

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.19042 OF 2022 (GM-RES)

BETWEEN:

HARSHA D.,
S/O LATE DODDANANJAIHA
AGED ABOUT 33 YEARS
FIRST DIVISIONAL CLERK
RECRUITMENT SECTION
CIT, BENGALURU - 560 001.

... PETITIONER

(BY SRI SANDESH J.CHOUTA, SR.ADVOCATE A/W
SRI ARUN G., ADVOCATE)

AND:

1. STATE BY HIGH GROUND POLICE STATION
BENGALURU - 560 001
REPRESENTED BY HCGP.
2. THE SUPERINTENDENT OF POLICE
FINANCIAL INTELLIGENCE UNIT(FIU)
CID, BENGALURU - 560 001
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
HIGH COURT COMPLEX
BENGALURU)

3. DIRECTORATE OF ENFORCEMENT
REPRESENTED BY ITS
ASSISTANT DIRECTOR
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
BENGALURU – 560 027
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
BENGALURU.

... RESPONDENTS

(BY SRI K.S.ABHIIJITH, HCGP FOR R1 & R2;
SRI MADHUKAR DESHPANDE, SPL.P.P. FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C.,PRAYING TO QUASH THE IMPUGNED ORDER DTD 14.09.2022 IN C.C.NO.25035/2022 PASSED BY THE 1ST ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU ANNEXURE-D IN SO FAR AS PETITIONER.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.09.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 14-09-2022 passed by the I Additional Chief Metropolitan Magistrate, Bengaluru in C.C.No.25035 of 2022 in a case

concerning offences punishable under Sections 34, 120B, 420, 465, 468 and 471 of the IPC.

2. Heard Sri Sandesh J.Chouta, learned senior counsel appearing for the petitioner, K.S. Abhijith, learned High Court Government Pleader for respondents 1 and 2 and Sri Madhukar Deshpande, learned Special Public Prosecutor appearing for respondent No.3.

3. *Shorn* of details, the facts in brief, are as follows:-

A crime comes to be registered in Crime No.48 of 2022 before the Chowk Police Station, Kalaburagi in which the petitioner is one of the accused. The same is transferred to the 2nd respondent, the Investigating Agency. Another crime comes to be registered in Crime No.60 of 2022 before the High Grounds Police Station against 34 persons in which petitioner is accused No.29. The latter crime was registered during the time when the earlier crime was under investigation. On 26.07.2022 the police filed charge sheet in Crime No.60 of 2022. The petitioner throughout has been in prison either concerning crime No.48 of 2022 or crime No.60 of 2022.

4. The issue in the case at hand is not with regard to merits of the matter concerning either of the crimes. What drives the petitioner to this Court is that on 30-08-2022 the 3rd respondent/ Directorate of Enforcement ('ED' for short) files an application under Section 50(3) of the Prevention of Money Laundering Act, 2002 ('the PMLA' for short) before the concerned Court i.e., the learned Magistrate in C.C.No.25035 of 2022 seeking permission to record written statement of five accused including the petitioner who are in judicial custody and to allow two officers of the ED with a laptop and a printer for the purpose of recording the statements and also sought a direction to the Jail Authorities to cooperate for recording of such statements. The petitioner filed his objections to the said application on 05-09-2022. The learned Magistrate considering both the application and the objection filed, allows the application and permits the ED to record the statements as was sought for in the application. It is this order of the learned Magistrate that drives the petitioner to this Court.

5. The learned senior counsel Sri Sandesh J.Chouta, appearing for the petitioner would contend that once an

Enforcement Case Information Report in ECIR No.ECIR/BGZO/68/2022 (for short 'ECIR') is registered all actions and any permission that is to be sought has to be before the Sessions Court as the competent Court or the designated Court to permit such application would only be the Special Court and the Special Court is the Sessions Court. The learned Magistrate could not have permitted recording of statement by his order, as the order is one without jurisdiction. He would place reliance upon the judgment of the co-ordinate Bench of this Court in **DR. MADHUKAR G.ANGUR v. ENFORCEMENT OF DIRECTORATE – Criminal Petition No.1189 of 2022 decided on 30th March, 2022**, the judgment of the Apex Court in the case of **HARSHAD S.MEHTA v. STATE OF MAHARASHTRA – (2001)8 SCC 257** and the judgment of the Apex Court in **A.R.ANTULAY v. R.S.NAYAK – AIR 1988 SC 1531** to buttress his submission.

