this appeal by special leave.

22. The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and respondent no.3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court.

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

47. Before parting with this appeal, we would like to discuss an issue which is of great public importance, i.e., how and when warrants should be issued by the Court? It has come to our notice that in many cases that bailable and non-bailable warrants are issued casually and mechanically. In the instant case, the court without properly comprehending the nature of controversy involved and without exhausting the available remedies issued non-bailable warrants.

Personal liberty and the interest of the State

50. Civilized countries have recognized that liberty is the most precious of all the human rights. The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilized society. Sometimes in the larger interest of the Public and the State





it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable-warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant."

58. In the humble opinion of this court, the Apex Court on analysing the facts of the case of Inder Mohan Goswami (supra) came to the conclusion that the averments made in the FIR do not





make out a case for prosecution under Section 420 and 467 IPC. The Apex Court held that criminal prosecution should not be used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. The Apex Court further held that it was neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction under Section 482 Cr.P.C. The Apex Court further held that though powers are very wide under Section 482 Cr.P.C. but they are to be exercised sparingly, carefully and with caution. The Apex Court, while considering the issue of personal liberty and the interest of the State and in what manner non-bailable warrants should be issued to bring a person to the court when summons or bailable warrants would be unlikely to have the desired result, held that the court has to properly balance both personal liberty and societal interest before issuing warrants and there cannot be any straitjacket formula for issuance of warrants.

59. This court finds that time and again the Apex Court has laid down the law that economic offences are required to be dealt with strict approach as these offences affect the economy of the whole Nation and economic offences are committed with a pre-meditated design. This court finds that the economic offences stand on a different footing and they constitute a class apart and need to be visited with a different approach. The economic offences have deep rooted conspiracies and involving huge loss of public funds and thus, need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. The Apex Court in the case of **Y.S.Jagan Mohan Reddy Vs. CBI** reported in **(2013) 7 SSC 439** has considered the nature



of economic offences and the relevant portion of the judgment is quoted hereunder:-

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

60. The Apex Court in the case of **State of Gujarat Vs. Mohanlal Jitamalji Porwal and Anr.** reported in **(1987) 2 SSC 364** has considered the nature of economic offences and has held as under:-

"5. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest. The High Court was therefore altogether unjustified in rejecting the application made by the learned Assistant Public Prosecutor invoking the powers of the Court under Section 391 of the CrPC. We are of the opinion that the application should have been granted in the facts and circumstances of the case with the end in view to do full and true justice. The application made by the learned Assistant Public Prosecutor is therefore granted. The High Court will issue appropriate directions for the recording of the evidence to prove the report of the Mint Master under Section 391 Cr.P.C. when the matter goes back to High





Court and is listed for directions. The appeal is therefore allowed. The order of acquittal is set aside. The matter is remitted to the High Court for proceeding further in accordance with law in the light of the abovesaid directions."

61. This court finds that the co-ordinate Bench of this court in **S.B.Criminal Misc. Petition No.474/2010 (Pooran Singh and Anr. Vs. State of Rajasthan)** decided on 25.05.2010 has considered the issue in respect of warrant of arrest issued against the accused persons. The coordinate Bench has also considered the principles laid down by the Apex Court in the case of Inder Mohan Goswami (supra) and found that status of the accused is one of the considerations that has to be taken into account and those people who are supposed to uphold the law and if they violate the law such persons should also realize the consequences of violating the law.

62. This court finds that the court below has taken into account the nature of allegations levelled against the accused petitioners, role of accused petitioners, impact of the alleged offences on the society and the scope of interference in economic matters by giving undue leverage to the accused petitioners affecting the interest of the society and has accordingly rejected the prayer of the petitioners in rightful manner. The offences under PMLA, 2002 are cognizance and non-bailable, as per Section 45 of the Act.

63. This court does not find any error in the orders passed by the court below and accordingly all the petitions are dismissed. This court makes it clear that what has been observed by this court is only for the purpose of disposal of the present revision petitions and misc. petitions and any observation made, shall either may not prejudice rights of the parties and the trial court may also not be influenced/inhibited, by the observations made by this court





and the trial court shall proceed independently in accordance with the law. No cost.

(ASHOK KUMAR GAUR),J



Solanki DS, PS

RAJASTHAN HIGH COURT



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