



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

CRIMINAL APPEAL No(s). 2221-2222 OF 2023

ABHISHEK BANERJEE & ANR.

...APPELLANT(S)

VERSUS

DIRECTORATE OF ENFORCEMENT

...RESPONDENT(S)

J U D G M E N T

BELA M. TRIVEDI, J.

- 1.** Both these Appeals are arising out of the Common Impugned Order dated 11.03.2022 passed by the High Court of Delhi in W.P (Crl.) No. 1808 of 2021 and Crl. M.C. No. 2442 of 2021, filed by the Appellants (Original Petitioners), whereby the High Court has dismissed the same.
- 2.** The Writ Petition (Crl.) No. 1808 of 2021 was filed by the Appellants - Abhishek Banerjee and Rujira Banerjee seeking quashing of the Summons dated 10.09.2021 issued to them by the Respondent – ED under Section 50 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the “PMLA”), and seeking further direction

against the Respondent not to issue any Summons under Section 50 of the said Act to the Appellants for their appearance in New Delhi, rather than their hometown/ place of domicile i.e. Kolkata. The CrI. M.C. No. 2442 of 2021 was filed by the Appellant - Rujira Banerjee seeking quashing of the Complaint dated 13.09.2021 filed by the respondent-ED against her for the offence under Section 174 of India Penal Code (IPC), and for quashing the Order dated 18.09.2021 passed by the Chief Metropolitan Magistrate (CMM), Patiala House, New Delhi taking cognizance of the complaint, as also the Order dated 30.09.2021 summoning her, passed by the said Court.

- 3.** The facts in the nutshell are that an FIR/R.C. bearing No. RC0102020A0022 came to be registered by the CBI, ACB, Kolkata on 27.11.2020 for the offences under Section 120B and 409 of IPC and Section 13(2) r/w 13(1)(a) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "PC Act"), in respect of alleged illegal excavation and theft of Coal taking place in the leasehold areas of Eastern Coalfields Limited (ECL) by one Anup Majee *alias* Lala with the active connivance of certain employees of ECL. Based on the said FIR, on 28.11.2020, an ECIR bearing No. 17/HIU/2020 came to be registered by the Respondent at their Head Investigative Unit situated at New Delhi.

- 4.** During the course of investigation of the FIR in respect of theft of Coal and illegal excavation being done by the criminal elements in the leasehold area of ECL, a large number of vehicles/ equipments used in the illegal coal mining and its transportation were seized. It was also found that the said case involved money laundering to the tune of Rs. 1300 Crores. According to the Respondent – ED one of the accused Vikas Mishra was arrested on 16.03.2021 and another accused Inspector Ashok Mishra of Bankura Police Station was arrested on 03.04.2021, who had become part of illegal Coal mafia and had helped in laundering several hundred crores of rupees. It was also found during the course of investigation that Inspector Ashok Kumar Mishra had allegedly received Rs.168 crores in just 109 days from the co-accused Anup Majee, to be delivered to his political bosses including co-accused Vinay Mishra. The said Rs.168 crores were allegedly transferred through vouchers to Delhi and Overseas.
- 5.** On 22.07.2021, the Respondent issued Summons to the Appellant No.1 under Section 50 of PMLA seeking his personal appearance on 03.08.2021 in New Delhi with the documents sought for. Again on 04.08.2021, another Summons were issued to the Appellant No.1 seeking the same documents as sought in Summons dated 22.07.2021 for remaining present on 12.08.2021 in New Delhi. The Appellant No.2

was also issued Summons on 04.08.2021 under Section 50 of PMLA for her personal appearance in New Delhi on 13.08.2021 along with the documents/records stated in the said Summons. Both the Appellants did not remain present as directed and furnished their respective replies on 12.08.2021 seeking time to comply with the said Summons. The Respondent again issued Summons on 18.08.2021 requiring the Appellant No.1 to remain present in New Delhi on 06.09.2021 and Appellant No.2 to remain present in New Delhi on 01.09.2021. The Appellant No.2 replied to the Summons dated 18.08.2021 requesting the Respondent to examine her at Kolkata as there was a functional office of the Respondent in Kolkata and the alleged cause of action had arisen in West Bengal. The Appellant No.1 in due compliance to the Summons dated 18.08.2021 appeared before the Respondent – ED on 06.09.2021 at New Delhi, however he was again issued Summons on the same day seeking his personal appearance along with the documents in New Delhi on 08.09.2021. The Appellant No.1 did not appear before the respondent however, submitted a reply on 08.09.2021 requesting for four weeks' time to collect and collate the documents sought. The Appellant No.1 was further served with another Summons dated 10.09.2021 seeking his appearance in New Delhi on 21.09.2021. The said summons came to be challenged by the appellants by filing the W.P. (CrI.) No.1808/2021 before the High Court.

