Tushar Mehta
Solicitor General of India

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
TRANSFERRED CASE (CRL) NO. 4 OF 2018

IN THE MATTER OF:-

DIRECTORATE OF ENFORCEMENT ..... PETITIONER

VERSUS

RAJBHUSHAN DIXIT & ANR. ..... RESPONDENTS

WRITTEN SUBMISSIONS

BEHALF OF TUSHAR MEHTA, SOLICITOR GENERAL OF INDIA

SECTION 3 - CONTINUED

The language of Section 3 will become otiose if "projecting proceeds of any process or activity connected with crime as untainted property" is required as a mandatory pre-condition

1. Section 3 as it originally stood reads as under:

"Whoever
- directly or indirectly
- attempts to indulge
- or knowingly assist
- or knowingly a party
- or is actually involved

⬇

in any "process" or "activity"

⬇

connected with the proceeds of crime **and** projecting it as untainted."

2. In the above definition, if projection of proceeds of any process or activity connected with crime as untainted is considered to be mandatory, the following consequences will inevitably emerge-

(i) If someone "knowingly assist" in any process or activity connected with the proceeds of crime, he will not be guilty of offence under section 3.

This is NOT the intention of the legislation.

(ii) If someone is "knowingly a party" in any process or activity connected with the proceeds of crime, he will not be guilty of offence under section 3.

(iii) Even if a person is "actually involved" in any process or activity connected with the proceeds of crime, he will not be guilty of offence under section 3.

3. Thus, a mandatory requirement of the projection of proceeds of any process or activity connected with crime as untainted property, distorts and negates the very fundamental intention of the legislature. This Hon'ble Court would not accept any interpretation which renders the language of the statutory provisions meaningless.

4. Therefore, it has always been the stand of India as a nation that the word "**and**" used before the expression "projecting it as untainted property" is intended to be read as "**or**". In other words, projecting proceeds of any process or activity connected with crime is one of the specie of the offence of money laundering as defined under section 3 and is not understood to be read as a mandatory requirement having bearing on other ingredients of the offence.

The expression "and" is to be read as "or"

5. It is submitted that as pointed out in Para 37 of Note II, it is the stand of India that the word "and" which precedes the expression "projecting it as untainted property" is always understood and read as "or" during the review of FATF in 2013. The reading of the word "and" as "or" is not an unknown method of interpreting Statutes.

6. In light of the above legislative intent as well as well as well settled principles of statutory interpretation, the expression "and projecting or claiming it as untainted property" has to be read as a disjunctive 'or projecting or claiming it as untainted property'.

7. A 5 Judge Bench of this Hon'ble Court in ***Sanjay Dutt v. State (1994) 5 SCC 410*** **(at paras 38 to 41) [SGI Compilation – Volume IX – pg. 4113-4147]** was faced with a construction of Section 5 of the TADA Act. An earlier decision in ***Paras Ram v. State of Haryana*** **(1992) 4 SCC 662 [SGI Compilation – Volume IX – pg. 4148-4152]** was cited by the accused wherein it was held that the words "arms and ammunition" in Section 5 has to be read conjunctively and the conclusion there was that only a person who is in possession of both a fire arm and the ammunition would be liable to be punished under Section 5 and not one who has either the fire arms or the ammunitions alone. Section 5 of the TADA Act is extracted as follows:

> *"5. Possession of certain unauthorised arms, etc., in specified areas.— Where any person is in possession of any arms and ammunition specified in Columns 2 and 3 of Category I or Category III(a) of Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorisedly in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine." (emphasis supplied)*

8. The larger bench of this Hon'ble Court overruling the earlier view taken in ***Paras Ram*** **(supra) [SGI Compilation – Volume IX – pg. 4148-4152]** held that the words "arms and ammunition" are not be read conjunctively especially since a disjunctive 'or' is used while describing other forbidden substances like bomb or dynamite or other explosive substances. It was held that unless these words are read disjunctively, instead of conjunctively, in this manner, the object of the prohibiting of unauthorized possession of forbidden arms, ammunition etc. would be easily frustrated by the simple device of one person carrying the forbidden arm and his accomplice carrying his ammunition so that neither is covered by section 5 of TADA. 8. The aforesaid ratio would be squarely applicable to the interpretation

of Section 3 of PMLA wherein the petitioners have canvased a similar argument which was rejected by this Hon'ble Court. The argument that mere concealment or use or possession of proceeds of crime would not amount to an offence of money laundering would frustrate the very object of the Act and would be contrary to India's obligation to international community as well as the FATF recommendation. The relevant extracts of ***Sanjay Dutt*** **(supra) [SGI Compilation – Volume IX – pg. 4113-4147]** are as follows :

> *"38. We may deal with one more aspect pertaining to the construction of Section 5 of the TADA Act to which reference was made placing reliance on the decision in Paras Ram v. State of Haryana [(1992) 4 SCC 662 : 1993 SCC (Cri) 13] , to which one of us (J.S. Verma, J.) was a party.* ***Correctness of that decision has been doubted by the learned Additional Solicitor General. That decision holds that the words "arms and ammunition" in Section 5 should be read conjunctively and so read, the conclusion is that a person in possession of only both, a firearm and the ammunition therefor, is punishable under Section 5 and not one who has either the firearm or the ammunition alone.***
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> *39. Section 5 applies where "any person is in possession of any arms and ammunition specified in Columns 2 and 3 of Category I or Category III(a) of Schedule I to the Arms Rules, 1962, or … unauthorisedly in a notified area". After specifying the forbidden arms and ammunition, Section 5 proceeds to include in that category other substances by using the expression "or bombs, dynamite or other explosive substances". It is clear that unauthorised possession in a notified area is forbidden of "any arms and ammunition" which is specified "or bombs or dynamite or other explosive substances".* ***The other forbidden substances being read disjunctively, the only question is : Whether in this context the words "arms and ammunition" in Section 5 should be read conjunctively? We do not think so.***
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> *40. Schedule I to the Arms Rules specifies the categories of both arms and ammunition mentioned therein. This is what has led to use of the words "arms and ammunition" in Section 5 while referring to them as those specified in Columns 2 and 3 of Category I or Category III(a) of Schedule I.* ***The word 'and' has been used because Schedule I specifies both arms and ammunition in Columns 2 and 3 thereof. The words "any arms and ammunition" in Section 5 mean any of the arms and ammunition so specified or in other words any arm or any ammunition specified in Columns 2 and 3 of Category I or Category III(a) of the Schedule. The word 'and' instead of 'or' is used in the expression "any arms and ammunition specified …" because reference to both is made as specified in the Schedule. For this reason, the words "arms and ammunition" are not to be read conjunctively. This is further evident from the fact that the disjunctive 'or' is used while describing other forbidden substances like bombs etc. It means the forbidden substances, the unauthorised possession of any of which in a notified area is an offence under Section 5, are any of the specified arms or its ammunition or bombs or dynamite or other explosive substances. Unless these words are read disjunctively instead of conjunctively in this manner, the object of prohibiting unauthorised possession of the forbidden arms and ammunition would be easily frustrated by the simple device of one person carrying the forbidden arm and his accomplice carrying its ammunition so that neither is covered by***

> ***Section 5 when any one of them carrying both would be so liable***. *We must, therefore, correct the view taken in Paras Ram [(1992) 4 SCC 662 : 1993 SCC (Cri) 13] . This part of Section 5 has to be read in the manner indicated herein by us. With respect, the decision in Paras Ram [(1992) 4 SCC 662 : 1993 SCC (Cri) 13] does not lay down the correct law.*
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> ***41. Parliament envisages that enactment of the TADA Act is necessary to deal with terrorists, disruptionists and their associates or even those reasonably suspected of such association. A purposive construction promoting the object of the enactment but not extending its sweep beyond the frontiers within which it was intended to operate must be adopted keeping in view that a construction which exempts a person from its operation must be preferred to the one which includes him in it, in view of the penal nature of the statute***. *The construction we have made of Section 5 of the TADA Act which gives an opportunity to the accused to rebut the presumption arising against him of the commission of an offence by mere unauthorised possession of any such arms etc. within a notified area is manifest from the Statement of Objects and Reasons. This is in consonance with the basic principles of criminal jurisprudence and the basic rights of an accused generally recognised. We must attribute to Parliament the legislative intent of not excluding the right of an accused to prove that he is not guilty of the graver offence under Section 5 of the TADA Act and, therefore, he is entitled to be dealt with under the general law which provides a lesser punishment. The provision of a minimum sentence of five years' imprisonment for unauthorised possession of any of the specified arms etc. with the maximum punishment of life imprisonment under Section 5 of the TADA Act is by itself sufficient to infer such a legislative intent, more so, when such intent is also more reasonable.* ***The practical considerations in prosecution for an offence punishable under Section 5 of the TADA Act affecting the burden of proof indicate that the intended use by the accused of such a weapon etc. of which he is in unauthorised possession within a notified area is known only to him and the prosecution would be unable most often to prove the same while the accused can easily prove his intention in this behalf. The practical considerations also support the view we have taken***.*" (emphasis supplied)*

9. Therefore, the legislative intent justifies the interpretation put forth by the Enforcement Directorate as above and requires that the expression 'and' is read as 'or' as indicated above.

10. The argument that the court has on several occasions read 'and' for 'or' and 'or' for 'and' but with the one exception which is to produce the result more favourable to the subject was specifically rejected on principle that there is no reason why the words should not be correctly interpreted even though the result is less favourable to the subject. Reliance is placed on Queen's Bench decision in ***Regina v Oakes*** **1959 (2) QB 350** (at page 356) **[SGI Compilation – Volume IX – pg. 4153-4160]**:

> *"Accordingly, for all those reasons it seems to this court that, read literally, no intelligible meaning can be given to this section, and accordingly, this court agrees with Slade J.* ***The judge thought that the natural way of getting over the difficulty was to read into the Act after the word "and" and before the word "does" the opening words of the section, "Any person who," so that***

> ***it would read, "or aids or abets and any person who does any act preparatory to the commission of an offence under the principal Act or this Act." The court, on the whole, prefers to read the word "or" for "and," because if the words "any person who" are inserted it leaves the words "aids or abets" in the air, whereas if "and" is changed to "or" it will read in this way: "or aids or abets or does any act preparatory to," and then I insert a comma "the commission of an offence." Indeed, read in that way it happens very closely to correspond with the only two enactments near the time, namely, the regulations of 1914 and of 1921****." (emphasis supplied)*

11. This kind of interpretative exercise does not amount to judicial legislation rather it is giving effect to the legislative intent by otherwise correcting 'faultiness of expression' as held in ***Regina vs Oakes*** **(supra at 357) [SGI Compilation – Volume IX – pg. 4153-4160]:**

> *"Mr. Howard has quite rightly pointed out that, although the court has on occasions read "and" for "or" and "or" for "and," it has with one exception been in order to produce a result more favourable to the subject. The court feels, however, that on principle there is no reason, if compelled to that end, why the words should not be changed even though the result is less favourable to the subject, and, indeed, that was done in Attorney- General v. Beauchamp. 26 In that case Rowlatt J., having referred to the manifest absurdity which would arise if a literal construction was given, said*
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> > *27: **"It is not really a question of adding anything to the section, for it is quite clear what the intention was, and the omission of certain words that you would expect to find there is nothing more than a faultiness of expression."***

12. In the case of ***Joint Directors of Mines Safety v. M/s Tandur and Nayandgi Stone Quarries*** **(1987) 3 SCC 208 [SGI Compilation – Volume IX – pg. 4161-4164]** this Hon'ble Court while interpreting the expression 'and' appearing in the proviso to section 3 of the Mines Act 1952 held that the expression "and" must be read as a disjunctive "or" to give effect to the legislative intent manifested by the scheme of the Act which was primarily meant for ensuring the safety of workmen employed in the mines. The relevant extract of **Joint Directors of Mines Safety (supra) [SGI Compilation – Volume IX – pg. 4161-4164],** is as follows:

> *"4. **According to the plain meaning, the exclusionary clause in sub-section (1) of Section 3 of the Act read with the two provisos beneath clauses (a) and (b), the word "and" at the end of para (b) of sub-clause (ii) of the proviso to clause (a) of Section 3(1) must in the context in which it appears, be construed as "or";** and if so construed, the existence of any one of the three conditions stipulated in paras (a), (b) and (c) would at once attract the proviso to clauses (a) and (b) of sub-section (1) of Section 3 and thereby make the mine subject to the provisions of the Act. **The High Court overlooked the fact that the use of the negative language in each of the three clauses implied that the word "and" used at the end of clause (b) had to be read disjunctively. That construction of ours is in keeping with the legislative intent manifested by the scheme of the Act which is primarily meant for ensuring the safety of workmen employed in the mines.**" (emphasis supplied)*

13. In yet another decision of this Hon'ble Court, in ***Gujarat Urja Vikas Nigam Limited v. SR Power Limited*** **(2008) 4 SCC 755 [SGI Compilation – Volume IX – pg. 4165-4183]** this Hon'ble Court while construing Section 86(1)(f) of the Gujrat Electricity Industry (Regulation and Reorganization) Act of 2003 which read as follows:

> *"86. Functions of the State Commission – (1) The State Commission shall discharge the following functions, namely- *** (f) adjudicate upon the disputes between the licensees and generating companies and to refer to any dispute for arbitration."*

came to the conclusion that the word 'and' between the generating companies and the words refer any dispute means 'or', otherwise it will lead to an anomalous situation because obviously the State Commission cannot both decide a dispute itself and refer to some arbitrator. Relevant extracts of **Gujarat Urja (supra) [SGI Compilation – Volume IX – pg. 4165-4183]** are as under:

> *"26. It may be noted that Section 86(1)(f) of the Act of 2003 is a special provision for adjudication of disputes between the licensee and the generating companies. Such disputes can be adjudicated upon either by the State Commission or the person or persons to whom it is referred for arbitration.* ***In our opinion the word "and" in Section 86(1)(f) between the words "generating companies" and "to refer any dispute for arbitration" means "or". It is well settled that sometimes "and" can mean "or" and sometimes "or" can mean "and"*** *(vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, p. 404).*
> *27. In our opinion in Section 86(1)(f) of the Electricity Act, 2003 the word "and" between the words "generating companies" and the words "refer any dispute" means "or", otherwise* ***it will lead to an anomalous situation because obviously the State Commission cannot both decide a dispute itself and also refer it to some arbitrator. Hence the word "and" in Section 86(1)(f) means "or"."*** *(emphasis supplied)*

14. In ***Ishwar Singh Bindra v UP*** **1969 1 SCR 219 [SGI Compilation – Volume IX – pg. 4184-4188]** a three judge bench of this Hon'ble Court while construing the definition of 'drug' contained in section 3(b) of the Drugs Act 1940 came to the conclusion that the expression 'all medicines…. and substances…' must be read disjunctively to mean all medicines …… or substances…' for the reason that dictionary meaning of the words 'medicines'and 'substances' are distinct and therefore, in order to carry out the intention of the legislature it would be justified to read the conjunctions 'or' and 'and' one for the other (Maxwell on interpretation of statutes 11th edition). Relevant extracts of the above judgment at paras 11 to 12 are as follows:-

> *"11.* ***Now if the expression "substances" is to be taken to mean something other than "medicine" as has been held in our previous decision it becomes difficult to understand how the word "and" as used in the definition of drug in Section 3(b)(i) between "medicines" and "substances" could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disconjunctively.*** *In Stroud's Judicial Dictionary, 3rd Edn. it is stated at p. 135 that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as "or".*