6. On the other hand, the learned counsel representing ED Mr. Madhukar Deshpande would refute the submissions to contend that no doubt proceedings or trial will have to be conducted by the designated Court, but the petitioner could not have been

summoned by the ED for recording of the statement after registration of the crime as he is in judicial custody in C.C.No.25035 of 2022. Once he is in custody of the Court, an application has to be moved before the Court concerned which has passed order of judicial custody. Therefore, no fault can be found in the order passed by the learned Magistrate in permitting the ED to record statement of the petitioner and would rely on a judgment in the case of ***NIRANJAN SINGH v. PRABHAKAR RAJARAM KHAROTE – (1980) 2 SCC 559*** wherein the Apex Court considers what would be the meaning of custody, to buttress his submission.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

8. Before embarking upon the consideration of respective contentions on merit, I deem it appropriate to notice the statutory frame work of the PMLA. Section 2 of the PMLA deals with definitions. Section 2(1)(z) defines a 'Special Court' to mean a Court of Session designated as Special Court under sub-section (1) of Section 43. It is not in dispute that an ECIR is filed against the

petitioner and it is in furtherance of the said registration of the crime, statements of the petitioner are sought to be recorded by the respondent/ED to consider whether there is an offence made out against the petitioner for offences punishable under the PMLA. Now PMLA would mean offences punishable under Chapter II which deals with offence of money laundering. Chapter-II encompasses within itself Sections 3 and 4 of the PMLA. Sections 3 and 4 thereof read as follows:

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

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

- (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely—
 - (a) concealment; or
 - (b) possession; or
 - (c) acquisition; or
 - (d) use; or
 - (e) projecting as untainted property; or
 - (f) claiming as untainted property,

in any manner whatsoever;

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

4. Punishment for money-laundering.—Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine:

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."

It is to unearth whether the petitioner has indulged himself in acts that would become punishable under the aforesaid provisions of the PMLA an ECIR is registered. Section 43 of the PMLA reads as follows:

"43. Special Courts.—(1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under Section 4, by notification, designate, one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.—In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial."

(Emphasis supplied)

Section 43 directs constitution of a Special Court or a designated Court and such Court to be the Court of Session. Therefore, in terms of Section 43 for trying the offence punishable under the PMLA designated Court is the Court of Session. Section 44 of the PMLA reads as follows:

"44. Offences triable by Special Courts.—(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

(a) an offence punishable under Section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under Section 3, without the accused being committed to it for trial:

Provided that after conclusion of investigation, if no offence of money laundering is made out requiring filing of such complaint, the said

authority shall submit a closure report before the Special Court; or

- (c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.*
- (d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.*

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

- (i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;*
- (ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.*

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regard bail under Section 439 of the Code of Criminal Procedure, 1973 (2 of

1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under Section 43."

Section 44 deals with offences triable by Special Court. Special Court would mean the Court of Session. Section 44(1)(c) mandates that if the Court which has taken cognizance of a scheduled offence is other than the Special Court, it shall immediately commit the same to the Special Court. Section 50 of the PMIA reads as follows:

"50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—(1) The Director shall, for the purposes of Section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (a) *discovery and inspection;*
- (b) *enforcing the attendance of any person, including any officer of a reporting entity, and examining him on oath;*
- (c) *compelling the production of records;*
- (d) *receiving evidence on affidavits;*
- (e) *issuing commissions for examination of witnesses and documents; and*
- (f) *any other matter which may be prescribed.*

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to

produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

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

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

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

- (a) impound any records without recording his reasons for so doing; or*
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director.”*
(Emphasis supplied)

Section 50 empowers the authorities under the PMLA with regard to summons, production of documents and to give evidence. Sub-Section (3) of Section 50 directs that all persons so summoned shall be bound to attend in person or through authorized agents and shall be bound to state the truth upon any subject with respect

to which they are examined or make statements and produce documents as may be required. Therefore, the authority under the PMLA does have power to summon and record statement of witnesses in terms of Section 50 of the Act. Section 71 of the PMLA reads as follows:

"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.*

Section 71 of the PMLA makes the provisions of PMLA to have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. It is the interpretation of the aforesaid provisions that has become necessary in the case at hand.