- 6.** On 13.09.2021, the Respondent filed a Complaint against the Appellant No.2 in the Court of Chief Metropolitan Magistrate, Patiala House, New Delhi under Section 190 (1)(a) r/w Section 200 Cr.P.C. r/w Section 63(4) PMLA, alleging the commission of the offence under Section 174 of IPC for non-compliance of the Summons dated 04.08.2021 and 18.08.2021. The said Court vide the Order dated 18.09.2021 took cognizance of the impugned offence and issued Summons to the Appellant No.2 for her personal appearance on 30.09.2021. The Appellant No.2 on 30.09.2021 appeared virtually and sought exemption from personal appearance. The Learned CMM passed an Order allowing the exemption application for that day only, and directed the Appellant No.2 to remain personally present before the Court on 12.10.2021. The said complaint filed by the respondent and the said orders passed by the CMM Court came to be challenged by the Appellant Rujira by filing the Crl. M.C No. 2442 of 2021 before the High Court.
- 7.** As stated earlier, both the W.P. (Crl.) No.1808/2021 and Crl. M.C. No.2442/2021 came to be dismissed by the High Court vide the impugned order.
- 8.** The Learned Senior Counsel Mr. Kapil Sibal, appearing for the Appellant No.1 – Abhishek Banerjee made lengthy submissions, the crux of which may be stated as under: -

- i. Section 50 of the PMLA merely indicates the substantive power of ED to summon but does not provide the procedure for exercise of such power.
- ii. The procedure relating to territoriality of investigation, or power to summon sick, or infirm/ women/ children and record their statements has not been provided under Section 50 PMLA, as it is provided under Section 160 and 161 Cr.P.C.
- iii. Power without guidance for manner in which it is to be exercised could not be said to be fair, just and reasonable procedure established by law under Article 21 of the Constitution.
- iv. A combined reading of Section 4(2) Cr.P.C. and Section 65 PMLA would show that the application of the Code is not barred as long as the provisions of the Code are consistent with the PMLA.
- v. The Judgment of this Court in ***Vijay Madanlal Choudhary and Others vs. Union of India and Others***¹ has not dealt with the issue of procedure for summoning under Section 50 of the PMLA.
- vi. The Cr.P.C. provides that the existence of the territorial nexus to the commission of a crime is a jurisdictional threshold for the exercise of powers of investigation by a police officer. However, the Respondent – ED has not demonstrated as to how it could be

¹ (2022) SCC OnLine SC 929

prejudiced by calling the Appellant No.1 to its office in Kolkata where the ED has the Zonal Office.

- vii. The Department of Revenue, Ministry of Finance has issued administrative instructions consistent with Section 51 of PMLA that demarcate the specific territorial jurisdiction of various Zonal Offices of the ED. The said instructions must be strictly complied with by the ED in consonance with Article 21 of the Constitution of India.
- viii. The Appellant No.1 is a permanent resident of Kolkata and being Member of Parliament has a residence in Delhi, which however does not alter his permanent residence at Kolkata.
- ix. Section 91 of Cr.P.C. only deals with summons for production of documents, whereas the summons issued to the Appellant No.1 under PMLA are for personal appearance before the Respondent at New Delhi is nothing but an abuse of process of law.

9. In addition to the above submissions, Learned Senior Counsel Mr. Abhishek Manu Singhvi along with Learned Senior Counsel Mr. Gopal Sankaranarayanan appearing for the Appellant No.2 broadly made following submissions: -

- i. The Appellant No.2 has been summoned to appear in New Delhi despite she being a home maker and a mother of two children. The ED has created Zonal Offices and has an office at Kolkata.