Similarly in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other". *(emphasis supplied)*

15. The Hon'ble Supreme Court held in ***National Legal Services Authority v Union of India*****, 2014 (5) SCC 438 [SGI Compilation – Volume IX – pg. 4189-4260]**, as under:

"58. Article 51, as already indicated, has to be read along with Article 253 of the Constitution. If Parliament has made any legislation which is in conflict with the international law, then Indian courts are bound to give effect to the Indian law, rather than the international law. However, in the absence of a contrary legislation, municipal courts in India would respect the rules of international law. In Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225], it was stated that in view of Article 51 of the Constitution, the Court must interpret language of the Constitution, if not intractable, in the light of the United Nations Charter and the solemn declaration subscribed to it by India. In Apparel Export Promotion Council v. A.K. Chopra [(1999) 1 SCC 759 : 1999 SCC (L&S) 405] , it was pointed out that domestic courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. Reference may also be made to the judgments of this Court in Githa Hariharan v. RBI [(1999) 2 SCC 228] , R.D. Upadhyay v. State of A.P. [(2007) 15 SCC 337 : (2010) 3 SCC (Cri) 704] and People's Union for Civil Liberties v. Union of India [(2005) 2 SCC 436]" . (emphasis supplied)

16. Further the Hon'ble Supreme Court has emphasized the importance of the legal context, including conventions in the interpretation of the Constitution and statutes alike, vide the decision in ***Pratap Singh v. State of Jharkhand*****, 2005 (3) SCC 551 [SGI Compilation – Volume IX – pg. 4261-4301]**:

"64. The Juvenile Justice Act specially refers to international law. The relevant provisions of the Rules are incorporated therein. The international treaties, covenants and conventions although may not be a part of our municipal law, the same can be referred to and followed by the courts having regard to the fact that India is a party to the said treaties. A right to a speedy trial is not a new right. It is embedded in our Constitution in terms of Articles 14 and 21 thereof. The international treaties recognise the same. It is now trite that any violation of human rights would be looked down upon. Some provisions of the international law although may not be a part of our municipal law but the courts are not hesitant in referring thereto so as to find new rights in the context of the Constitution. Constitution of India and other ongoing statutes have been read consistently with the rules of international law. Constitution is a source of, and not an exercise of, legislative power. The principles of international law whenever applicable operate as a statutory implication but the legislature in the instant case held itself bound thereby and, thus, did not legislate in disregard of the constitutional provisions or the international law as also in the context of Articles 20 and 21 of the Constitution. The law has to be understood, therefore, in accordance with the international law. Part III of our Constitution protects substantive as well as procedural rights. Implications which arise therefrom must effectively be protected by the judiciary. A contextual meaning to the

statute is required to be assigned having regard to the constitutional as well as international law operating in the field. (See Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [(2004) 9 SCC 512] .)" 65. In R v. Secy of State for the Home Deptt., ex p Daly (2001) 2 AC 532 Lord Stein observed that in the law context is everything in the following terms:

> *28. The differences in approach between the traditional grounds of review and the proportionality approach may therefore sometimes yield different results. It is therefore important that cases involving convention rights must be analysed in the correct way. This does not mean that there has been a shift to merits review. On the contrary as Professor Jowell (2000) PL 671, 681 has pointed out the respective roles of judges and administrators are fundamentally distinct and will remain so. To this extent, the general tenor of the observations in R vs Secy of State for the Home Depot, ex. P Mahmood. (2001) 1 WLR 840 at p. 847, para 18, "that the intensity of review in a public law case will depend on the subject matter in hand". That is so even in cases involving convention rights. In law context is everything.*

66.Constitution of India and the juvenile justice legislations must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and conventions. Our Constitution takes note of the institutions of the world community which had been created. Some legal instruments that have declared the human rights and fundamental freedoms of humanity had been adopted but over the time even new rights had been found in several countries, as for example, South Africa..." (emphasis supplied)

17. Therefore, it is submitted that **if an enactment or amendment thereof is enacted / amended in pursuance of an international obligation under a treaty or a convention, such background would not only provide the object and intent to this Hon'ble Court but this Hon'ble Court may lean in favour of the interpretation which is in conformity with the India's treaty obligation**

If any particular provision is not arbitrary or unconstitutional on the face of it, this Hon'ble Court may lean in favour of accepting an interpretation in international treaties / conventions / others.

It is a settled law that the Parliament never intents to act in breach of its commitment at the international level and, therefore, the Courts, while interpreting law, prefer to give an interpretation to statutory provisions which is in consonance with India's international obligations.

As pointed out in Note II earlier, non-compliance with FATF recommendations has consequences in terms of falling in ratings which, in turn, has economic consequences. The interpretation of section 3 canvassed by the respondent is not *per se* unconstitutional or violative of Article 14 or any other provisions.

18. In this context, the following judgments are placed for consideration-

***People's Union for Civil Liberties v. Union of India*, (2005) 2 SCC 436 [SGI Compilation – Volume IX – pg. 4302-4325]**

> ***41.*** *Thus, international treaties have influenced interpretation of Indian law in several ways. This Court has relied upon them for statutory interpretation, where the terms of any legislation are not clear or are*

reasonably capable of more than one meaning. In such cases, the courts have relied upon the meaning which is in consonance with the treaties, for there is a prima facie presumption that Parliament did not intend to act in breach of international law, including State treaty obligations. It is also well accepted that in construing any provision in domestic legislation which is ambiguous, in the sense that it is capable of more than one meaning, the meaning which conforms most closely to the provisions of any international instrument is to be preferred, in the absence of any domestic law to the contrary. In this view, Section 3(2)(d) is to be read keeping in view the Paris principles. Further, the proposal to appoint police officers on two earlier occasions was dropped when the Chairperson of NHRC expressed his opinion against appointments of such persons.

***Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228 [SGI Compilation – Volume IX – pg. 4326-4345]**

14. *The message of international instruments — the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 ("CEDAW") and the Beijing Declaration, which directs all State parties to take appropriate measures to prevent discrimination of all forms against women is quite clear. India is a signatory to CEDAW having accepted and ratified it in June 1993. The interpretation that we have placed on Section 6(a) (supra) gives effect to the principles contained in these instruments. The domestic courts are under an obligation to give due regard to international conventions and norms for construing domestic laws when there is no inconsistency between them. (See with advantage Apparel Export Promotion Council v. A.K. Chopra [(1999) 1 SCC 759] .)*

19. It is a settled legal principle that principles of international law whenever applicable operate as a statutory implication and it will be presumed that the legislature held itself bound and did not legislate in disregard of the constitutional principles or international law. Therefore, for all the above reasons this Hon'ble Court may consider interpreting the expression "AND PROJECTING OR CLAIMING IT AS UNTAINTED PROPERTY" in section 3 of PMLA as "OR PROJECTING OR CLAIMING IT AS UNTAINTED PROPERTY"

EXTENT OF APPLICABILITY OF CR.P.C.

Complete Code doctrine – Exclusion by necessary implication

20. At the outset, it is stated that the fundamental misconception on which the case of the Petitioners is premised at is that it is the Petitioners' understanding that the method, mode and manner of investigation of all criminal offences in the country is to be carried out only and only as per the provisions of the CrPC. It is submitted that while CrPC represents a constitutional compliant substantive but generic procedural law with regard to criminal offences, ***the CrPC is not the only mode in which criminal offences in the country can be investigated/tried*** except the offences under the IPC. It is submitted that the same is clear from the Cr.P.C. itself as section 4 and 5 state as under :

> *"4. Trial of offences under the Indian Penal Code and other laws.—*
>
> *(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
>
> *(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.*
>
> *5. Saving.—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."*

21. It is submitted that this legislative intent reflected in Section 4 and 5 of the CrPC, is clearly manifested in the PMLA. Specific reliance in this regard is placed on Section 65 and 71 of the PMLA which are as under :

Section 65 : Code of Criminal Procedure, 1973 to apply *The provisions of the Code of Criminal Procedure, 1973 (1 of 1974) shall apply, **in so far as they are not inconsistent with the provisions of this Act**, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.*
Section 71 : Act to have overriding effect ***The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.***

22. It is submitted that the ***CrPC is merely one of the means of investigation of criminal offences*** as is clear from a bare perusal of Section 5 CrPC. It is, therefore, open for the Legislature, while enacting substantive penal provisions, to provide for a procedure that may differ from the procedure provided under the CrPC. Admittedly, such procedure ought to entail sufficient constitutional safeguards; however, it would be open to make requisite departures from the procedure provided in the CrPC if the nature of the offence being dealt with so justifies. It is submitted that the CrPC itself envisages this departure by enacting Section 5 which itself puts restrictions on applicability of Cr.P.C. if special procedure is provided.

23. It is submitted that further, a special criminal law procedure is wrongly portrayed by the Petitioners that procedure of all offences shall have to be ***Cr.P.C. compliant***. It is submitted that such special procedure ***only*** ought to be ***constitutionally compliant*** and not necessarily CrPC compliant as sought to be canvassed by the Petitioners. It is submitted that the constitutional protections of non-arbitrariness [***Article 14, Article 20, Article 21***) (which is fair and reasonable procedure and other constitutional principles enshrined under Part III)] will form the basis of testing the validity of any special procedure prescribed by law. It is submitted that such procedure cannot be tested on the anvil of the procedure enshrined in CrPC.

24. It is submitted that the Cr.P.C. has a detailed procedure for registration, investigation, arrest by "*Police officers*" and subsequent trial for both, cognizable and non-cognizable offences.

It is submitted that the legislature has, in order to specifically tackle a particular malaise/crime and considering the peculiar nature of the mischief of money laundering, has established a separate procedure under the enactment. The PMLA, a *complete Code*, when read in juxtaposition of the Code of Criminal Procedure, 1973, would override provisions of the Cr.P.C., to the extent the PMLA provides for a separate procedure, either directly or by *implication*. It is submitted that however, where the provisions of the Cr.P.C. cannot be ousted, either by

a. direct displacement by PMLA provisions or

b. by necessary implication by giving meaning to PMLA provisions as a whole,

the provisions of the Cr.P.C., to that extent alone and only when they are not inconsistent, ***directly or impliedly,*** *apply to the investigation under PMLA.*

25. It is submitted that when a statute creates a new offence and also sets up a machinery for 'dealing' with it, the generic provisions of the Cr.P.C relating to the matters covered by such special statute would not be applicable to the special offence. The said settled law as held by Hon'ble Supreme Court in the case of ***Delhi Administration vs Ram Singh*****, AIR 1962 SC 63 [SGI Compilation – Volume VIII – pg. 3415-3423]**. The said decision is squarely applicable to present case as the PMLA, the Companies Act, 2013, etc. created the new offences in themselves and the manner of inquiry and investigation is prescribed in the respective Acts themselves. This has been referred to by the Court as the "*complete code* doctrine".

26. It is submitted that in the context of PMLA itself, this Hon'ble Court in ***Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act)*****, (2015) 16 SCC 1 [SGI Compilation – Volume VIII – pg. 3424-3441]**, held as under:

> *"**26.** The learned Solicitor General submitted that Section 45 of PMLA refers only to the term "Special Court" and therefore, has to be given restricted meaning. <u>According to him, PMLA is a "Special Law" applicable to the subject of money-laundering, and deals with economic offenders and white collar criminals</u>. The object of PMLA is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering. To enable the scheme of the Act, reliance was placed on various provisions of PMLA. He further submitted that Section 44 of PMLA only confers jurisdiction on the Special Court to deal with offences under PMLA. Section 45 of PMLA makes the offence of money-laundering cognizable and non-bailable and also provides that notwithstanding the provisions of the Criminal Procedure Code, 1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond, unless the Public Prosecutor has been given an opportunity to oppose the application for such release.*
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> ***27.** The learned Solicitor General lastly submitted that "money-laundering" being an economic offence poses a serious threat to the national economy and national interest and committed with cool calculation and deliberate design with the motive of personal gain regardless of the consequences to the society. Hence, for money-launderers "jail is the rule and bail is an exception", which finds support from many landmark judgments of this Court.*

> ***28.*** *Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money-laundering and Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by Parliament for dealing with money-laundering.* ***Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law****.* ***In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict****.*
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> ***29.*** ***Section 45 of PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them.*** *Section 45 of PMLA imposes the following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule to PMLA:*
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> *(i) That the prosecutor must be given an opportunity to oppose the application for bail; and*
>
> *(ii) That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.*
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> ***30.*** ***The conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act.*** *Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."*

27. It is submitted that even by virtue of Section 5 of the Cr.P.C. itself, especially in cases where there exists a specific overriding provision in the nature of Section 71, certain provisions of the Cr.P.C. can be deemed to be impliedly excluded from application to the process envisaged under the PMLA.

28. It is submitted that specifically, the doctrine of complete Code has been given judicial recognition in ***Central Bureau of Investigation v. State of Rajasthan*****, (1996) 9 SCC 735 [SGI Compilation – Volume VIII – pg. 3442-3456].** In the context of FERA, this Hon'ble Court, held as under**:**

*"**14.** Mr Ashoke Sen, learned Senior Counsel appearing for Respondent 3, namely, Shri Arvind Singh Mewar, has contended that it will be quite apparent from the combined reading of Sections 4, 5 and 26 of the Code of Criminal Procedure that if there is a special law prescribing the special procedure for investigation of the cases falling under that law, the provisions of the Code of Criminal Procedure are not applicable. It is only in the absence of any provisions regulating investigation, inquiry and trial of non-IPC offence i.e. offence under any other law, investigation, inquiry or trial, shall be as per the Code of Criminal Procedure. Under FERA specific provisions have been made for the investigation, inquiry and recording of statement of witnesses and also of trial of offences under FERA. Therefore, the provisions of the Code of Criminal Procedure do not govern the investigation etc. in respect of the offences under FERA. Mr Sen has submitted that Section 33(2) of the FERA empowers the Central Government or the Reserve Bank or any other officer of Enforcement Directorate not below the rank of Chief Enforcement Officer to call for information, book or other document in possession of any person. Section 34 of FERA empowers any officer of the Enforcement Directorate so authorised by Central Government to search a suspected person and to seize document. Section 35 authorises an officer of Enforcement to arrest a person against whom the officer has reason to believe that any person in India or within the Indian customs waters has been guilty of an offence punishable under FERA. Section 36 authorises the officer of Enforcement to stop and search conveyances. Section 37 confers power to search premises. Section 38 authorises the officers of Enforcement to seize documents. Section 39 authorises the Director of Enforcement or any other officer of Enforcement authorised by the Central Government to examine persons. Section 40 authorises the Gazetted Officer of Enforcement to summon persons to give evidence and produce documents. Section 41 authorises an officer of Enforcement to take into custody the document. Section 42 authorises such officer to investigate the drafts, cheques and other instruments. Section 43 authorises the officer of Enforcement to inspect books of accounts and other documents. Other provisions of the Act provide various course of actions for implementation of the Act. The said contravention of Section 25 is punishable under Section 56. Section 62 of the Act makes the offence under FERA as non-cognizable. Mr Sen has submitted that the aforesaid scheme of FERA shows that FERA is a special Act and is a self-contained code which is fully comprehensive specifying the various offences, prescribing the procedure for investigation or trial of such offences and the punishment to be awarded for such offences.* ***These provisions constitute special law and according to Mr Sen, in view of Section 5 of the Code of Criminal Procedure, the provisions of the Code are not applicable in respect of such matters governed by the special law i.e. FERA.***

15. *Mr Sen has further submitted that the effect of Section 5 of the Code of Criminal Procedure is to render the provision of the Code inapplicable in respect of matters covered by special law. This section clearly excludes the applicability of the Code in respect of investigation etc. under any special or local law. Therefore, only those officers who have been empowered to investigate under the special law i.e. FERA can do so and that too in accordance with the special law. Mr Sen has submitted that the police, therefore, goes out of picture. Section 155 of the Code of Criminal Procedure also cannot be invoked as on account of*

specific provisions in the special law, general provisions contained in the Code do not apply.