9. The petitioner is in judicial custody concerning crime No.60 of 2022. Charge sheet has been filed and the petitioner continues to be in judicial custody and the matter is pending consideration before the Court of the learned Magistrate in C.C.No.25035 of 2022. The issue involved is the alleged scam with regard to recruitment of Police Sub-Inspectors in the year 2021. Huge cash flow is also alleged in the case at hand. It is, therefore, to get into the angle of

money laundering an ECIR comes to be registered against the petitioner. Pursuant to registration of ECIR, the authorities, as obtaining under Section 50 of the PMLA, sought to record the statements of the petitioner with regard to registration of crime. In terms of Section 50(2) of the PMLA which empowers the Director or an authority authorized for collection of evidence, the statements of the petitioner including others who are in judicial custody concerning C.C.No.25035 of 2022 are sought to be recorded. Therefore, the application was filed before the concerned Court. The application so filed before the concerned Court by the ED is titled "APPLICATION TO RECORD STATEMENTS UNDER SECTION 50(3) OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002" and the plea of the ED before the learned Magistrate is as follows:

"1. Shailendra Kumar Choubey, working as Assistant Director in the Directorate of Enforcement, Bengaluru begs leave to this Court to file this application to record statement of the respondent No.2/accused No.1. Respondent No.29/Accused No.28, Respondent No.31/ Accused No.30, Respondent No.32/Accused No.31 and Respondent No.28/Accused No.27 (who are under the judicial custody of this Hon'ble Court), by virtue of Section 50(2) & (3) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as an "Act"; for the sake of brevity), as such I am well conversant with the facts of the case from the office records.

2. *It is humbly submitted that the Applicant is the Investigating Officer and authorized to investigate cases under Section 48 & 49 of the PMLA, 2002.*

3. *It is respectfully submitted that the Applicant Department is the sole Investigation Agency under the Act and the main objects of the Act are to confiscate the movable and immovable properties which are proceeds of crime and involved in money laundering and also to punish the offenders of money laundering.*

4. *It is humbly submitted that the brief facts of the scheduled offence case are that High Grounds Police Station registered an FIR vide crime No.48/2022 against the above said accused persons under Section 120B, 409, 420, 465, 468, 471 r/w 34 of IPC, 1860. It is alleged that these accused were involved in the irregularities observed in Police Sub-Inspector Recruitment, 2021, Karnataka State Police Examination. These people have been actively involved in; the colluding with some candidates who used illegal means to get selection in the said examination. There were around 8 FIRs registered by various Police Stations against the candidates and Police authorities in the recruitment Cell."*

The afore-quoted title and the plea for filing the application would unmistakably indicate that the ED wanted to record statements under sub-sections (2) & (3) of Section 50 of the PMLA and it was described that the signatory to the application was the Investigating Officer who was authorized to investigate under Sections 48 and 49 of the PMLA. Sections 48 and 49 deal with authorities under the PMLA. Therefore, the intention of the Investigating Officer who was appointed to investigate into the ECIR so registered against the

petitioner and others was to record statements in terms of sub-sections (2) and (3) of Section 50. Therefore, the provisions of PMLA were invoked against the petitioner and it is during investigation where the offence under Sections 3 and 4 is made out the statements are sought to be recorded.

10. If the ED wants to invoke the provisions of the PMLA to discern the offence under Section 3 of the PMLA, the designated Court is the Court of Session alone which had the power to even consider any application emanating from the provisions of the PMLA as the offence *supra*, Section 43 *supra* and Section 71 clearly mean that the designate Court to try anything emanating from the PMLA is the Special Court and the Special Court is the Court of Session. Section 71 has overriding effect on any law. The petitioner may have been in custody concerning C.C.No.25035 of 2022 and the said custody is ordered by the learned Magistrate. Merely because custody is ordered by the learned Magistrate, he cannot be clothed with the powers of a Court of Session, which alone has the power to consider any application of the kind that was made before the learned Magistrate. The learned Magistrate was dealing with an

application filed under Section 50 of the PMLA. It was completely without jurisdiction for the learned Magistrate to have considered the application filed under Section 50 of the PMLA. It ought to have been placed before the concerned Court for taking permission to record the statements as it is trite that the Special Court can always have the power of the Magistrate and not the other way round since it touches upon the jurisdiction. PMLA mandates that anything emanating from the PMLA shall be considered only by the Special Court.