Therefore, summoning the Appellant No.2 in Delhi is illegal and reeks mala fide.

- ii. The Appellant No.2 is neither an accused in the predicate offence nor in the money laundering offence.
- iii. Protection of woman provided under Section 160 of Cr.P.C would be applicable to the PMLA also.
- iv. Section 65 of PMLA makes provisions of Cr.P.C. applicable in so far as they are not inconsistent with the provisions of PMLA with regard to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the said Act. Therefore, in the absence of any specific procedure for summoning of witnesses the Cr.P.C. will apply.
- v. Article 21 of the Constitution provides that a person's life and liberty can be curtailed by State only in accordance with the procedure established by law, and therefore the procedure for Summons curtailing the right of the Appellant No.2 to life and liberty must be just and reasonable.

10. The Learned Senior Counsel, Mr. S.V. Raju also made elaborate submissions on behalf of the Respondent – ED which may be summarized as under: -

- i. Section 91 Cr.P.C. neither encompasses any territorial jurisdictional limit nor does it contain any proviso for women, minors or elderly

akin to Section 160 Cr.P.C. A police officer has to resort to Section 91 Cr.P.C. to mandate the provision of any document. Hence, Section 91 Cr.P.C. cannot be equated with the powers under Section 50 of PMLA.

- ii. Section 160 Cr.P.C. applies to a Police Officer who is making an investigation under Chapter XII of Cr.P.C., whereas the process envisaged by Section 50 of PMLA is in the nature of an inquiry and is not an Investigation in the strict sense of the term as held in case of ***Vijay Madanlal*** (supra).
- iii. ED has the power to summon any person whose attendance is considered necessary whether to give evidence or to produce any record as contemplated in Section 50 of the PMLA. A statement made under Section 50 is admissible in evidence, whereas the statement made under Section 161 is inadmissible as provided under Section 162 Cr.P.C.
- iv. There are stark inconsistencies between Section 50 PMLA and Section 160 Cr.P.C., and therefore Section 160 Cr.P.C would not apply to the proceedings under Section 50 of PMLA.
- v. The procedure to exercise power under Section 50 PMLA is laid down in the Rules called the Prevention of Money Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority,

Impounding and Custody of Records and the Period of Retention) Rules, 2005.

- vi. The Appellant No.1 had attempted to mislead the Court by suppressing the fact that he had residence in New Delhi also.
- vii. The statement made under Section 50 of PMLA would not infringe any fundamental right of the person contained in Article 20(3) inasmuch as the person making the statement is not an accused at the time when the statement under Section 50 is recorded.
- viii. As regards territorial jurisdiction, it is submitted in the alternative that as per the case of ED, the proceeds of crime to the tune of Rs.168 Crores were transferred through vouchers to Delhi and Overseas, and therefore, there was adequate nexus with the territory of Delhi with the alleged offence. Even a prosecution complaint could have been filed in Delhi, which would be consistent with the law laid down by this Court in ***Rana Ayyub vs. Directorate of Enforcement***².
- ix. The Regional Offices created in the Directorate of Enforcement are for administrative convenience and do not in any manner limit the

² (2023) 4 SCC 357

scope of enquiry of those concerned offices or officers, if the offence of money laundering spreads over multiple States.

- x. Section 5 r/w Section 4 (2) of Cr.P.C. itself contemplates that nothing contained in the Code of 1973 would apply or affect any special law in force regulating the manner of place of investigation, inquiring into or dealing with such special offences.
- xi. There was no illegality in summoning the Appellant No.2 to New Delhi, as according to the ED the proceeds of crime had travel to New Delhi, which would be the area in which part of the offence has been allegedly committed.
- xii. Section 50 of PMLA is gender neutral as it does not make any distinction between a man and a woman. The Court cannot carve out an exception in favour of women in Section 50, when there is none. Whenever the legislature felt the need to carve out an exception in favour of women, it has done so as evident from the proviso to Section 45 of PMLA. Therefore, there cannot be any presumption that a casus omissus exists in Section 50.

11. For the sake of convenience, let us refer to some of the provisions of Cr.P.C and PMLA, relevant for the purpose of deciding these Appeals, as also relied upon by the learned counsels for the parties.