16. *Mr Sen has also submitted that the provisions of FERA, read particularly with Sections 61 and 62 clearly show that no other authority except the officers duly authorised under Section 5 thereof can investigate any contravention under Section 25 punishable under Section 56 of FERA. Mr Sen has also submitted that in 1991, the authorities under FERA interrogated Respondent 3 on the basis of the very same allegations which had been made by the CBI. Mr Sen has submitted that the aforesaid fact clearly shows that for the same allegation with regard to the contravention of FERA, the authorities under FERA are already investigating the matter and the CBI cannot be allowed to have a parallel proceeding. In support of this contention, Mr Sen has referred to the decision of this Court in Nilratan Sircar v. Lakshmi Narayan Ram Niwas [AIR 1965 SC 1 : (1964) 7 SCR 724 : (1965) 1 Cri LJ 100] . It has been observed in the said decision:*

> *"Section 5 Criminal Procedure Code provides that all offences under any law other than the Penal Code, 1860 shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The Foreign Exchange Regulation Act is a Special Act and it provides under Section 19-A for the necessary investigation into the alleged suspected commission of an offence under the Act, by the Director of Enforcement. The provisions of the Code of Criminal Procedure therefore will not apply to such investigation by him."*

17. *Mr Sen has also referred to the decision of the Madras High Court in L.E. Mohd. Hussain v. Dy. Supdt. of Customs [AIR 1970 Mad 464 : 1970 Mad LW (Cri) 14] . It has been observed in the said decision:*

> *"When there is a prohibition against taking cognizance by the Magistrate without a complaint by a concerned authority and when procedure is laid down under the Foreign Exchange Regulation Act which is a special Act the power of the police to investigate can only be confined to that conferred to them under Section 19-J(2) of the Act. So far as offence in the special enactments are made cognizable, the police, under the general power, may investigate. In the Foreign Exchange Regulation Act, the only offence that is made cognizable is the contravention of sub-section (1) of Section 4, and the police cannot investigate other offences except on the complaint of the officer concerned and with the order of the Magistrate. In investigating a cognizable offence which they are entitled to, it may be that certain facts which may amount to an offence under special Acts may also be disclosed. But that would not deprive the police of their power to investigate a cognizable offence not falling under the special statute."*

18. *Mr Sen has submitted that Section 62 of FERA makes all offences punishable under Section 56 non-cognizable, thereby excluding the jurisdiction of police officer to investigate such offences. The provisions of Chapter XIV of the Code of Criminal Procedure, therefore, cannot apply to investigation of such offences. Mr Sen has also submitted that violation of Section 25 (restriction on purchase of properties abroad) is punishable under Section 56 of FERA. Section 62 has been enacted notwithstanding anything contained in the Criminal Procedure Code. The said Section 62 has been enacted to prevent police from initiating action in case of alleged FERA violations. The jurisdiction of police is*

normally excluded from several economic offences as they can be properly investigated by specialized agencies only. Mr Sen has submitted that Section 45 of FERA is the only exception where powers have been conferred upon police in case a person is guilty of illegally purchasing or buying foreign exchange in public place [Section 8(1) FERA]. This is the only limited role of police under FERA.

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24. *The aforesaid sections of FERA indicate that for implementing enforcement of the provisions of FERA different classes of officers of Enforcement have been constituted in Section 3. Under Section 4(1) of FERA, the Central Government has been authorised to appoint such persons, as it thinks fit, to be officers of the Enforcement. Under sub-section (2) of Section 4 of FERA, the Central Government may authorise some of the senior officials of the Directorate of Enforcement, as mentioned in that sub-section, to appoint officers of Enforcement below the rank of Assistant Director of Enforcement. Sub-section (3) of Section 4 authorises the Central Government to impose conditions and limitations in the exercise of powers and discharge of duties under FERA by an officer of Enforcement. Section 5 authorises the Central Government to entrust the functions of Director or other officers of the Enforcement, with such conditions and limitations as it thinks fit, to any officer of the Customs or any Central Excise officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of the Enforcement under FERA as may be specified in the order to be issued by the Central Government.*

25. *In our view, a combined reading of Sections 3, 4 and 5 of FERA makes it quite evident that primarily the officer of Enforcement Directorate as mentioned in Sections 3 and 4 have been empowered to exercise the powers and discharge the duties conferred or imposed on such officers of the Enforcement Directorate under FERA. As it may be expedient in some cases to confer powers and duties under FERA to persons outside the Enforcement Directorate,* ***the Legislature in its wisdom has given authority to the Central Government under Section 5 of FERA to authorise any officer of Customs or Central Excise officer or a police officer or any officer of Central Government or State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under FERA as may be specified subject to such conditions and limitations as deemed fit by the Central Government.***

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28. ***FERA is a special legislation relating to regulation of foreign exchange.*** *FERA is also a Central legislation enacted at a later point of time than the DSPE Act which was enacted in 1946. In our view, Sections 4 and 5 of the Code of Criminal Procedure will not come in aid of the investigation of the offences under FERA by a member of police force like an officer of DSPE in accordance of the Criminal Procedure Code. Sections 4 and 5 of the Code of Criminal Procedure provide that in the absence of any provision regulating investigation, inquiry or trial of non-IPC offences i.e. offences under any other law, the investigation, inquiry and trial shall be in accordance with the Code of Criminal Procedure.* ***But FERA is a self-contained code containing comprehensive provisions of investigation, inquiry and trial for the***

offences under that Act. The provisions under FERA gives power to the officers of the Directorate of Enforcement or other officers duly authorised by the Central Government under FERA to search, confiscate, recover, arrest, record statements of witnesses, etc. FERA contains provisions for trial of the offences under FERA and imposition of punishment for such offences. FERA, being a special law, containing provisions for investigation, enquiry, search, seizure, trial and imposition of punishment for offences under FERA, Section 5 of the Code of Criminal Procedure is not applicable in respect of offences under FERA. In the decision of Nilratan Sircar case [AIR 1965 SC 1 : (1964) 7 SCR 724 : (1965) 1 Cri LJ 100] , this Court has considered the import of the provisions of FERA and has held:

> *"It was also urged for the appellant that the provisions of Section 5(2) of the Code apply to the present case in matters which are not provided by the Act. This contention too has no basis. Section 5 provides that all offences under any law other than the Penal Code, 1860 shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The Act is a special Act and it provides under Section 19-A for the necessary investigation into the alleged suspected commission of an offence under the Act, by the Director of Enforcement. The provisions of the Code of Criminal Procedure therefore will not apply to such investigation by him, assuming that the expression 'investigation' includes the retaining of the documents for the purposes of the investigation."*

29. The position is same under the FERA of 1973 as it would appear from its various provisions noted above. The aforesaid case was concerned with FERA of 1947. Similar view has been expressed by this Court in Ajmer Singh case [Ajmer Singh v. Union of India, (1987) 3 SCC 340 : 1987 SCC (Cri) 499] by indicating that the Army Act, Navy Act and Air Force Act embody a completely self-contained and comprehensive Code and therefore constitute a special law in force providing for special jurisdiction and powers on court-martial and prescribing a special form of procedure for trial of the offences under the said Acts. Hence, Section 5 of the Code of Criminal Procedure was not applicable*."*

29. It is submitted that in the context of special enactment dealing with serious offences, this Hon'ble Court adopted the reasoning of "*exclusion by necessary implication*" in ***Usmanbhai Dawoodbhai Memon v. State of Gujarat*****, (1988) 2 SCC 271 [SGI Compilation – Volume VIII – pg. 3457-3478]**. It is submitted that this Hon'ble Court held as under:

> ***"14.*** *Our attention was drawn to Section 4(1) of the Code which provides that all offences under the Penal Code, 1860 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions contained therein i.e. in accordance with the procedure prescribed under the Code. Sub-section (2) thereof however engrafts an exception to the general rule as to the procedure to be followed for the trial of offences under any other laws, and it reads:*
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> > *"4(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject*

to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences."

In support of the contention that the procedure to be followed is the special procedure laid down by the Act, reliance is placed on Section 5 of the Code which is in these terms:

"(5) Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

It is submitted that there is no express provision excluding the applicability of Section 439 of the Code similar to the one contained in Section 20(7) of the Act in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under the Act or any rule made thereunder, but that result must, by necessary implication, follow. According to the Learned Counsel, the source of power of a Designated Court to grant bail is not Section 439 of the Code but Section 437 which speaks of "a Court other than a High Court or a Court of Session" and it, insofar as material, reads as follows:

"437(1) When bail may be taken in case of non-bailable offence.—When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail.... "

(emphasis supplied)

15. *Before dealing with the contentions advanced, it is well to remember that the legislation is limited in its scope and effect. The Act is an extreme measure to be resorted to when the police cannot tackle the situation under the ordinary penal law.* ***The intendment is to provide special machinery to combat the growing menace of terrorism in different parts of the country.*** *Since, however, the Act is a drastic measure, it should not ordinarily be resorted to unless the Government's law enforcing machinery fails.*

16. ***As a matter of construction, we must accept the contention advanced by Learned Counsel appearing for the State Government that the Act being a special Act must prevail in respect of the jurisdiction*** *and power of the High Court to entertain an application for bail under Section 439 of the Code or by recourse to its inherent powers under Section 482. Under the scheme of the Act, there is complete exclusion of the jurisdiction of the High Court in any case involving the arrest of any person on an accusation of having committed an offence punishable under the Act or any rule made thereunder. There is contrariety between the provisions of the Act and those contained in the Code. Under the Code, the High Court is invested with various functions and duties in relation to any judgment or order passed by criminal court subordinate to it. Those powers may be briefly enumerated, namely, the jurisdiction and power to hear an appeal under Section 374 against any judgment or sentence passed by the Court of Session, the power to hear an appeal against an order of acquittal by a criminal court including the Court of Session under Section 378, the power to hear a reference as to the validity of any Act, ordinance or regulation or any provision contained therein made by a criminal court under Section 395, the confirmation of a death sentence on a reference by a Court of*

Session under Sections 366-371 and Section 392, the power to grant bail under Section 439 subject to certain limitations, the inherent power under Section 482 to make such orders as may be necessary or to prevent abuse of the process of the court or otherwise to secure the ends of justice. Undoubtedly, the High Court has the jurisdiction and power to pass such orders as the ends of justice require, in relation to proceedings before all criminal courts subordinate to it.

17. *The legislature by enacting the law has treated terrorism as a special criminal problem and created a special court called a Designated Court to deal with the special problem and provided for a special procedure for the trial of such offences. A grievance was made before us that the State Government by notification issued under Section 9(1) of the Act has appointed District and Sessions Judges as well as Additional District and Sessions Judges to be judges of such Designated Courts in the State. The use of ordinary courts does not necessarily imply the use of standard procedures. Just as the legislature can create a special court to deal with a special problem, it can also create new procedures within the existing system. Parliament in its wisdom has adopted the framework of the Code but the Code is not applicable. The Act is a special Act and creates a new class of offences called terrorist acts and disruptive activities as defined in Sections 3(1) and 4(2) and provides for a special procedure for the trial of such offences. Under Section 9(1), the Central Government or a State Government may by notification published in the Official Gazette, constitute one or more Designated Courts for the trial of offences under the Act for such area or areas, or for such case or class or group of cases as may be specified in the notification. The jurisdiction and power of a Designated Court is derived from he Act and it is the Act that one must primarily look to in deciding the question before us. Under Section 14(1), a Designated Court has exclusive jurisdiction for the trial of offences under the Act and by virtue of Section 12(1) it may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence. Where an enactment provides for a special procedure for the trial of certain offences, it is that procedure that must be followed and not the one prescribed by the Code.*

18. *No doubt, the legislature by the use of the words "as if it were" in Section 14(3) of the Act vested a Designated Court with the status of a Court of Session. But, as contended for by Learned Counsel for the State Government, the legal fiction contained therein must be restricted to the procedure to be followed for the trial of an offence under the Act i.e. such trial must be in accordance with the procedure prescribed under the Code of the trial before a Court of Session, insofar as applicable. We must give some meaning to the opening words of Section 14(3) "subject to the other provisions of the Act" and adopt a construction in furtherance of the object and purpose of the Act.* ***The manifest intention of the legislature is to take away the jurisdiction and power of the High Court under the Code with respect to offences under the Act****. No other construction is possible. The expression "High Court" is defined in Section 2(1)(e) but there are no functions and duties vested in the High Court. The only mention of the High Court is in Section 20(6) which provides that Sections 366-371 and Section 392 of the Code shall apply in relation to a case involving an offence triable by a Designated Court, subject to the modifications that the references to "Court of Session" and "High Court" shall be construed as references to "Designated Court" and "Supreme Court" respectively. Section 19(1)*

of the Act provides for a direct appeal, as of right, to the Supreme Court from any judgment or order of the Designated Court, not being an interlocutory order. There is thus a total departure from different classes of criminal courts enumerated in Section 6 of the Code and a new hierarchy of courts is sought to be established by providing for a direct appeal to the Supreme Court from any judgment or order of a Designated Court, not being an interlocutory order, and substituting the Supreme Court for the High Court by Section 20(6) in the matter of confirmation of a death sentence passed by a Designated Court.