11. The answer to a question concerning jurisdiction, can be either a 'yes' or a 'no' and never be 'may be'. Since the unequivocal interpretation of the PMLA is that everything shall be placed before the Special Court, the application so filed under Section 50 of the PMLA could not have been placed before the learned Magistrate, notwithstanding the fact that the petitioner is in judicial custody concerning a case and the said custody is ordered by the learned Magistrate. The acts of the accused may result in several proceedings under the IPC, under special enactments or under any other law that would govern such accused and those

enactments may require the accused to be tried before a Special Court. If the offence alleged is amalgam of the offences under the IPC which is to be tried before a Magistrate and the other offences to be tried before a Special Judge, any proceedings that the prosecution wants to initiate under special enactment it shall be only before the Special Court. Reference being made to the judgments of the Apex Court in the cases of **HARSHAD S.MEHTA** (*supra*), **A.R.ANTULAY** (*supra*) and **VIJAY MADANLAL CHOUDHARY AND OTHERS v. UNION OF INDIA AND OTHERS**¹ in the circumstances becomes apposite. I deem it appropriate to notice the judgment in the case of **VIJAY MADANLAL CHOUDHARY** (*supra*) at the outset. The Apex Court, while considering entire spectrum of the PMLA and with regard to constitution of Special Courts, has held as follows:

"352. The expression "Special Court" has been defined in Section 2(1)(z), which in turn refers to Section 43. Section 43 reads thus:

"CHAPTER VII

SPECIAL COURTS

43. Special Courts.—(1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as

¹ **2022 SCC OnLine SC 929**

Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.—In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Criminal Procedure Code, 1973 (2 of 1974), be charged at the same trial."

353. *The Special Courts established under Section 43 of the 2002 Act are empowered to try the offences under the 2002 Act. Section 44 bestows that power in the Special Courts. The same reads thus:*

"44. Offences triable by Special Courts.—(1) *Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974),—*

(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial.

Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing

of such complaint, the said authority shall submit a closure report before the Special Court; or

- (c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.*
- (d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Criminal Procedure Code, 1973 (2 of 1974) as it applies to a trial before a Court of Session.*

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

- (i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;*
- (ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.*

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Criminal Procedure Code, 1973 (2 of

1974) and the High Court may exercise such powers including the power under clause (b) of subsection (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43."

354. This provision opens with a non-obstante clause making it clear that the dispensation provided therein is notwithstanding anything contained in the 1973 Code regarding the matters provided therein in relation to trials concerning offence of money-laundering to be conducted by the Special Court. This provision has undergone amendment vide Act 20 of 2005, Act 2 of 2013 and Finance (No. 2) Act, 2019. In the present set of matters, we are essentially concerned with the provision as obtaining after Act 2 of 2013 and the subsequent amendment vide Finance (No. 2) Act, 2019. To begin with, Clause (a) in sub-section (1) of Section 44, as existed prior to amendment Act 2 of 2013, stood thus:

"44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974),—

(a) the scheduled offence and offence punishable under Section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or."