Relevant Provisions of Cr.P.C.:

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 or 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.

91. Summons to produce document or other thing. —

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

160. Police officer's power to require attendance of witnesses. —

(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person [under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.”

Relevant Provisions of PMLA:

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 banking company or a financial institution or a company, 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 Director.

51. Jurisdiction of Authorities. —

(1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this Act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely: —

(a) territorial area;

(b) classes of persons;

(c) classes of cases; and

(d) any other criterion specified by the Central Government in this behalf

63. Punishment for false information or failure to give information, etc.—

(1) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which

may extend to two years or with fine which may extend to fifty thousand rupees or both.

(2) If any person,—

(a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act; or

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign; or

(c) to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure.

(3) No order under this section shall be passed by an authority referred to in sub-section (2) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

(4) Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code (45 of 1860).

65. Code of Criminal Procedure, 1973 to apply. —The provisions of the Code of Criminal Procedure, 1973 (2 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.

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.

12. In exercise of the powers conferred by sub-Section (1) read with clause

(a), clause (m), clause (n), clause (o), clause (pp) and clause (w) of sub-section (2) of Section 73 of the PMLA, 2002, the Central Government

has also framed the Rules called “the Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005”. As per Rule 11 of the said Rules, the Summoning Officer, while exercising the powers under sub-section (2) and (3) of Section 50 of the PMLA, has to issue Summons in Form V, appended to the said Rules. Rule 11 of the said Rules reads as under: -

“Rule 11: - Forms of records. - The Summoning Officer shall, while exercising powers under sub-sections (2) and (3) of Section 50 of the Act, issue summons in Form V appended to these rules.”

13. At the outset, it may be noted that as well settled by now, the provisions of PMLA are not only to investigate into the offence of money laundering but more importantly to prevent money laundering and to provide for confiscation of property derived from or involved in money laundering and the matters connected therewith and incidental thereto. As held by the Three-Judge Bench in *Vijay Madanlal* (supra), the PMLA is a self-contained Code and the dispensations envisaged thereunder, must prevail in terms of Section 71 thereof, which predicates that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, which includes provisions of the Cr.P.C. The Section 65 of the Act

predicates that the provisions of the Cr.P.C. shall apply insofar as they are not inconsistent with the provisions of the PMLA in respect of arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act. It is pertinent to note that Section 4(2) of the Code states that 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 investigating, inquiring into, trying or otherwise dealing with such offences. Further, Section 5 of the Code states that nothing contain in the Code shall, in absence of 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. Thus, having regard to the conjoint reading of Section 71 and Section 65 of the PMLA as also Section 4(2) and Section 5 of the Code, there remains no shadow of doubt that the provisions of PMLA will have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, including the provisions of the Cr.P.C.

14. Though, it was sought to be vehemently submitted by the learned counsels for the appellants that the sweep of Section 160 of Cr.P.C. would extend to summoning any person irrespective of whether that

person is an accused of that offence or a mere witness, the said submission deserves to be discarded outrightly in view of the specific observations made by the three-Judge Bench in **Vijay Madanlal**, to the effect that the provisions of Chapter XII of the Code (under which Section 160 falls) do not apply in all respects to deal with information derived relating to the commission of money laundering offence much less investigation thereof. The precise observations made by the Court in **Vijay Madanlal**, while considering the issue, whether an ECIR could be equated with an FIR under the 1973 Code or not, are reproduced as under: -

“456.... Considering the scheme of the 2002 Act, though the offence of money-laundering is otherwise regarded as cognizable offence (cognizance whereof can be taken only by the authorities referred to in Section 48 of this Act and not by jurisdictional police) and punishable under Section 4 of the 2002 Act, special complaint procedure is prescribed by law. This procedure overrides the procedure prescribed under 1973 Code to deal with other offences (other than money-laundering offences) in the matter of registration of offence and inquiry/investigation thereof. This special procedure must prevail in terms of Section 71 of the 2002 Act and also keeping in mind Section 65 of the same Act. In other words, the offence of money-laundering cannot be registered by the jurisdictional police who is governed by the regime under Chapter XII of the 1973 Code. The provisions of Chapter XII of the 1973 Code do not apply in all respects to deal with information derived relating to commission of money-laundering offence much less investigation thereof. The dispensation regarding prevention of money-laundering, attachment of proceeds of crime and inquiry/investigation of offence of money laundering upto filing of the complaint in respect of offence under Section 3 of the 2002 Act is fully governed by the provisions of the 2002 Act itself. To wit, regarding survey, searches, seizures, issuing summons, recording of statements of concerned persons and calling upon production of documents, inquiry/investigation, arrest of persons involved in the offence of money-laundering including bail and