19. ***Though there is no express provision excluding the applicability of Section 439 of the Code similar to the one contained in Section 20(7) of the Act in relation to a case involving the arrest of any person on an accusation of having committed an offence punishable under the Act or any rule made thereunder, but that result must, by necessary implication, follow.*** *It is true that the source of power of a Designated Court to grant bail is not Section 20(8) of the Act as it only places limitations on such power. This is made explicit by Section 20(9) which enacts that the limitations on granting of bail specified in Section 20(8) are "in addition to the limitations under the Code or any other law for the time being in force". But it does not necessarily follow that the power of a Designated Court to grant bail is relatable to Section 439 of the Code. It cannot be doubted that a Designated Court is "a court other than the High Court or the Court of Session" within the meaning of Section 437 of the Code. The exercise of the power to grant bail by a Designated Court is not only subject to the limitations contained therein, but is also subject to the limitations placed by Section 20(8) of the Act.*

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22. *Upon that view, the court in Balchand Jain case [(1976) 4 SCC 572 : 1976 SCC (Cri) 689 : AIR 1977 SC 366 : (1977) 2 SCR 52:] held that Rule 184 of the Defence and Internal Security of India Rules, 1971, does not take away the power conferred on a Court of Session or a High Court under Section 438 of the Code to grant anticipatory bail. We have been referred to the decision of R.S. Pathak, C.J. speaking for a Division Bench of the Himachal Pradesh High Court in Ishwar Chand v. State of Himachal Pradesh [ILR 1975 HP 569] holding that Rule 184 did not affect the jurisdiction and power of the High Court under Sections 438 and 439 of the Code which were independent of the power of the special tribunal to try an offence for contravention of an order made under Section 3 of the Defence and Internal Security of India Act, 1971. Both these decisions are clearly distinguishable. The view expressed in Balchand Jain case [(1976) 4 SCC 572 : 1976 SCC (Cri) 689 : AIR 1977 SC 366 : (1977) 2 SCR 52:] is not applicable at all for more than one reason. There was nothing in the Defence and Internal Security of India Act or the Rules framed thereunder which would exclude the jurisdiction and power of the High Court altogether. On the contrary, Section 12(2) of that Act expressly vested in the High Court the appellate jurisdiction in certain specified cases. In view of the explicit bar in Section 19(2), there is exclusion of the jurisdiction of the High Court. It interdicts that no appeal or revision shall lie to any court, including the High Court, against any judgment, sentence or order, not being an interlocutory order, of a Designated Court. The Act by Section 16(1) confers the right of appeal both on facts as well as on law to the Supreme Court. Further, while it is true that Chapter 33 of the Code is still preserved as otherwise the Designated Courts would have no power to grant bail, still the source of power is not Section 439 of the Code but Section 437 being a*

court other than the High Court or the Court of Session. Any other view would lead to an anomalous situation. If it were to be held that the power of a Designated Court to grant bail was relatable to Section 439 it would imply that not only the High Court but also the Court of Session would be entitled to grant bail on such terms as they deem fit. The power to grant bail under Section 439 is unfettered by any conditions and limitations like Section 437. It would run counter to the express prohibition contained in Section 20(8) of the Act which enjoins that notwithstanding anything in the Code, no person accused of an offence punishable under the Act or any rule made thereunder shall, if in custody, be released on bail unless the conditions set forth in clauses (a) and (b) are satisfied. Lastly, both the decision in Balchand Jain [(1976) 4 SCC 572 : 1976 SCC (Cri) 689 : AIR 1977 SC 366 : (1977) 2 SCR 52:] and that in Ishwar Chand [ILR 1975 HP 569] turn on the scheme of the Defence and Internal Security of India Act, 1971. They proceed on the well recognised principle that an ouster of jurisdiction of the ordinary courts is not to be readily inferred ***except by express provision or by necessary implication. It all depends on the scheme of the particular Act as to whether the power of the High Court and the Court of Session to grant bail under Sections 438 and 439 exists.*** *We must accordingly uphold the view expressed by the High Court that it had no jurisdiction to entertain an application for bail under Section 439 or under Section 482 of the Code."*

30. It is submitted that important, the concept of deference in dealing with special enactments in the field of criminal law was recognised and adopted in ***Mahmadhusen Abdulrahim Kalota Shaikh (2) v. Union of India*****, (2009) 2 SCC 1 [SGI Compilation – Volume VIII – pg. 3479-3522]**. This Hon'ble Court, held as under:

"POTA (Repeal), 2004 is a special Act that overrides general Acts such as CrPC

94. In addition, POTA (Repeal), 2004 is a special Act that trumps a general Act such as CrPC. This is consistent with the general principle of statutory interpretation. What is more, CrPC itself allows Parliament to deviate from CrPC when necessary. CrPC says that it is a general law that is subject to special laws*.*

96. *The special Act must be deemed to supersede the provisions of the general Act. In Harbans Singh v. State [AIR 1953 All 179] , AIR at p. 18, the U.P. Private Forests Act (Act 6 of 1949) was a special statute that precluded the Magistrates of the First Class from trying violations under the Act. Under Schedule III of the general CrPC of 1898, the Magistrates of the First Class had the power to try similar offences. The Allahabad High Court held that the special law must trump the general law and set aside the conviction entered by the Magistrate of the First Class. The Court relied on Section 5 CrPC, 1898, from which Section 5 CrPC, 1973 is borrowed: (AIR p. 180, para 4)*

> *"4. It is, therefore, clear that the powers conferred under the general provisions of the Code of Criminal Procedure are subject to any special provisions that might be made with regard to the exercise or regulation of those powers by any special Act. The special Act having made such provisions with regard to the offences under the said Act must be deemed to supersede the provisions of the general Act."*

97. *The provisions of the special law must prevail and CrPC must give way. In an earlier case, Kirpa Ram v. Ram Asrey [AIR 1951 All 414] , the Allahabad High Court emphasised this principle. The accused had allegedly stolen mangoes valued at less than Rs 50. Section 52 of the Village Panchayat Raj Act provided that offences where less than Rs 50 was at stake were to be tried by the Panchayati Adalat. The provision as to the amount in controversy was special relative to the general provisions of the Penal Code, under which the Judicial Magistrate convicted the accused. Therefore, the High Court set aside the lower court's conviction and transferred the case to the Panchayati Adalat. Even where Special Courts had not been constituted and transfer of the case to a non-existing court could lead to lawlessness, the rule of special vis-à-vis general was to be followed. Para 3 reads as under: (AIR p. 415)*

> *"3. ... The fact that the Panchayati Adalats had not been constituted would not affect the provision taking away jurisdiction from the other courts, although it may result in great inconveniences and lawlessness."*

98. The Statement of Objects and Reasons of POTA (Repeal), 2004 expressly says that it is special. POTA, like TADA before, deviates from the general criminal codes (the Penal Code, 1860 and the Code of Criminal Procedure, 1973) and provides special substantive and procedural rules for acts of terrorism. It was first reasoned by the legislature that harsher laws were necessary to combat and deter terrorism.

99. While reviewing the constitutionality of TADA, the Court in Kartar Singh [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] gave Parliament a substantial amount of deference and upheld all but Section 22 of TADA—subject to a few modifications—finding that Parliament had the legislative competence to make harsh laws for harsh times. (See Pandian, J.'s summary at p. 712 at para 368.)"

31. It is submitted that ***Ajmer Singh v. Union of India*****, (1987) 3 SCC 340 [SGI Compilation – Volume VIII – pg. 3523-3530],** this Hon'ble Court held as under :

> ***"V. BALAKRISHNA ERADI, J.—*** *These four appeals have been filed against judgments of the High Court of Punjab and Haryana rejecting the claims of the appellants who have been convicted by the General court martial for offences under the Army Act and are undergoing their sentences of varying terms of imprisonment for the grant of benefit to them of the provision for set off contained in Section 428 of the Code of Criminal Procedure. The High Court has granted certificates of fitness under Article 134-A of the Constitution and it is on the strength of those certificates that these appeals have been preferred to this Court.*
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> ***8.*** *Sections 34 to 68 contained in Chapter VI of the Act specify the different categories of offences under the Act including abetment of offences under the Act. Chapter VII of the Act which comprises Sections 71 to 89 of the Act deals with the punishments awardable by court martial in respect of the different offences. Sections 101 to 107 contained in Chapter IX of the Act deal with the arrest and custody of offenders and the proceedings prior to the trial. Chapter X of the Act describes in Sections 108 to 118, the different kinds of court martial, the authorities competent to convene them, their composition, and respective powers. In Chapter XI consisting of Sections 128 to 152, we find detailed provisions laying down the procedure to be followed by court martial in*

conducting the trial of offenders. Chapter XII contains provisions relating to confirmation and revision of the findings entered and sentences imposed by the different categories of court martial. Sections 166 to 176 contained in Chapter XIII deal with the execution of sentences and the establishment and regulation of military prisons etc. The subject of granting pardons, remissions and suspensions of sentences is dealt with in Sections 179 to 190 comprised in Chapter XIV of the Act. ***Thus we find that the Act contains elaborate and comprehensive provisions dealing with all the stages commencing from the investigation of offences and the apprehension and detention of offenders and terminating with the execution of sentences and the grant of remissions, suspensions etc.***

9. *Section 167 of the Act specifically lays down that whenever a person is sentenced by a court martial under the Act to imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the Presiding Officer or, in the case of a summary court martial, by the Court. In the face of this categorical provision laying down that the sentence of imprisonment shall be deemed to have commenced only on the day when the court martial proceeding was signed by the Presiding Officer or by the Court as the case may be, it is in our opinion futile to contend that the Army Act is silent with respect to the topic as to the date with effect from which the period of imprisonment covered by the sentence is to be reckoned. We state this only for the reason that an ingenious argument was advanced before us by counsel for the appellants that Section 5 of the Code of Criminal Procedure only lays down that nothing in the Code shall affect any special or local law and hence in the absence of any specific provision in the special or local law covering the particular subject-matter, the provisions of the Code would get attracted. Even if this argument is to be assumed to be correct (which assumption we shall presently show is wholly unwarranted), inasmuch as Section 167 of the Act specifically deals with the topic of the date of commencement of the sentence of imprisonment, there is absolutely no scope for invoking the aid of Section 428 of the Code of Criminal Procedure in respect of prisoners convicted by court martial under the Act.*

10. ***As we have already indicated, we are unable to accept as correct the narrow and restricted interpretation sought to be placed on Section 5 of the Code by the counsel appearing on behalf of the appellants. In our opinion the effect of Section 5 of the Code is clearly to exclude the applicability of the Code in respect of proceedings under any special or local law or any special jurisdiction or form of procedure prescribed by any other law. Whatever doubt might otherwise have existed on this point is totally set at rest by Section 475 of the Code of Criminal Procedure which furnishes a conclusive indication that the provisions of the Code are not intended to apply in respect of proceeding before the court martial.*** *That section is in the following terms:*

> *"475. Delivery to commanding officers of persons liable to be tried by court martial.—(1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950) and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be tried by a court to which this Code applies or by a court martial; and when*

any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a court to which this Code applies or by a court martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by a court martial.

Explanation.—In this section—

(a) 'unit' includes a regiment, corps, ship, detachment, group, battalion or company,

(b) 'Court martial' includes any tribunal with the powers similar to those of a court martial constituted under the relevant law applicable to the armed forces of the Union.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situated within the State be brought before a court martial for trial or to be examined touching any matter pending before the Court martial."

***The distinction made in the section between "trial by a court to which this Code applies" and by a Court martial conclusively indicates that Parliament intended to treat the court martial as a forum to the proceedings before (sic which) the provisions of the Code will have no application**."*

32. It is submitted that in ***Rohtas v. State of Haryana*, (1979) 4 SCC 229 [SGI Compilation – Volume VIII – pg. 3531-3534]**, this Hon'ble Court held as under:

*"**4.** This being the position, so long as the Haryana Act was to be in force in the State of Haryana, it is manifest that Section 29-B was put completely out of action and any trial of an accused who was a child within the meaning of the Haryana Act had to be conducted in the manner prescribed by the Haryana Act. For the purposes of this case it is not necessary for us to detail the procedure which was to be adopted by the Court under the Haryana Act. The fact remains, therefore, that until the passing of the Code of 1973 the Haryana Act held the field. The Haryana Act came into force on March 1, 1974. In fact the said Act received the assent of the President as far back as on February 6, 1974 and was published in the Haryana Gazette on February 12, 1974 but under the provisions of Section 1 sub-section (3) of the Act it was to come into force on a date to be notified by the State Government and this was done on March 1, 1974. Thus the Haryana Act started operating w.e.f. March 1, 1974 and any offences committed thereafter by a child, as defined in the Act, were to be tried according to the procedure laid down by the Haryana Act. So far there is no dispute between the parties. The only difficulty that arises is that just about the time that the Haryana Act was passed the Code of 1973 was also passed by Parliament which completely revolutionised the entire Criminal Procedure Code of 1898. It is not disputed in the present case that the occurrence in the present case look place after coming into force of the Code of 1973 and if, therefore, the Code of 1973 applies to the present trial then it is obvious that the trial has to be held not in accordance with the provisions of the Haryana Act but according to the*

provisions of the Code of 1973. So far as the Code of 1973 (Act 2 of 1974) is concerned, it came into force w.e.f. April 1, 1974. Section 4 of the Code of 1973 clearly lays down that all offences under the Penal Code, 1860 shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the said Code. Thus at the first sight the contention of the respondent that the accused was rightly ordered to be tried under the Code of 1973 appears to be sound. In the view that we have taken in this case and on a close and careful interpretation of Section 5 of the Code of 1973, we do not find it necessary to go into this point at all.

5. In our opinion the provisions of Section 5 of the Code in the present case completely clinch the entire issue. Far from overruling or colliding with the provisions of the Haryana Act, the Code of 1973 appears to have kept alive and fully endorsed the application of the Haryana Act or for that matter the provisions of any other Act passed by the State legislature and which falls within the ambit of Section 5 of the Code of 1973 which may be extracted thus:

"Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

6. It will thus be seen that Section 5 carves out a clear exception to the provisions of the trial of an offence under any special or local law for the time being in force or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force. It is not disputed that the Haryana Act was in force when the Code of 1973 was passed and, therefore, the Haryana Act far from being inconsistent with Section 5 of the Code of 1973 appears to be fully protected by the provisions of Section 5 of the Code of 1973 as indicated above."

33. It is submitted that in ***State (Union of India) v. Ram Saran*, (2003) 12 SCC 578 [SGI Compilation – Volume VIII – pg. 3535-3543]**, this Hon'ble Court, held as under:

*"**5.** The courts below have overlooked certain essential and vital aspects necessary to appreciate the relevant issues arising in their proper perspective. Under Section 3(1) of the Act, CRPF is constituted to be an "armed force" maintained by the Central Government, and consequently, it would be "any other armed force of the Union" as envisaged in Entry 2 of List I of the Seventh Schedule to the Constitution of India. Entry 93 of List I enables Parliament also to provide for offences against laws with respect to any of the matters enumerated in List I. Sections 9 and 10 create by enumerating what are stated to be "more heinous offences" and "less heinous offences" respectively and many of such specially created offences for the purposes of this Act cannot constitute or amount to be offences under the ordinary criminal law of the land. To that extent they are new classes of offences created with punishments therefor, which are unknown to the ordinary criminal law in force. Section 16 provides for empowering competent authorities in the hierarchy of the force itself with powers or duties conferred or imposed on a police officer of any class or grade by any law for the time being in force and by further enacting a provision with a specific "non obstante" clause*

stipulating that notwithstanding anything contained in the Code, the Central Government may invest the Commandant or Assistant Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by a member of the force and punishable "under this Act" or any offence committed by a member of the force against the person or property of another member. Consequently, what is purported to be done by these provisions is merely to refer to the nature and extent of powers possessed by such authorities under the other laws being made available to the authorities designated under this Act, for discharging their duties under this Act, without exhaustively enumerating the details of all such powers or without re-enacting all such provisions in detail as part and parcel of this law, the Act, and not to constitute them to be or empower them as Magistrates as such for all or any of the purposes for which courts of ordinary criminal justice have been constituted under the Code. ***Section 5 of the Code sufficiently protects the authorities empowered to function and exercise powers under the Act from any such challenge as are directed against them in this case. The fallacy in the reasoning of the courts below lies in their superficial and cursory nature of consideration undertaken therein, without reference to the competence and powers of Parliament to specifically and specially provide for trial and punishment of offences separately created under a special enactment of Parliament, in a manner distinct and separate from the method of trying other ordinary criminal offences under the general criminal law of the country****."*

34. It is submitted that in ***Union of India v. Chandra Bhushan Yadav*****, (2020) 2 SCC 747 [SGI Compilation – Volume VIII – pg. 3544-3552]**, this Hon'ble Court held as under:

"First information report (FIR)

9. *Mr Vinay Kumar Garg, learned Senior Counsel appearing on behalf of the respondent submitted that Para 804(b) of the Regulations imposes an obligation that a loss caused due to theft should be reported to the civil police. He supported the finding of the Tribunal that there is requirement of compulsory registration of FIR in view of the provisions of Section 154 CrPC. Mr R. Balasubramanian, learned Senior Counsel appearing for the Union of India submitted that Para 804(b) of the Regulations is not mandatory. It is open to the authorities to report a theft to the civil police if the situation warrants. He submitted that the Air Force Act, 1950 and the Air Force Regulations, 1964 govern the conduct and discipline of the Air Force. The Air Force Act, 1950 is a special law in which detailed procedure for conducting of trial by a court martial has been prescribed and no requirement for registration of an FIR is mandatory under the Rules therein. The conduct of trial including investigation is covered under the Air Force Act and the Rules. He referred to Section 5 CrPC to submit that CrPC is not applicable to the personnel governed under the Air Force Act. He relied upon the judgment of this Court in Ajmer Singh v. Union of India [Ajmer Singh v. Union of India, (1987) 3 SCC 340 : 1987 SCC (Cri) 499] in support of his argument.*

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11. It is clear from the above that the Air Force Act is a special law conferring jurisdiction and powers on the court martial and prescribing the procedure for trial of offences. It is also clear that the Code of

> ***Criminal Procedure is not applicable in respect of matters covered by the Air Force Act. Hence, the finding recorded by the Tribunal that it is mandatory for the authorities to report the offences to civil police for registration of an FIR is unsustainable. The Tribunal further relied upon Para 804(b) of the Regulations to hold that it is incumbent on the part of the authorities to report an offence to the civil police for registration of an FIR."***

35. It is submitted that a constitution bench of this Hon'ble Court in ***Lalita Kumari v. Govt. of U.P.*, (2014) 2 SCC 1 [SGI Compilation – Volume VIII – pg. 3553-3613]**, held as under:

> *"**90.** It may be submitted that Sections 4(2) and 5 of the Code permit special procedures to be followed for special Acts. Section 4 of the Code lays down as under:*
>
> *xxx*
>
> *It is thus clear that for the offences under the laws other than IPC, different provisions can be laid down under a special Act to regulate the investigation, inquiry, trial, etc. of those offences. Section 4(2) of the Code protects such special provisions.*
>
> ***91.** Moreover, Section 5 of the Code lays down as under:*
>
> *xxx*
>
> ***Thus, special provisions contained in the DSPE Act relating to the powers of CBI are protected also by Section 5 of the Code.***
>
> ***92. In view of the above specific provisions in the Code, the powers of CBI under the DSPE Act, cannot be equated with the powers of the regular State Police under the Code**."*

Effect of the overriding provision

36. It is submitted that further, the said question ought to be analysed in the context of Section 71. It is submitted that the insertion of a non-obstante clause in a statute has the effect of rendering any other statute ineffective, or of no consequence, in case of any inconsistency or departure. [**Kafaltiya A.B., *Interpretation of Statutes* (2008).**] In ***Union of India* v. *G.M. Kokil*, 1984 Supp SCC 196, ¶11 [SGI Compilation – Volume VIII – pg. 3614-3622]**, it was stated to be a 'legislative device' used to preclude the operation and effect of all contrary provisions.

37. It is submitted that it is believed that as the legislature has complete knowledge of the existing laws, it would not deliberately make a conflicting law without repealing the existing law. Secondly, when the new legislation specifically provides for a repealing section, the principle of *est exclusio alterius* (the express intention of one person or thing is the exclusion of another) applies, implying that there exists an intention to exclude the repeal of the remaining existing laws. [***Kishorebhai Khamanchand Goyal* v. *State of Gujarat*, (2003) 12 SCC 274**.] **[SGI Compilation – Volume VIII – pg. 3623-3629]**

38. Thus, a non-obstante clause should be used judiciously and in accordance with the legislative intent behind both the statutes, having regard to the principles of determining implied repeal of statutes. It is submitted that in ***Deep Chand* v. *State of U.P.*, AIR 1959 SC 648, ¶39 [SGI Compilation – Volume VIII – pg. 3630-3658],** this Hon'ble Court laid down a

test in order to determine whether an inconsistency or repugnancy exists between two statutes. In the said case, the constitutional validity of the Uttar Pradesh Transport Service (Development) Act, 1955 ('Transport Service Act') and the notifications issued under it were challenged. The appellants were involved in the business of plying buses on different routes in Uttar Pradesh. The U.P. Government issued a notification under the Transport Service Act stating that the said routes would exclusively be used by the State buses. Thereafter, an amendment was made in the Motor Vehicles Act, 1988, which provided for the nationalisation of the transport services. The appellants contended that the said amendment had rendered the Transport Service Act void owing to the direct contradiction between the two. This Hon'ble Court followed the following test to determine whether there existed repugnancy between statutes:

(i) whether the provisions are in direct conflict with each other;

(ii) whether the legislative intent was to lay down an exhaustive code on the subject matter and thereby replace the previous law;

(iii) whether the two legislations operate in the same field.

39. It is submitted that a similar provision exists in the Insolvency and Bankruptcy Code which was interpreted in ***Innoventive Industries Ltd.* v. *ICICI Bank*, (2018) 1 SCC 407, ¶49 [SGI Compilation – Volume VIII – pg. 3659-3719]** to hold that the Code would be given primacy over other statutes. It is submitted that in ***Aswini Kumar Ghose & Anr. v. Arabinda Bose & Anr***, reported in **AIR 1952 SC 369 [SGI Compilation – Volume VIII – pg. 3720-3764]**, a Constitution Bench of this Hon'ble Court speaking through Chief Justice Patanjali Sastri observed that the non-obstante clause can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment. In ***Central Bank of India v. State of Kerala & Ors***, reported in **(2009) 4 SCC 94 [SGI Compilation – Volume VIII – pg. 3765-3838]**, this Hon'ble Court reiterated that while interpreting a non-obstante clause the court is required to find out the extent to which the legislature intended to give it an overriding effect.

40. In view of such consistent opinion expressed by this Hon'ble Court on the purport and meaning of non-obstante clause, it is submitted that the text and the context of procedure prescribed by PMLA, include the exclusion of provisions of Cr.P.C. by ***necessary implication***, and therefore, to ***superimpose*** the Cr.P.C. over the PMLA, would be uncalled for.

General law vs. Special law

41. It is submitted that further it is a settled doctrine of law *generalia specialibus non derogant* which means that *general law yields to special law*. The adoption of the aforesaid rule in application of principle of harmonious construction has been explained by House of Lords observed in ***Warburton* v. *Loveland*** **[(1831) 2 Dow & Cl 480 : 6 ER 806 : (1824-34) All ER Rep 589 (HL)] [SGI Compilation – Volume VIII – pg. 3839-3851]** as under:

> *"No rule of construction can require that, when the words of one part of a statute convey a clear meaning … it shall be necessary to introduce another part of the statute which speaks with less perspicuity, and of which the words may be capable of such construction, as by possibility to diminish the efficacy of the [first part].'*

42. The said position has been followed by this Hon'ble Court in ***Anandji Haridas and Co. (P) Ltd.* v. *S.P. Kasture*** **[AIR 1968 SC 565 : (1968) 1 SCR 661]** **,** ***Patna Improvement Trust* v. *Lakshmi Devi*** **[AIR 1963 SC 1077 : 1963 Supp (2) SCR 812]** **,** ***Ethiopian Airlines* v. *Ganesh Narain Saboo*** **[(2011) 8 SCC 539 : (2011) 4 SCC (Civ) 217],** ***Usmanbhai Dawoodbhai Memon* v. *State of Gujarat*** **[(1988) 2 SCC 271 : 1988 SCC (Cri) 318],** ***South India Corpn. (P) Ltd.* v. *Board of Revenue*** **[AIR 1964 SC 207 : (1964) 4 SCR 280],** ***Maharashtra State Board of Secondary and Higher Secondary Education* v. *Paritosh Bhupeshkumar Sheth*** **[(1984) 4 SCC 27]**.

43. In light of the above, to the extent the PMLA provides for a special procedure, despite at first blush, not expressly providing for a provision ousting the applicability of some provisions of Cr.P.C., it is submitted that such provisions of the PMLA would have to be given full effect it.

Conclusions

44. In conclusion, it can be respectfully submitted that :

a. PML Act is a Special Statute creating a special offence, providing for special procedure for investigation, survey, search, seizure etc. and contemplates a separate court namely Special Court.

b. It is clear that the issues / aspects of mode, manner and method of investigation which are provided for differently in PML Act would oust the applicability of CrPC.

c. If there is no specific different provision in PML Act, the provision of CrPC would apply so long as the generic provision of CrPC are not inconsistent with the special law namely PML Act.

d. The inconsistency could be direct or be inferred by *necessary implication*.

e. The object which PML Act seeks to achieve, intricacies involved in the offence of money laundering [which would have nation and trans-border implications], the speed at which evidence can be destroyed, the moment the accused comes to know about the investigation, the legislature has provided for a separate architecture which explicitly and by implication oust the provisions of Chapter 12.

f. Some provisions of Chapter 12, in particular, and of the Cr.P.C., in general, may however, apply in view of section 71 read with section 65 of PML Act. For example, while the procedure to be followed in case of commencement of investigation after an FIR, forwarding the copy of the FIR to the Magistrate etc. will not apply. Similarly, summoning of witnesses and recording of statements would also not apply as these aspects are already covered under a separate mechanism consciously provided by legislature under PML Act.

g. However, provision like Section 167, provision for remand and other provision for conduct of trial etc contained in CrPC will apply as there are no *pari materia* provisions in PML Act that occupy the place and, therefore, such generic provisions of CrPC would apply since they are not inconsistent with the special provisions of PML Act.

Summary in brief

45. At the outset, the controversies raised about the offence under PML Act being either "cognizable" or "non-cognizable" is irrelevant in view of the peculiar scheme of PML Act. The term "cognizable" or "non-cognizable" are defined respectfully in section 2[c] and 2[l] of CrPC which reads as under:-

> *"Section 2(c) - Cognizable Offence -*
> *"Cognizable Offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant."*

Section 2(l) - Non-cognizable Offence -

> *"Non-Cognizable Offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant."*

46. Firstly, these two definitions would apply only to "police officer" and to the offences mentioned in the First Schedule appended to the CrPC. Undeniably, the "Authorities" [as defined under section 48 and 49 of PML Act] who exercise the power of investigation are not "police officers" as held by the Constitution Bench judgment in ***Ramesh Chandra Mehta v. State of W.B.*, (1969) 2 SCR 461. [SGI Compilation – Volume VIII – pg. 3852-3863]**

47. Secondly, the offence of money laundering defined in section 3 and made punishable in section 4 is doubtlessly not an offence mentioned in First Schedule appended to CrPC. These offences would be in Part II of the Second Schedule. The concept of offence being "cognizable" or "non-cognizable" under PML Act is, therefore, not relevant.

48. The question of offence being either "cognizable" or "non-cognizable" arises only for the limited purpose of power to arrest with or without warrant. The scheme of PML Act has done away with this distinction in two ways –

(i) Not making any difference or distinction between "cognizable" or "non-cognizable" by defining it; and

(ii) By conferring a specific and unequivocal power to arrest under section 19 of the PML Act without requiring the authorities mentioned therein to take any warrant.

49. The question as to whether an offence of money laundering under section 3 is "cognizable" or "non-cognizable" is further irrelevant in view of section 19 of the Act conferring the power of arrest without warrant [that too subject to the maximum safeguard provided therein]

Beginning of controversies by some accused person on the issue of the offence being "cognizable" or "non-cognizable"

50. The term "cognizable" was used only in section 45 of the Act from the inception. Section 45, as it existed then, reads as under-

> *"45. Offences to be cognizable and non-bailable. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—*
> *(a) every offence punishable under this Act shall be cognizable;"*

51. The use of the word "cognizable" though redundant, was causing an unnecessary confusion giving an impression that an offence under section 3 can also be investigated by "police officer" exercising powers under CrPC. This reference was redundant as –

(i) The authorities under PML Act are not "police officers"

(ii) The investigation by a "police officer" result into a police report defined under section 2[r] which needs to be forwarded to the Magistrate under section 173[2] of CrPC after which further trial would commence.

52. As against this, not only the authorities are not "police officers", the scheme of PML Act provides for filing of a complaint before the Special Court. In other words, in case of an investigation by police officers under CrPC, the Court takes cognizance on a police report filing under section 173[2] while in case of investigation by "authorities" under PMLA, the Court while take cognizance upon a complaint made by an authority.

53. To remove this anomaly and only for the said purpose, the said words viz. "cognizable" were deleted which becomes clear from the speech of the then offences while tabling the amendment. Interestingly, with a view to obviate any possible misinterpretation, the definition of "investigation" was also inserted. This is very crucial since in absence of definition of the term "investigation in PML Act" [till the said amendment of 2005], someone can rely upon the definition "investigation" given in section 2[h] of CrPC which is as under:-

> *(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;*

54. Since the term "police officer" was creating confusion which was sought to be removed by the amendment made in 2005, the definition of the word "investigation" was inserted wide section 2[na] in the PML Act which reads as under-

> ***(na) "investigation"** includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act **for the collection of evidence**;*

55. The relevant extracts of the **2005 Speech of the then Hon'ble Finance Minister [SGI Compilation – Volume VIII – pg. 3864-3872]** reads as under:-

> *"Under the existing provisions in Section 45 of the Act, every offence is cognizable. If an offence is cognizable, then any police officer in India can arrest an offender without warrant. At the same time, under Section 19 of the Act, only a Director or a Deputy Director or an Assistant Director or any other officer authorised, may arrest an offender. Clearly, there was a conflict between these two provisions. Under Section 45(1)(b) of the Act, the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint made in writing by the Director or any other officer authorised by the Central Government. So, what would happen to an arrest made by any police officer in the case of a cognizable offence? Which is the court that will try the offence? Clearly, there were inconsistencies in these provisions. They have now been removed. We have now enabled only the Director or an officer authorised by him to investigate offences. Of course, we would, by rule, set up a threshold; and, below that threshold, we would allow State police officers also to take action. The second anomaly that we found was that the expression "investigation*

officer" and the word "investigation" occur in a number of sections but they were not defined in the Act. Consequently, one has to go to the definition in the Criminal Procedure Code and that Code provides only "investigation by a police officer or by an officer authorised by a magistrate". So, clearly, there was a lacuna in not enabling the Director or the Assistant Director under this Act to investigate offences. That has been cured now.

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What we are doing is, we are inserting a new Section, 2 (n) (a) defining the term, investigation; making an amendment to Sections 28, 29 and 30, dealing with tribunals; amending Sections 44 and 45 of the Act to make the offence non-cognisable so that only the Director could take action; and also making consequential changes in Section 73. I request hon. Members to kindly approve of these amendments so that the Act could be amended quickly and we could bring it into force."