355. Post amendment of 2013 and as applicable to this date, Clause (a) reads thus:

"44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974),—

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or;

- (a) *an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:
....”*

356. *The amendment of 2013 in fact clarifies the dispensation to be followed in regard to trials concerning offence of money-laundering under this Act and the trial in relation to scheduled offence including before the Special Court trying such (scheduled) offence. By virtue of this clause, the trials regarding the offence of money-laundering need to proceed before the Special Court constituted for the area in which the offence of money-laundering has been committed. In case the scheduled offence is triable by Special Court under the special enactment elsewhere, the provision, as amended, makes it amply clear that both the trials after coming into effect of this Act need to proceed independently, but in the area where the offence of money-laundering has been committed.*

357. *In that, the offence of money-laundering ought to proceed for trial only before the Special Court designated to try money-laundering offences where the offence of money-laundering has been committed. This is a special enactment and being a later law, would prevail over any other law for the time being in force in terms of Section 71 of the 2002 Act.”*

(Emphasis supplied)

The Apex Court holds that the offences falling under the PMLA shall be tried only by the Special Court that is the Court of Session and Section 71 of the PMLA has overriding effect over any other law for the time being in force.

12. It is now germane to notice the judgment of Seven Judge Bench of the Apex Court in the case of **A.R.ANTULAY v. R.S.NAYAK**² (*supra*). A Constitution Bench had directed the matter to be transferred to a High Court for conduct of enquiry. This order comes to be recalled by a Seven Judge Bench holding that the jurisdiction that is not conferred under the Act cannot be conferred even by the Court. The Apex Court in the said judgment holds as follows:

"7. The State Government on 15-1-1983, notified the appointment of Shri R.B. Sule as the Special Judge to try the offences specified under Section 6(1) of the 1952 Act. On or about 25-7-1983, it appears that Shri R.B. Sule, Special Judge discharged the appellant holding that a member of the Legislative Assembly is a public servant and there was no valid sanction for prosecuting the appellant.

8. On 16-2-1984, in an appeal filed by Respondent 1 directly under Article 136, a Constitution Bench of this Court held that a member of the Legislative Assembly is not a public servant and set aside the order of Special Judge Sule. Instead of remanding the case to the Special Judge for disposal in accordance with law, this Court suo motu withdrew the Special Cases No. 24/82 and 3/83 (arising out of a complaint filed by one P.B. Samant) pending in the Court of Special Judge, Greater Bombay, Shri R.B. Sule and transferred the same to the Bombay High Court with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court for holding the trial from day to day. These directions were given, according to the appellant, without any pleadings, without any arguments, without any such prayer from either side and without giving any opportunity to the appellant to

² **AIR 1988 SC 1531**

make his submissions before issuing the same. It was submitted that the appellant's right to be tried by a competent court according to the procedure established by law enacted by Parliament and his rights of appeal and revision to the High Court under Section 9 of the 1952 Act had been taken away.

... ..

14. *P.S. Shah, J. to whom the cases were referred to from D.N. Mehta. J. on 24-7-1986 proceeded to frame as many as 79 charges against the appellant and decided not to proceed against the other named co-conspirators. This is the order impugned before us. Being aggrieved by the aforesaid order the appellant filed the present Special Leave Petition (Cri) No. 2519 of 1986 questioning the jurisdiction to try the case in violation of the appellant's fundamental rights conferred by Articles 14 and 21 and the provisions of the Act of 1952. The appellant also filed Special Leave Petition (Cri) No. 2518 of 1986 against the judgment and order dated 21-8-1986 of P.S. Shah, J. holding that none of the 79 charges framed against the accused required sanction under Section 197(1) of the Code. The appellant also filed a Writ Petition No. 542 of 1986 challenging a portion of Section 197(1) of Code as ultra vires Articles 14 and 21 of the Constitution.*

... ..

19. *In this appeal two questions arise, namely, (1) whether the directions given by this Court on 16-2-1984 in R.S. Nayak v. A.R. Antulay [(1984) 2 SCC 183, 243; 1984 SCC (Cri) 172; (1984) 2 SCR 495, 557] withdrawing the Special Case No. 24 of 1982 and Special Case No. 3 of 1983 arising out of the complaint filed by one Shri P.B. Samant pending in the Court of Special Judge, Greater Bombay, Shri R.B. Sule, and transferring the same to the High Court of Bombay with a request to the Chief Justice to assign these two cases to a sitting Judge of the High Court, in breach of Section 7(1) of the Act of 1952 which mandates that offences as in this case shall be tried by a Special Judge only thereby denying at least one right of appeal to the appellant was violative of Articles 14 and 21 of the Constitution and whether such directions were at all valid or legal, and (2) if such directions were not at all valid or legal in view of the order dated 17-4-1984 referred to hereinbefore, is this appeal sustainable or the grounds therein justifiable in these*

proceedings. In other words, are the said directions in a proceeding inter partes binding even if bad in law or violative of Articles 14 and 21 of the Constitution and as sued are immune from correction by this Court even though they cause prejudice and do injury? These are the basic questions which this Court must answer in this appeal.