attachment, confiscation and vesting of property being proceeds of crime. Indeed, after arrest, the manner of dealing with such offender involved in offence of money-laundering would then be governed by the provisions of the 1973 Code - as there are no inconsistent provisions in the 2002 Act in regard to production of the arrested person before the jurisdictional Magistrate within twenty-four hours and also filing of the complaint before the Special Court within the statutory period prescribed in the 1973 Code for filing of police report, if not released on bail before expiry thereof.”

15. In view of the above, it is abundantly clear that the dispensation regarding Prevention of Money Laundering, Attachment of Proceeds of Crime, and Inquiry/Investigation of offence of Money Laundering including issuing summons, recording of statements, calling upon persons for production of documents etc. upto filing of the Complaint in respect of offence under Section 3 of PMLA is fully governed by the provisions of the said Act itself. The jurisdictional police who is governed by the regime of Chapter XII of the Code, can not register the offence of money laundering, nor can investigate into it, in view of the special procedure prescribed under the PMLA with regard to the registration of offence and inquiry/investigation thereof, and that the special procedure must prevail in terms of Section 71 of the PMLA.

16. Apart from the fact that Section 50 is a gender neutral, as it does not make any distinction between a man and a woman, there are glaring inconsistencies between the provisions contained in Section 50 of PMLA and Section 160/161 of Cr.P.C. The Chapter XII of Cr.P.C.

pertains to the “Information to the Police and their Powers to Investigate”. Section 160 which falls under Chapter XII empowers the Police Officer making an investigation under the said Chapter to require any person to attend within the limits of his own or adjoining station who, from the information given or otherwise appears to be acquainted with the facts and circumstances of the case, whereas, the process envisaged by Section 50 of the PMLA is in the nature of an inquiry against the proceeds of crime and is not “Investigation” in strict sense of the term for initiating prosecution; and the Authorities referred to in Section 48 of PMLA are not the Police Officers as held in **Vijay Madanlal**. It has been specifically laid down in the said decision that the statements recorded by the Authorities under Section 50 of PMLA are not hit by Article 20(3) or Article 21 of the Constitution, rather such statements recorded by the authority in the course of inquiry are deemed to be the Judicial proceedings in terms of Section 50(4), and are admissible in evidence, whereas the statements made by any person to a Police Officer in the course of an investigation under Chapter XII of the Code could not be used for any purpose, except for the purpose stated in the proviso to Section 162 of the Code. In view of such glaring inconsistencies between Section 50 PMLA and Section 160/161 Cr.P.C, the provisions of Section 50 PMLA would prevail in terms of Section 71 read with Section 65 thereof.

17. So far as the procedure to be followed by the Summoning Officer while exercising the powers under sub-section (2) and (3) of Section 50 of the PMLA is concerned, it is pertinent to note that Rule 11 of the said Rules 2005, requires the Summoning Officer to follow the procedure as prescribed therein, i.e., to issue Summons in Form V appended to the said Rules. The said prescribed Form V requires Summoning Officer to mention not only the Name, Designation and Address of the Summoning Officer but also the details of the persons summoned as also the documents sought therein. The foot note of Form V also mentions that the proceedings shall be deemed to be judicial proceedings within the meaning of Section 193 and Section 228 of the IPC, and if the person summoned fails to give evidence as mentioned in the Schedule, he would be liable to penal proceedings under the Act. Thus, there being specific procedure prescribed under the Statutory Rules of 2005 for summoning the person under sub-sections (2) and (3) of Section 50 of the Act, the same would prevail over any other procedure prescribed under the Code, particularly the procedure contemplated in Section 160/161, as also the procedure for production of documents contemplated in Section 91 of the Code, in view of the overriding effect given to the PMLA over the other Acts including the Cr.P.C. under Section 71 r/w Section 65 of the PMLA.