56. The Petitioners are misguiding themselves by an inadvertent use of the expression "to make an offence non cognizance so that only Director can take action". It is submitted that reading of the entire speech makes it clear that the intention is to obviate any misgivings about the simultaneous power in "police officer" to investigate money laundering offence. The expression quoted above does not make the offence "non cognizable" but the word "non cognizable" is immediately preceded by the expression "so that only the Director can take action" in the speech

Had there been an intention to make the money laundering offence "non cognizable" viz not empowering authorities under PML Act to arrest without warrant, the legislature would have deleted section 19 and would also have amended marginal note of section 45. The legislature did neither took these two steps. The legislature never does anything by "inadvertence". The intention of amendment is clear and the scheme of the Act is clear which was made further clear in the speech of the **Hon'ble Finance Minister while introducing 2019 amendment [SGI Compilation – Volume VII – pg. 3378-3387]**

57. It is submitted that the non-demarcation of offence of money laundering either as "cognizable" or "non-cognizable" in PML Act and authorising the authorities to arrest under section 19 of the Act has a purpose to achieve. As stated above, the offence of money laundering, by its very nature is different and distinct from the offence mentioned in Indian Penal Code. The offence of money laundering needs very intricate and complicated layering of money through a maze of dummy companies. Money laundering offences are more often than not taking place within and beyond the territories of India.

58. For these reasons, the laundering takes place through either Hawala transactions or electronic banking and other advanced technological methods. Because of the very nature of offence of money laundering and the potential of the accused to remove even the traces of offence with a view to frustrate the investigation, the legislature has consciously avoided either provision of registering FIR, supply the FIR to the Magistrate and requiring the authorities to obtain warrant before effecting arrest. Any form of intimation or notice will enable the accused to wipe of the evidence in a matter of literally few minutes. The legislature has, therefore, very consciously provided for different customized scheme to ensure effective investigation of the novel offence about which the entire world is troubled. Any interpretation

either as canvassed by the petitioners or otherwise requiring the authorities to do anything more than what is specifically stipulated in the Special Act and under the special scheme will defeat the very object of the Act.

59. These view is consistently taken by many High Court in the following judgments:-

S.NO.	PARTICULARS
1.	***Hari Narayan Rai v. Union of India & Anr.*** **[KS Compilation - Page 367 - 371 - Vol IV]** - Judgment dt. **26.03.2010** passed by the Hon'ble High Court of Jharkhand, reported in (2010) SCC OnLine Jhar 475.
2.	***Karam Singh & Ors. v. Union of India & Ors.*** **[KS Compilation - Page 339 – 366 - Vol IV]** - Judgment dt. **22.12.2015** passed by the Hon'ble High Court of Punjab & Haryana, reported in (2015) SCC OnLine P&H 19739.
3.	***Chhagan Chandrakant Bhujbal v. Union of India*** **[KS Compilation - Page 291 - 337 - Vol IV]** - Judgment dt. **14.12.2016** passed by the Hon'ble High Court of Bombay, reported in (2016) SCC OnLine Bom 9938.
4.	***Vakamulla Chandrashekhar v. Enforcement Directorate & Anr.*** **[KS Compilation - Page 77 – 117 - Vol IV]** - Judgment dated **08.05.2017** passed by the Hon'ble High Court of Delhi in Crl. M.A. No. 7706/2017 in W.P. (Crl.) 852/2017.
5.	***Virbhadra Singh & Anr. v. Enforcement Directorate & Anr.*** **[KS Compilation - Page 190 – 290 - Vol IV]** - Judgment dated **03.07.2017** passed by the Hon'ble High Court of Delhi in W.P. (Crl.) 856/2016.
6.	***Moin Akhtar Qureshi v. Union of India & Ors.*** **[KS Compilation - Page 119 – 189 - Vol IV]** - Judgment dated **01.12.2017** passed by the Hon'ble High Court of Delhi in W.P. (Crl.) 2465/2017.
7.	***Directorate of Enforcement & Anr. v. Vakamulla Chandrashekhar*** **[KS Compilation - Page 118 - Vol IV]** - Order dated **04.01.2018** passed by the Hon'ble Supreme Court in SLP (Crl.) No. 36918/2017.

60. All the above referred judgments are final judgments and not interim orders as sought to be projected and declare the law as expressed by the Respondent - ED.

61. It was only in case of one ***Rajbhushan Dixit*** **[KS Compilation - Page 1 - 32 - Vol IV] [relevant paras – 34-39, 56 - 62]** that a Division Bench took exception and did not agree with the coordinate bench in ***Vakamullah Chandrashekhar vs Enforcement Directorate*** **[KS Compilation - Page 77-117 - Vol IV]**. The Division Bench in ***Rajbhushan Dixit*** **[KS Compilation - Page 1 - 32 - Vol IV]** recorded completely wrong findings and not only referred the matter to a larger bench but exercised its jurisdiction under Article 226 of the Constitution of India and released Rajbhushan Dixit – petitioner on bail on the ground that the High Court is introducing a habeas corpus petition. This was despite the admitted fact that the petitioner therein- ***Rajbhushan Dixit*** **supra [KS Compilation - Page 1 - 32 - Vol IV]** was remanded by the competent court namely Special Court under section 167 of the Code and, therefore, writ of habeas corpus was not maintainable [for interim relief see **Page 31** of the **KS Case Compilation Vol-IV**]. The said interim order is in teeth of not only the above judgments of various High Court but judgments in ***SFIO vs Rahul Modi*** **[(2019) 5 SCC 266] [SGI Compilation – Volume VIII – pg. 3873-3908]**

62. Immediately upon the order in ***Rajbhushan Dixit*** **supra [KS Compilation - Page 1 - 32 - Vol IV]** order being delivered dated 19.02.2018, a Writ Petition No. 739 of 2018 [Delhi High Court] came to be filed and the Division bench granted anticipatory bail in the writ petition.

This resulted in the Enforcement Directorate filing of Special Leave Petition challenging the order dated 19.2.2018 in the case of ***Rajbhushan Dixit*** **supra [KS Compilation - Page 1 - 32 - Vol IV]** and above referred order dated 09.03.2018 in Writ petition No. 739/2018 **[SGI Compilation – Volume VIII – pg. 3909-3913]**. The Hon'ble Supreme Court was pleased to transfer the petitions Diary No. 9360 and 9365 of 2018 to itself **[SGI Compilation – Volume VIII – pg. 3914-3915]** and subsequently ordered the matters to be heard by a three-judge bench.

63. It may not be out of place to mention that ***Rajbhushan Dixit*** **supra [KS Compilation - Page 1 - 32 - Vol IV]** is a co-accused in what is known as Sterling Biotech scam where the main accused Sandesara Brothers and their family members are absconding and their extradition proceedings are going on. The rough and ready estimate shows a scam of Rs. 14,000 crores. The following facts would show how this ground of the offence being "cognizable" and "non cognizable" and the applicability of entire section 12 was misused by abuse of process of law.

64. It is submitted that after the writ petitions pending before Hon'ble High Court of Delhi in which interim orders were granted, were transferred by the Hon'ble Supreme Court to itself, the accused started filing Article 32 petitions raising the same grounds. It is submitted that after issuing notice in some matters, orders of 'no coercive steps' were passed in numerous petitions. It may be noted that various high profile accused in cases involving Sterling Biotech, Bhushan Steel etc. availed such orders which were passed *exparte*. In ***Union of India v. Sapna Jain***, vide **order dated 29.05.2019 [SGI Compilation – Volume VIII – pg. 3916-3918]** an appeal from an interim order of the Hon'ble Bombay High Court granting "no coercive steps", held that the said approach of mechanically passing such orders is wrong and approved the approach of the Hon'ble Telangana High Court wherein the judges had held that facts need to be necessarily seen before granting interim relief. In the meantime, the petition on behalf of Nitin Sadesara and others [Sterling Biotech Group] [petition titled as *Diptiben & Ors. v. Union of India*] was listed before this Hon'ble Court along with other two high profile matters. This Hon'ble Court, passed the same order in the nature of '**no coercive steps' dated 02.07.2019 [SGI Compilation – Volume VIII – pg. 3919]**.

65. This order enabled the promoters of Sterling Biotech to scuttle the investigation pending against them and further granted them protection despite being absconders from the law and escaping the country. The petitioners [Sandesaras] suppressed the crucial fact that non-bailable warrants are issued against them and the proceedings under the Fugitive Offenders Act are over and the judgment of the competent special court for declaring as "fugitive offenders" is reserved to be pronounced on 03.07.2019. Shockingly, on the very next day on which this Hon'ble Court passed the order quoted above, the counsel for the petitioner-fugitives appeared before the special court, relied upon the aforesaid order passed by this Hon'ble Court and successfully thwarted the pronouncement of the order of the special court under the Fugitive Offenders Act. The Petitioner accused place on record the order dated 02.07.19 passed by this Hon'ble Court before the Special Judge who directed ED to seek clarification from the Hon'ble Supreme Court with regard to the effect of the '*no coercive step*' order on the Fugitive Economic Offenders Act Application. The relevant part of the order, and how the Petitioner accused have already misused the order of this Hon'ble Court is clear from

a bare perusal of the order passed by the **Special Court dated 06.07.2019 [SGI Compilation – Volume VIII – pg. 3920-3921]**. The relevant part of the said order is quoted under :

> *".....*
> ***Accused A-6 to A-9 are absent/absconding**.*
> *....*
> *Ld. Senior Advocate appearing for accused A6 to A9 has filed on record copy of the order dated 02.07.2019 of Hon'ble Supreme Court of India passed in Writ Petition(s) (Criminal) no(s) 147/19 with W.P.(Crl) no.173/2019 and W.P.(Crl) no. 172 of 2019. It has been submitted that in the given Writ Petition no.172/2019, accused A6 to A8 herein are the petitioners and that Hon'ble Supreme Court vide the given order had directed that "no coercive steps shall be taken against the petitioners in all the Writ Petitions in the meanwhile". It has been submitted that consequent thereto, the non bailable warrants issued against these accused persons by this Court vide its order dated 25.10.2018, have to be recalled and cancelled. It has been further submitted that the parallel proceedings on the application of the Department / complainant filed under the Fugitive Economic Offenders Act,2018 also deserves dismissal."*

66. The said order is an instance of how the magnanimity and the deference of this Hon'ble Court has been misused by high profile accused persons.

Analysis in detail

Primary contention

67. The primary contention of the Petitioner is that the offence of money laundering under the PMLA is a non-cognizable offence. Therefore, as a corollary it is contended by the petitioners that without obtaining an order form a competent magistrate under section 155 of the Code of Criminal Procedure, 1973, no investigation could have been initiated under the PMLA. It is submitted that the stress of the Petitioners on the binary classification under the CrPC that cognizable or non-cognizable – is immaterial for the purposes of the PMLA. It is submitted that these binary classes of cognizable and non-cognizable is enshrined under the CrPC with a specific purpose and with a specific consequence. In the absence of an investigative process within the universe of the CrPC, the artificial importation of this binary classification would cause great violence to the procedure prescribed by law in special enactments. It is submitted that the PMLA is a complete Code to the extent it provides for the investigative process till the stage of filing of the complaint. In effect, it is immaterial to recognize the offence as cognizable or non-cognizable as the procedure that is supposed to be adopted is already specifically provided within the statute. It is said that asking the ***wrong question often leads to wrong results*** and the same is also true for this entire debate surrounding cognizable or non-cognizable.

68. From the scheme of PMLA, it is amply clear that the PMLA is a special statutory enactment providing for a separate procedure. Further, as per a combined reading of Section 65 and Section 71, it is palpably clear the provisions of Cr.P.C. would apply to the limited extent wherein the PMLA does not provide for a procedure. Further, in case of any conflict, the provisions of PMLA would override the provisions and procedure of the Cr.P.C. Section 18 provides for the search of persons and Section 19 provides power of arrest on the "reason to

believe" which have to be recorded in writing on the basis of the material in possession. The said reasons thereafter have to be forwarded to the adjudicating authority under sub-clause (2) and the person arrested is to be taken to the Judicial Magistrate within 24 hours or a Metropolitan Magistrate having jurisdiction. The trial for the offences created by PMLA is held in the court of sessions designated as Special Court in terms of Section 43. It is necessary to take note of Section 44, under which the Special Court is empowered to take cognizance of the offence of money-laundering under Section 4 or any scheduled offence connected thereto, in terms of Section 44(1)(b), upon a complaint by the competent authority (specified under Section 45), the judicial act of taking cognizance, thus being under Section 190(1)(a).

69. Thus, it is clear from the overview of the law thus far that the investigative process under PMLA is entrusted by the legislature in the hands of the authorities thereby created (generally speaking, the officers of the Directorate of Enforcement) and that police officers are generally inhibited from embarking upon investigations into the matters (or offences) relating to money-laundering, the only exception being where there is a special authorization.

70. It is argued that, even if the offences under PML Act are held to be cognizable, then, in view of the decision of the Apex Court in the case of ***Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1 [SGI Compilation – Volume VIII – pg. 3553-3613]**, whenever information related to cognizable offence is given, the Police is bound to register the offence and follow the procedure laid down in the said Chapter. Under the scheme of the PMLA, the recording of ECIR is the start of the investigative process under the PMLA. It may be noted that although there is no specific provision under which the ECIR is recorded, the said recording is not to be equated with the registration of FIR. ECIR is a term given for the purpose of administrative convenience for identification of each case and does not have any statutory sanction as in the case of FIR.

71. It must be noted that Chapter XII of the Cr.P.C., pertains to the "information given to the Police and their powers to investigate". As per Section 155(1) of the Cr.P.C., whenever the information as to non-cognizable offence is given, a Police Officer cannot investigate into the same without the order of the Magistrate, having power to try such case or commit such case for trial. It has been urged that if the offence under the PMLA is non-cognizable, then, the authorities under the PMLA could not have carried out investigation and arrest any person without the order of the Magistrate. It is stated that the said provisions in the Cr.P.C. are clearly made to be applicable to the Police Officers, when they receive any information relating to cognizable and non-cognizable offences as is evident from the title of Chapter XII which states "*Police and Their Powers to Investigate*". Chapter XII of CrPC concerns the restrictions on the powers of Police and the manner of investigation in respect of the information received by them about commission of cognizable or non-cognizable offence and, depending thereon, arrest of the concerned accused.

72. Therefore, when the power to investigate is not entrusted to a Police Officer and when PMLA contains specific provision relating to arrest, then, the PMLA being a complete Code in itself and also being a special law enacted with a particular object, in view of Section 5 of the Code, no such restriction as specified in Chapter XII in relation to investigations by Police officer can be imported into PMLA or any other Special Act.

73. It must also be noted that the definition of the term '*investigation*' as given in Section 2(na) of the PMLA includes all the proceedings under the Act conducted by the Director by an Authority Authorised by the Central Government under this Act for the collection of evidence. Thus, investigation under this Act does not given any role to the Police. Therefore, when there are specific provisions dealing with the investigation and power to arrest under the PMLA itself, the provisions of the Cr.P.C. in that respect will not have any application.

74. It is submitted that although the question of the complete applicability of Chapter XII of CrPC to investigations under special criminal enactments has not been directly decided by this Hon'ble Court, the judgments of this Hon'ble Court in ***Ramesh Chandra Mehta v. State of W.B.*, (1969) 2 SCR 461 [SGI Compilation – Volume VIII – pg. 3852-3863]** and ***Directorate of Enforcement v. Deepak Mahajan and Another,* 1994 (3) SCC 440 [SGI Compilation – Volume VIII – pg. 3922-3962]** clearly point towards judicial understanding of the working and the functioning of the investigative process under special criminal enactments.