... ..

22. *The only question with which we are concerned in this appeal is, whether the case which is triable under the 1952 Act only by a Special Judge appointed under Section 6 of the said Act could be transferred to the High Court for trial by itself or by this Court to the High Court for trial by it. Section 406 of the Code deals with transfer of criminal cases and provides power to this Court to transfer cases and appeals whenever it is made to appear to this Court that an order under this section is expedient for the ends of justice. The law provides that this Court may direct that any particular case or appeal be transferred from one High Court to another High Court or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court. Equally Section 407 deals with the power of the High Court to transfer cases and appeals. Under Section 6 of the 1952 Act, the State Government is authorised to appoint as many Special Judges as may be necessary for such area or areas for specified offences including offences under the Act. Section 7 of the 1952 Act deals with cases triable by Special Judges. The question, therefore, is whether this Court under Section 406 of the Code could have transferred a case which was triable only by a Special Judge to be tried by the High Court or even if an application had been made to this Court under Section 406 of the Code to transfer the case triable by a Special Judge to another Special Judge could that be transferred to a High Court, for trial by it. It was contended by Shri Rao that the jurisdiction to entertain and try cases is conferred either by the Constitution or by the laws made by Parliament. He referred to us the powers of this Court under Articles 32, 131, 137, 138, 140, 142, 145(1) of the Constitution. He also referred to Entry 77 of List I of the Constitution which deals with the constitution of the courts. He further submitted that the appellant has a right to be tried in accordance with law and no procedure which will deny the equal protection of law*

can be invented and any order passed by this Court which will deny equal protection of laws would be an order which is void by virtue of Article 13(2) of the Constitution. He referred us to the previous order of this Court directing the transfer of cases to the High Court and submitted that it was a nullity because of the consequences of the wrong directions of this Court. The enormity of the consequences warranted this Court's order being treated as a nullity. The directions denied the appellant the remedy by way of appeal as of right. Such erroneous or mistaken directions should be corrected at the earliest opportunity, Shri Rao submitted.

... ..

24. *Section 7(1) of the 1952 Act creates a condition which is sine qua non for the trial of offences under Section 6(1) of the said Act. The condition is that notwithstanding anything contained in the Code of Criminal Procedure or any other law, the said offences shall be triable by Special Judges only. (emphasis supplied). Indeed conferment of the exclusive jurisdiction of the Special Judge is recognised by the judgment delivered by this Court in A.R. Antulay v. Ramdas Srinivas Nayak [(1984) 2 SCC 500: 1984 SCC (Cri) 277: (1984) 2 SCR 914] where this Court had adverted to Section 7(1) of the 1952 Act and at p. 931 (SCC p. 514) observed that Section 7 of the 1952 Act conferred exclusive jurisdiction on the Special Judge appointed under Section 6 to try cases set out in Sections 5(1)(a) and 6(1)(b) of the said Act. The court emphasised that the Special Judge had exclusive jurisdiction to try offences enumerated in Section 6(1)(a) and (b). In spite of this while giving directions in the other matter, that is, R.S. Nayak v. A.R. Antulay [(1984) 2 SCC 183, 243: 1984 SCC (Cri) 172: (1984) 2 SCR 495, 557] this Court directed transfer to the High Court of Bombay the cases pending before the Special Judge. It is true that Section 7(1) and Section 6 of the 1952 Act were referred to while dealing with the other matters but while dealing with the matter of directions and giving the impugned directions, it does not appear that this court kept in mind the exclusiveness of the jurisdiction of the Special Court to try the offences enumerated in Section 6.*

... ..