75. It is submitted that this Hon'ble Court, in a constitution bench in ***Ramesh Chand Mehta* supra [SGI Compilation – Volume VIII – pg. 3852-3863]**, held that the officers functioning under special enactments, despite having powers akin to the powers of a 'police officer', are not police officers within the meaning of the CrPC and the Evidence Act. This Hon'ble Court was in the said case deciding the issue whether the statement made by a person under investigation before such officers would be admissible at the time of trial, held that because such officers are not 'police officers', such statements would be admissible and would not breach the guarantee under Article 20 against self-incrimination.

76. In ***Deepak Mahajan* supra [SGI Compilation – Volume VIII – pg. 3922-3962]**, this Hon'ble Court was adjudicating the issue whether in light of the judgment in ***Ramesh Chand Mehta* supra [SGI Compilation – Volume VIII – pg. 3852-3863]**, a judicial magistrate under section 167 of the CrPC has a power to remand the person arrested under the Special Act. This Hon'ble Court, in a judgment on the aspect of applicability of section 167 CrPC to arrests made under special criminal enactments held that for the purposes of section 167 CrpC, the person so arrested under the Special Act would be required to be produced before the Magistrate within 24 hours who shall thereafter subject to his satisfaction had the power to grant remand accordingly. The relevant paragraphs of ***Deepak Mahajan* supra [SGI Compilation – Volume VIII – pg. 3922-3962]** are **107-120**.

Pointless compartmentalisation

77. It is stated that the compartmentalization of offence into category of Cognizable and non-cognizable as defined in CrPC for the purpose of arrest is only applicable to investigations carried out by Police Officers. As far as officers empowered under Special Acts are concerned their power to arrest is governed by the said Special Act and is not governed by the general provisions of CrPC. The Power to arrest exercised by Police is governed by CrPC and hence the classification of offence into different categories is of some relevance. For example if the offence is non-cognizable Police cannot arrest without following the Procedure prescribed in CrPC. However when the Power to arrest is exercised by specially empowered officer under a

Special Act, the same is governed by the provision of arrest in the Special Act. The following points may be specifically noted :

(i) ***CLEAR POWER OF ARREST WITHOUT WARRANT***

Section 19 of the PMLA clearly grants the power to the authorised officer, subject to the conditions mentioned thereunder, the power to arrest without any warrant issued by the relevant judicial authority. In light of section 65 and section 71 PMLA and section 4 of the CrPC, it is clear that this particular section in cae of conflict would override the corresponding provisions if any in the CrPC. Therefore, considering the fact that the statute which has an overriding effect does not create any impediment on the power of the authorised officer to arrest in the nature of a judicial warrant, it would be absolutely irrational and absurd to allege that the offence under the PMLA is non-cognizable.

(ii) ***PUNISHMENT OF MORE THAN THREE YEARS***

Without prejudice to above, the 'First Schedule' of the Code specifically provides classification of the offences, which are "cognizable" or "non-cognizable"; bailable or non-bailable and triable by which Court according to the punishment, which is provided for the said offences. Under Part II of the First Schedule, "Classification of Offences against Other Laws" provides that, "offences punishable with imprisonment for more than three years or upwards would be cognizable and non-bailable. Under the PMLA, the offence under Section 4 r/w Section 3, as reproduced above, is punishable with imprisonment for more than three years and which may extend upto seven years or even upto ten years, as the case may be. Therefore, in view of Part II of the First Schedule of the Cr.P.C., the said offence becomes *cognizable* even if they were to be investigated by a Police Officer.

The Schedule is reproduced as under :

II.—CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or noncognizable	Bailable or nonbailable	By what court triable
If punishable with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Non-bailable	Court of Session
If punishable with imprisonment for 3 years and upwards but not more than 7 years	**Cognizable**	**Non-bailable**	Magistrate of the first class
If punishable with imprisonment for	Noncognizable	Bailable	Any Magistrate

less than 3 years or with fine only			

(iii) IRRELEVANCE OF THE COMPARTMENTALISATION

It is submitted that the question whether an offence is cognizable or non cognizable arises only in the context of investigations undertaken by the police officers under CrPC. This binary classification of offences as cognizable or non cognizable, achieves a specified purpose under the CrPC and creates a different mechanism under which a police officer is to function. It is critical to note that for new offences created under special enactments which are investigated by specially empowered officer, there is no impending necessity whatsoever, of classifying or categorizing the offences as cognizable or non cognizable as the procedure of investigation and the powers of the officers investigating the offence under the special enactment, is already specifically provided for in the said Acts. Therefore, a straight-jacket compartmentalization of the offences under PMLA is a question which is completely academic in nature and would not have any impact on the investigative process under special enactments.

78. It is submitted that when a statute creates a new offence and also sets up a machinery for 'dealing' with it, the provisions of the Cr.P.C relating to the matters covered by such statute would not be applicable to the offence. The said settled law as held by Hon'ble Supreme Court in the case of ***Delhi Administration vs Ram Singh*, AIR 1962 SC 63 [SGI Compilation – Volume VIII – pg. 3415-3423]**. The said decision is squarely applicable to present case as the PMLA created the new offences in themselves and the manner of inquiry and investigation is prescribed in the respective Acts themselves. It is submitted that the said Act ought to compliant with the Constitution of India and not complaint with the Cr.P.C.

79. Without prejudice to above it is stated that by the Prevention of Money-Laundering (Amendment) Act, 2005 (Act No.20 of 2005), the clause contained in Section 45(1)(a) quoted above was deleted. The clause (b) of Section 45(1), thus, merged with the remaining phraseology employed in the existing provision so as to become Section 45(1), now a provision intended to regulate primarily the issue of release on bail and the *mode of taking cognizance*, the pre-requisite being a complaint in writing by the Director or other authorized officer. The existing sub-Section (2) of Section 45 quoted above, was accordingly modified so as to remove reference to clause (b) of sub-section (1). A new sub-Section (1-A) was inserted which contains the general restrictions against a police officer investigating into an offence under PMLA.

80. It is argued that the legislature took a conscious decision by omitting Section 45(1)(a) and made the offences under PMLA to be non-cognizable. It is argued that the heading of the provision contained in Section 45 is not part of the legislation and cannot control its interpretation. It is argued that offence of money-laundering under Section 4 PMLA is non-cognizable and consequently, any arrest without authorization from the competent court, or even investigation by summoning any person under Section 50 PMLA is not permissible.

The provision contained in Section 45(1)(a), as appearing earlier seemingly was in conflict with the overall scheme of the law wherein the police had been kept out of the investigative process which was placed, instead, in the hands of a special machinery created

by the legislation for its purposes. Specifically, if the clear intent was to make the offences non-cognizable, it was open for the Legislature to amend Section 19 which provides for a specific power of arrest without warrant thereby making the offence cognizable. It is submitted that the fact that the Legislature chose not to amend Section 19, is a clear indication that the intent of the 2005 amendment, was not to make the offence non-cognizable, rather was merely to oust the local police from exercising powers under PMLA.

81. The continued use of the expression "cognizable" in relation to the offences under PMLA, in the marginal head of Section 45 cannot be wished away. It is part of the law as originally enacted and remains unamended. Marginal head act as a broad indicator of the content of each section. After the amendment, there is no clause appearing in Section 45 or, for that matter, in any other provision of PMLA, declaring the classification (cognizable or non-cognizable) of the offences created by the special statute.

82. It must be noted that the said clause 1(a) was deleted merely with an intention to ensure that there should be no conflict in the power of arrest exercised by the Police Officers and the authorities authorized under the PML Act. The deletion of the clause (a) was, therefore, only with that specific intention and not to state that all the offences under the Act have to be treated now as "non-cognizable". The, Legislature, by way of amendment, had not prescribed in positive terms that on account of deletion of clause (a) of sub-section (1) of Section 45, now all the offences under the PML Act have become non-cognizable.

83. It is settled law that the broad indication given by the heading does assist, if the need arises, to understand the true import of the statutory clause. Further, it is submitted that PMLA, was not designed to confer an additional responsibility or jurisdiction on the police. It is clearly indicative that the legislature intended to deal with the menace of money-laundering outside the general regime for dealing with the crimes. These are economic offences indulged in secrecy and stealth and their detection requires expertise and specially trained personnel.

84. It is pertinent to note that the Parliament has, though deleted Section 45(1)(a) of the PMLA, it has not changed the heading which still states "**Offences to be cognizable and non- bailable**" and it therefore clears the perceived ambiguity that subsists within the language of the Section 45. The Hon'ble Supreme Court in the case of ***Eastern Coalfields Ltd.* v. *Sanjay Transport Agency*, (2009) 7 SCC 345 [SGI Compilation – Volume VIII – pg. 3963-3966]**, while dealing with the interpretation of the provisions of under Arbitration and Conciliation Act, 1996, held as follows:

> *"6. It is well settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of any provision and to discern the legislative intent. The section heading constitutes an important part of the Act itself and may be read not only as explaining the provisions of the section, but it also affords a better key to the constructions of the provisions of the section which follows than might be afforded by a mere preamble."*

85. The Hon'ble Supreme Court in ***Bhagirath vs. Delhi Administration,* (1985) 2 SCC 580 [SGI Compilation – Volume VIII – pg. 3967-3976]**, further held that "marginal notes are now legislative and not editorial exercises".

86. Separately, it is submitted that the issue of the applicability of Chapter XII of the Cr.P.C. to the investigations under the Special Acts, specifically the Customs Act, stands authoritatively decided by a three judge bench of this Hon'ble Court in ***K.I. Pavunny v. Asstt. Collector (HQ), Central Excise Collectorate*, (1997) 3 SCC 721 [SGI Compilation – Volume VIII – pg. 3977-4003]**. The relevant portion of the judgment is quoted as under :

> *"**9.** The question then is whether the appellant is a person accused of an offence within the meaning of Section 24 of the Evidence Act? The question is no longer res integra. It is seen that the connotation of the words "person accused of the offence" under Section 24 of the Evidence Act is generally referable to initiate investigation of cognizable offence in Chapter XII of the Code of 1894 and the Code. It is not necessary, for the purpose of this case, to undertake elaborate consideration as to when the person becomes a person accused of an offence under the Code. Suffice it to state that in a reasoned judgment, a two-Judge Bench of this Court elaborately considered this question in Directorate of Enforcement v. Deepak Mahajan [(1994) 3 SCC 440 : 1994 SCC (Cri) 785] thus obviating the need to dwell in depth on the same now. Therein, the question was whether, when the person had surrendered before a Magistrate and was arrested under Section 38 of the Foreign Exchange Regulation Act, the Magistrate had jurisdiction to authorise his detention under Section 167(2) of the Code. In that behalf, it was held that the person who surrendered before the Magistrate was accused of an offence and that, therefore, gave the Magistrate the power to proceed further under the Code to remand the person to the judicial custody. As regards the person arrested for committing an offence under the Act, in Ramesh Chandra Mehta case [(1969) 2 SCR 461 : AIR 1970 SC 940] , at p. 740, the Constitution Bench held that a Customs Officer does not at the stage of enquiry accuse the person suspected of infringing the provisions of the Sea Customs Act, with the commission of any offence. His primary duty is to prevent smuggling and to recover duties of customs when collecting evidence in respect of smuggling against a person suspected of infringing the provisions of the Sea Customs Act. In Illias v. Collector of Customs [(1969) 2 SCR 613 : AIR 1970 SC 1065] another Constitution Bench had held that Customs Authorities have been invested under the Act with many powers of a police officer in matters relating to arrest, investigation and search, which the Customs Officers did not have under the Sea Customs Act. Even though the Customs Officers have been invested with many of the powers which an officer in charge of a police station exercises while investigating a cognizable offence, they do not, thereby, become police officers within the meaning of Section 25 of the Evidence Act and so the confessional statements made by the accused persons to Customs Officials would be admissible in evidence against them. It was further held at p. 618 that as regards the procedure for search the important change which has been made in the Act is that under Section 105 if the Assistant Collector of Customs has reason to believe that any goods liable to confiscation or any documents or things are secreted in any place, he may authorise any Officer of Customs to search or may himself search for such goods, documents or things without warrant from the Magistrate.*
>
> ***26.** In Naresh J. Sukhawani v. Union of India [1995 Supp (4) SCC 663 : 1996 SCC (Cri) 76] a two-Judge Bench (to which one of us, K. Ramaswamy, J., was a member) had held in para 4 that the statement recorded under Section 108 of the Act forms a substantive evidence inculpating the petitioner therein with the*

*contravention of the provisions of the Customs Act as he had attempted to export foreign exchange out of India. The statement made by another person inculpating the petitioner therein could be used against him as substantive evidence. Of course, the proceedings therein were for confiscation of the contraband. In Surjeet Singh Chhabra v. Union of India [(1997) 1 SCC 508 : (1997) 89 ELT 646] decided by a two-Judge Bench to which one of us, K. Ramaswamy, J., was a member the petitioner made a confession under Section 108. The proceedings on the basis thereof were taken for confiscation of the goods. He filed a writ petition to summon the panch (mediator) witnesses for cross-examination contending that reliance on the statements of those witnesses without opportunity to cross-examine them, was violative of the principle of natural justice. The High Court had dismissed the writ petition. In that context, it was held that his retracted confession within six days from the date of the confession was not before a police officer. The Customs Officers are not police officers. Therefore, it was held that "the confession, though retracted, is an admission and binds the petitioner. So there is no need to call panch witnesses for examination and cross-examination by the petitioner". **As noted, the object of the Act is to prevent large-scale smuggling of precious metals and other dutiable goods and to facilitate detection and confiscation of smuggled goods into, or out of the country. The contraventions and offences under the Act are committed in an organised manner under absolute secrecy. They are white-collar crimes upsetting the economy of the country. Detection and confiscation of the smuggled goods are aimed to check the escapement and avoidance of customs duty and to prevent perpetration thereof. In an appropriate case when the authority thought it expedient to have the contraveners prosecuted under Section 135 etc. separate procedure of filing a complaint has been provided under the Act. By necessary implication, resort to the investigation under Chapter XII of the Code stands excluded unless during the course of the same transaction, the offences punishable under the IPC like Section 120-B etc. are involved. Generally, the evidence in support of the violation of the provisions of the Act consists in the statement given or recorded under Section 108, the recovery panchnama (mediator's report) and the oral evidence of the witnesses in proof of recovery and in connection therewith. This Court, therefore, in evaluating the evidence for proof of the offences committed under the Act has consistently been adopting the consideration in the light of the object which the Act seeks to achieve**."