59. *Here the appellant has a further right under Article 21 of the Constitution — a right to trial by a Special Judge*

under Section 7(1) of the 1952 Act which is the procedure established by law made by the Parliament, and a further right to move the High Court by way of revision or first appeal under Section 9 of the said Act. He has also a right not to suffer any order passed behind his back by a court in violation of the basic principles of natural justice. Directions having been given in this case as we have seen without hearing the appellant though it appears from the circumstances that the order was passed in the presence of the counsel for the appellant, these were bad.

... ..

80. *In giving the directions this Court infringed the constitutional safeguards granted to a citizen or to an accused and injustice results therefrom. It is just and proper for the court to rectify and recall that injustice, in the peculiar facts and circumstances of this case."*

The Apex Court in the case of **HARSHAD S.MEHTA v. STATE OF MAHARASHTRA**³ (*supra*) has held as follows:

"Criminal courts are normally constituted under the provisions of the Criminal Procedure Code. Section 6 of the Code of Criminal Procedure, 1973 (for short "the Code") provides for the classes of criminal courts. In addition to the provisions contained in the Code or the old Code of 1898, from time to time, enactments have been passed providing that in respect of certain offences, there will be a Special Court manned by persons having specified qualifications. In the present appeals, we are concerned with such an enactment, namely, the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 ("the Act" for short). The passing of the Act was preceded by an Ordinance which was promulgated on 6-6-1992.

... ..

6. *The Act has an overriding effect as provided in Section 13 which, inter alia, stipulates that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in*

³ (2001)8 SCC 257

force. Section 14 is the rule-making power of the Central Government. Section 15 repeals the Ordinance.

... ..

22. *The Special Court may not be a criminal court as postulated by Section 6 of the Code. All the same, it is a criminal court of original jurisdiction. On this count the doubt, if any, stands resolved by the decision of the Constitution Bench of this Court in A.R. Antulay v. Ramdas Srinivas Nayak [(1984) 2 SCC 500 (p. 527, para 27) : 1984 SCC (Cri) 277] . In Antulay case [(1984) 2 SCC 500 (p. 527, para 27) : 1984 SCC (Cri) 277] the Constitution Bench said that shorn of all embellishment, the Special Court is a court of original criminal jurisdiction and to make it functionally oriented some powers were conferred by the statute setting it up and except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hidebound by the terminological status description of Magistrates or a Court of Session. Under the Code, it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied.*

... ..

62. *Our conclusion, therefore, is that the Special Court established under the Act is a court of exclusive jurisdiction. Sections 6 and 7 confer on that court wide powers. It is a court of original criminal jurisdiction and has all the powers of such a court under the Code including those of Sections 306 to 308."*

A Three Judge Bench of the Apex Court in the case of **HARSHAD S.MEHTA** followed the judgment in the case of **A.R.ANTULAY** (*supra*) to hold, if a Special Court is created under the provisions of a special enactment, the proceedings falling under that enactment shall be held only before the Special Court. For this purpose the Apex Court holds that the Special Court enjoys all the powers of the

court of original jurisdiction and it holds a dual capacity and powers of both the Magistrate and the Court of Session depending upon the stage of the case.

13. In the light of the statutory frame work of the PMLA and the application filed under Section 50 of the Act, this Court is of the considered view that the application was not maintainable before the learned Magistrate, since the Court did not have the power to direct recording of statements for it to become a record under the PMLA, the order which is passed by the Court which did not have a jurisdiction to even consider any application under the PMLA, is rendered unsustainable. There can be no qualm about the principles laid down in the judgment rendered in the case of **NIRANJAN SINGH** (*supra*) relied on by the learned counsel representing the ED to mean what is custody, but the judgment is inapplicable to the facts of the case at hand as it does not deal with issues concerning jurisdiction. Therefore, in view of the preceding analysis, the order passed on the application by the learned Magistrate requires appropriate interference and is to be consequently obliterated.

14. For the aforesaid reasons, I pass the following:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 14.09.2022 passed by the I Additional Chief Metropolitan Magistrate, Bengaluru in C.C.No.25035 of 2022 stands quashed.
- (iii) The 3rd respondent - Enforcement Directorate is reserved liberty to file an application of the kind that it has filed before the learned Magistrate, before the Special Court, which shall deal with it in accordance with law.

**Sd/-
JUDGE**

bkp
CT:MJ