Position across the Hon'ble High Courts

87. It is submitted that numerous High Courts in the country have already analysed these provisions and directly answered that offence under the PMLA is cognizable in so far as the power to arrest without warrant is concerned. It is submitted that in terms of understanding the nature and special acts and the meaning of cognizable or non-cognizable in the context of such acts, the judgment of the Hon'ble High Court of Delhi at New Delhi in ***Virbhadra Singh v. Enforcement Directorate*, 2017 SCC Online Del 8930 [KS Compilation – Vol IV - 190 – 290]** is the most illustrative. It is submitted that ***Virbhadra* supra** states that investigation under Prevention of Money Laundering Act (PMLA), 2002, is fair and provides the crucial safeguards held that an officer empowered by PMLA may take up investigation of

a PMLA offence and arrest any person as permitted by its provisions without obtaining authorization from the court. The relevant paras are **23, 24, 26 -67, 77 - 89,96 – 100, 110 – 125, 142 - 147.**

88. With regard to the ECIR being equivalent to an FIR thereby kicking in the machinery under Chapter XII, the Division Bench of the Hon'ble Hyderabad High Court ***Dalmia Cement (Bharat) Limited and another v. The State of Andhra Pradesh*, W.P. 36838 of 2014 [SGI Compilation – Volume VIII – pg. 4004-4035]**, has rightly held as under:

> *"**8.** Mr. P. Chidambaram, learned senior counsel for the petitioners, submitted that ECIR was registered on 30.08.2011 under Section 3 of PMLA against several persons and first petitioner is shown at Sl.No.26. Learned senior counsel contended that registration of ECIR is equal to registration of an FIR under Cr.P.C and the first respondent stands in the capacity of an accused at Sl.No.26. Thereafter, the summons were issued by the first respondent under Section 50 of PMLA commencing from 20.10.2014, by then petitioners were already arrayed as accused and 12 respectively in the charge sheet filed by CBI. The allegations in the charge sheet being the basis for registration of ECIR by the first respondent, compelling the petitioners under the summons, would further compel them to make statement and produce incriminating documents with a threat of prosecution for giving false statement or false information. Learned senior counsel submits that such testimonial compulsion against the second petitioner would, undoubtedly, amount to incriminating him not only in the CBI case but also in the ECIR registered.*
>
> *43. **At this stage, therefore, investigation is only for the purpose of collecting evidence with regard to proceeds of crime in the hands of the persons suspected and their involvement, if any, in the offence under Section 3 of PMLA. I am, therefore, unable to equate ECIR registered by the first respondent to an FIR under Section 154 Cr.P.C and consequently, I agree with the learned Additional Solicitor General that under PMLA the petitioners are not accused at present.** Consequently, therefore, the submission on behalf of the petitioners on the assumption that petitioners are accused under PMLA is liable to be rejected.*
>
> *Point is accordingly answered in the negative.*
>
> *47. **From the above decisions, it would be clear that when an ECIR is lodged with the Directorate of Enforcement there is no Magisterial intervention unlike an FIR and mere registration of ECIR against the suspects of offence under Section 3 of PMLA cannot go to mean that such persons are accused under Section 3 of PMLA. Consequently, therefore, the protection against testimonial compulsion as under Cr.P.C as well as under Article 20(3) of the Constitution of India, in my view, would not be available**, as claimed by the petitioners."*

89. In a larger challenge to the PMLA, in light of similar assertions made, the Hon'ble High Court of Punjab and Haryana at Chandigarh in ***Karam Singh v. Union of India*, 2015 SCC Online P&H 19739 [KS Compilation – Vol IV – 339 - 366]**, while examining the said question, rejected the argument of the Petitioners on the question of cognizable offence. The relevant paras are **26, 27, 29, 30, 31, 35, 37, 42, 43, 45, 55**.

90. The retention of the headnote in section 45 and the absence of language expressly deeming the offences under the PMLA as "*non-cognizable*", only warrant the inference that

the legislature did not intend to make the offence "*non-cognizable*" but only wanted to clear the conflict between the powers of arrest as regards police and the authorities established under the Act.

91. On the same issue, a Division Bench of the Hon'ble High Court of Bombay in ***Chhagan Chandrakant Bhujbal v. Union of India*, 2016 SCC Online Bom 9938 [KS Compilation – Vol IV - 291 – 337]**, while interpreting the transcripts of the 'Debates' that took place in the Parliament when Amendment Act No. 20 of 2005 and the statement made by the then Finance Minister, while introducing this amendment in Section 45(1) of the Act, held in favour of the Directorate on the said issue. It is submitted that the relevant paras of the said judgment are **75, 91, 106, 109, 110, 111, 112, 113, 114, 115, 117, 118, 119, 121, 122, 123, 124.**

92. Similarly the Hon'ble High Court of Delhi at New Delhi in ***Vakamulla Chandrashekhar v. Enforcement Directorate & Anr.*, W.P. (CRL) 852 of 2017 [KS Compilation – Vol IV – 77 - 117]**, while interpreting Section 45 of PMLA in light of the question of cognizability of the offence under Section 3, held in favour of the Directorate. The relevant paragraphs are **24, 26, 29, 31, 32, 43, 47, 54, 55.**

93. Subsequently, in the said limited context, this Hon'ble Court in ***Ashok Munilal Jain And Anr. V. Assistant Director, Directorate Of Enforcement*, CRL A NO. 566 of 2017 [KS Compilation – Vol III – 97-99]**, this Hon'ble Court, was confronted with a situation wherein an accused was arrested under PMLA and subsequently filed application for statutory bail when the period of 60 days of judicial custody of the appellant was over and no complaint was filed. He, thus, invoked the provisions of Section 167 (2) of the Cr.P.C. while requesting for statutory bail. The Trial Court and the Hon'ble High Court had dismissed the application taking the view that the provisions of Section 167(2) Cr.P.C. are not applicable to cases arising out of PMLA. It is submitted that it was in that context, a short order was passed placing reliance on ***Deepak Mahajan* supra [SGI Compilation – Volume VIII – pg. 3922-3962]**, stating that Section 167 Cr.P.C. would apply to PMLA proceedings. It is submitted that the it is admitted that considering the constitutional mandate of magisterial intervention within 24 hrs of arrest, Section 167 Cr.P.C. would apply.

94. The Petitioner's have erroneously placed reliance on the order of this Hon'ble Court in ***Ashok Munilal Jain* supra [KS Compilation – Vol III – 97-99]** to import the complete Code of the Cr.P.C. ignoring the fact that the observations of this Hon'ble Court were limited to the applicability of Section 167(2) Cr.P.C. in the given fact situation, especially when the said issue had already been decided by this Hon'ble Court in the case of ***Deepak Mahajan* supra [SGI Compilation – Volume VIII – pg. 3922-3962].**

Scope of clarificatory amendments

95. It is further submitted that the argument that the legislature intended the offences under PMLA to be non cognizable is also fallacious and it has been clarified by the legislature itself by way of clarificatory amendment of section 45 specifically stating '*For the removal of doubts, it is clarified that*'. It has been alleged that the amendment being carried out under section 45 are prospective in nature and does not make offences being investigated by the agency, prior to the said amendment, to be cognizable. It is submitted that it is a settled law

that all amendments are prospective and if such amendment is only clarificatory, the same would operate retrospectively. As narrated above, the intention of legislature as well as the law settled, the offences specified under PMLA are cognizable to the extent that the empowered officer does not require a warrant before exercising its power under section 19 as mentioned hereinabove. By way of an amendment being carried out, the intention is not to amend / modify the provisions of section 45 but only to clarify what had always been the intention and the settled law.

96. It is submitted that this Hon'ble Court in ***CIT* v. *Shelly Products*, (2003) 5 SCC 461 [SGI Compilation – Volume VIII – pg. 4036-4054]**, held as under :

> *"38. It was submitted that after 1-4-1989, in case the assessment is annulled the assessee is entitled to refund only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee. But before the amendment came into effect the position in law was quite different and that is why the legislature thought it proper to amend the section and insert the proviso. On the other hand the learned counsel for the Revenue submitted that the proviso is merely declaratory and does not change the legal position as it existed before the amendment. It was submitted that this Court in CIT v. Chittor Electric Supply Corpn. [CIT v. Chittor Electric Supply Corpn., (1995) 2 SCC 430] has held that proviso (a) to Section 240 is declaratory and, therefore, proviso (b) should also be held to be declaratory. In our view that is not the correct position in law. Where the proviso consists of two parts, one part may be declaratory but the other part may not be so. Therefore, merely because one part of the proviso has been held to be declaratory it does not follow that the second part of the proviso is also declaratory. However, the view that we have taken supports the stand of the Revenue that proviso (b) to Section 240 is also declaratory. We have held that even under the unamended Section 240 of the Act, the assessee was only entitled to the refund of tax paid in excess of the tax chargeable on the total income returned by the assessee. We have held so without taking the aid of the amended provision. It, therefore, follows that proviso (b) to Section 240 is also declaratory**. It seeks to clarify the law so as to remove doubts leading to the courts giving conflicting decisions, and in several cases directing the Revenue to refund the entire amount of income tax paid by the assessee where the Revenue was not in a position to frame a fresh assessment. Being clarificatory in nature it must be held to be retrospective, in the facts and circumstances of the case. It is well settled that the legislature may pass a declaratory Act to set aside what the legislature deems to have been a judicial error in the interpretation of statute. It only seeks to clear the meaning of a provision of the principal Act and make explicit that which was already implicit**."*

97. Further, this Hon'ble court in ***CIT* v. *Vatika Township (P) Ltd.*, (2015) 1 SCC 1 [SGI Compilation – Volume VIII – pg. 4055-4085]**, held as under :

> *"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 labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh [Principles of Statutory*

Interpretation, (13th Edn., LexisNexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:

'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, 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 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."

A similar opinion was reiterated recently by this Hon'ble Court in ***SBI v. V. Ramakrishnan*, (2018) 17 SCC 394 [SGI Compilation – Volume VIII – pg. 4086-4112]**.

98. Be that as it may, it has to be held that, even if one ignores the heading of Section 45, considering the totality of the provisions and the intent behind the Act and the amendment, the offence under the PMLA is cognizable to the extent as discussed above. Even otherwise, the said exercise may not be necessary considering the fact that the PMLA is a complete code and provides a separate procedure which may not necessarily be pigeon-holed in the straight jacket formula of "cognizable" or "non-cognizable" under the Cr.P.C.

99. The following comparative chart will assist this Hon'ble Court in juxtaposing provisions of CRPC viz. PMLA. :

Chapter XII of Cr.PC	PMLA
The investigation under Cr.PC has been defined in section 2(h) as under: *(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.*	The investigation under the PMLA is very different from the term investigation under Cr.PC as evident from section 2(1)(na) which is reproduced as under: *(na) "investigation" includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence.*
S. 154 – Information in cognizable cases	Information in form of copies of the FIR/ Chargesheet/ Prosecution Complaint of the offence mentioned in the schedule of the PMLA are obtained from the Law Enforcement Agency u/s 54 of the PMLA. The starting point of investigation cannot be in the nature of an FIR considering the fact the procedure prescribed by PMLA provides for complaint process. The investigative powers are not vested with the police and neither the ED office is a "police station". Therefore, there is an *implied exclusion*.
S. 155 – Information as to non-cognizable cases and investigation of such cases	Same as above. Implied exclusion. Further, the offence is clearly specially defined.
S. 156 – Police officer's power to investigate cognizable case	The power of officer of ED to investigate offence under PMLA is prescribed in Chapter V r/w s. 50 of PMLA.
S. 157 – Procedure for investigation	The procedure of investigation by the officer of ED is prescribed in Chapter V r/w S. 50 of PMLA.
S. 158 – Report how submitted	There exists no report in the nature of S. 157 and neither is there any jurisdictional magistrate therefore, S. 158 application is ousted. Since the investigation under the PMLA is initiated as sequel to FIR/Chargesheet/Prosecution Complaint filed by other Law Enforcement Agency, the Competent Court is aware of or has already taken cognizance of offence in the schedule of PMLA. Accordingly, the provisions of Section 158 are not applicable. After the completion of investigation, Prosecution Complaint is filed u/s 44 of PMLA before Special Court.
S. 159 – Power to hold investigation or preliminary inquiry	Power to hold investigation/inquiry by ED officials is stipulated under Chapter V of PMLA. There exists no jurisdictional magistrate under the PMLA.
S. 160 – Police officer's power to require attendance of witnesses	Section 50 of PMLA. Further, the PMLA investigations are nation wide in character and cannot be limited to CR.P.C. concepts of *police station* and their territorial jurisdiction.

Chapter XII of Cr.PC	PMLA
	The exception in the S. 50 of the PMLA makes a specific departure and declines to provide any specific reprieve to special category. Further, the power of S. 50 is also exercised on a far wider plane than S. 160 as the same is exercised even for regulatory or prevention functions of authorised officers.
S. 161 – Examination of witnesses by police	Section 50 of PMLA. Same as above.
S. 162 – Statements to police not to be signed: Use of statements in evidence	Section 50 of PMLA. Same as above.
S. 163 – No inducement to be offered	Section 50 of PMLA. Same a above.
S. 164 – Recording of confessions and statements	The statement recorded u/s 50 of PMLA is admissible as evident in Court of Law. The officers of the ED are not police officers. *See* Ramesh Chandra Mehta case.
S. 165 – Search by police officer	Section 17 & 18 of PMLA oust the applicability of the said provision.
S. 166 – When officer in charge of police station may require another to issue search-warrant	Section 17 & 18 of PMLA oust the applicability of the said provision.
S. 166-A – Letter of request to competent authority for investigation in a country or place outside India	Section 57 of the PMLA - Letter of request to a contracting State in certain cases ousts the applicability of the said provision.
S. 166-B – Letter of request from a country or place outside India to a Court or an authority for investigation in India	Section 58 of PMLA - Assistance to a contracting State in certain cases ousts the applicability of the said provision.
S. 167 – Procedure when investigation cannot be completed in twenty-four hours	Section 19 r/w Section 45 & 46 of PMLA. Section 167 will apply in a modified form – *See* Deepak Mahajan case.
S. 168 – Report of investigation by subordinate police officer	Not relevant - Chapter V of PMLA
S. 169 – Release of accused when evidence deficient	Section 19 r/w Section 45 of PMLA. However, similar powers may apply to the authorised officer.
S. 170 – Cases to be sent to Magistrate when evidence is sufficient	Section 19 r/w Section 45 of PMLA – PMLA case is a compliant case under the second proviso to sub-section 1of Section 45. Therefore, the question of police report or magistrate authorised under Cr.P.C. as mentioned in Section 170, does not arise.
S. 171 – Complainant and witnesses not to be required to accompany police office and not to be subjected to restraint	Not relevant. Chapter V of PMLA is sufficient.
S. 172 – Diary of proceedings in investigation	The file record is perused by the Ld. Special Judges while granting remand or for the purposes of bail.

Chapter XII of Cr.PC	PMLA
	After filing of compliant, all the relevant documents are supplied to the accused persons.
S. 173 – Report of police officer on completion of investigation	Section 44 of PMLA and 45 of the PMLA. However, Section 173(8), and the inherent power of *further investigation*, would apply.
S. 174 – Police to inquire and report on suicide, etc.	Not applicable
S. 175 – Power to summon persons	Section 50 of PMLA ousts the applicability of the said provision.
S. 176 – Inquiry by Magistrate into cause of death	Not applicable.

100. It is amply clear from careful comparison of provisions of Chapter XII of Cr.PC and provisions of PMLA with regards to information and power of investigation by the police authorities and officers of Enforcement Directorate that the specific provisions have been incorporated in PMLA for investigation, search & seizure, arrest and filing of Prosecution Complaint, accordingly, provisions contained in Chapter XII of Cr.PC shall not apply being inconsistent with the provisions of PMLA in this regard as provided in Section 65 of PMLA. The provisions of Section 167 falling in Chapter XII of Cr.PC are applicable to provisions of PMLA as specifically provided in Section 46 of PMLA. It is amply clear from the legal analysis of provisions contained in Chapter XII of Cr.PC and relevant provisions of PMLA that provisions of Chapter XII of Cr.PC do not apply to investigation into offences under PMLA except for exception as provided in Section 46 of PMLA that too for the proceedings before the Special Court.

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