18. The submission made on behalf of Learned Counsels for the Appellants that the conferment of power upon the Authority under Section 50 of PMLA excluding the procedural safeguards would be contrary to the standard of “procedure established by law” under Article 21 of the Constitution, is also thoroughly misconceived. The validity of Section 50 was sought to be challenged in *Vijay Madanlal* on the ground of being violative of Article 20(3) and Article 21 of the Constitution and the Court upholding the validity observed as under: -

“**425.** Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression “proceeding” in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act....”

426 to 430.....

431. In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a

prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money laundering. If the statement made by him reveals the offence of money -laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20 (3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.”

19. The above ratio laid down in *Vijay Madanlal* clinches the contentions raised by the learned counsels for the appellants with regard to the provisions of Section 50 being violative of Article 20(3) or Article 21 of the Constitution, and we need not further elaborate the same, nor do we need to deal with the decisions of this Court on the said issue which

have already been dealt with in ***Vijay Madanlal***. Suffice it to say that Section 50 enables the authorized Authority to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of the proceedings under the Act, and that the persons so summoned is bound to attend in person or through authorized agent, and to state truth upon the subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of subsection (3) of Section 50. At the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution, the same being not “testimonial compulsion”. At the stage of recording of statement of a person for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime, is not an investigation for prosecution as such. The summons can be issued even to witnesses in the inquiry so conducted by the authorized officers. The consequences of Article 20(3) of the Constitution or Section 25 of the Evidence Act may come into play only if the involvement of such person (noticee) is revealed and his or her statements is recorded after a formal arrest by the ED official. In our opinion, the learned counsels for the appellants have sought to reagitate the issues which have already been settled in ***Vijay Madanlal***.

20. Much reliance has been placed by the Learned Counsels for the Appellants on the Annual Report of Ministry of Finance, GOI, which according to them has stated about the Organizational Structure of Directorate of Enforcement, demarcating the territorial jurisdiction of various Zonal Office of the ED. According to them, such instructions by the Department of Revenue are for exercise of powers of investigation by the ED as mandated by Section 51 PMLA and therefore must be strictly complied with. The said submission also being fallacious cannot be accepted. Apart from the fact that the document relied upon is an Annual Report by the Ministry of Finance, showing the Organizational Structure of the ED, the same could not be construed as the directions issued by the Central Government for the purpose of exercise of powers and performance of the functions by the Authorities as contemplated in Section 51 of the said Act. As stated in the said Report, the said Offices of the Directorate of Enforcement all over India are set up to ensure that the Money Laundering offences are investigated in an effective manner and they act as deterrence for the potential offenders of the Money Launderers. Pertinently, the Headquarters Investigation Unit (HIU) has not been restricted to any territorial jurisdiction in the said Organizational Structure. The present ECIR bearing ECIR/17/HIU/2020 is recorded at the HIU. Further, as per the specific case of the ED in the complaint, filed against the accused persons before the Special Court, PMLA,

Rouse Avenue Courts, New Delhi, Rs.168 Crores were allegedly received by the Inspector Ashok Kumar Mishra from the co-accused Anup Majee to be delivered to his political bosses, and the said Rs. 168 Crores were transferred through vouchers to Delhi and Overseas, which clearly established adequate nexus of the offence and the offenders with the territory of Delhi. We therefore do not find any illegality in the summons issued by the respondent-ED summoning the Appellants to its Office at Delhi, which also has the territorial jurisdiction, a part of the offence having been allegedly committed by the accused persons as alleged in the complaint. It is also not disputed that the Appellant No.1 being a Member of Parliament has also an official residence at Delhi.

21. In that view of the matter, we do not find any substance in the challenge made by the Appellants to the Summons issued to the Appellants under Section 50 of the PMLA. As contemplated in the sub-section (3) of Section 50, all the persons summoned are bound to attend in person or through authorized agents as the officer may direct and are bound to state the truth upon any subject respecting which they are examined or make statements, and to produce the documents as may be required. As per sub-section (4) thereof every proceeding under sub-sections (2) and (3) is deemed to be a Judicial proceeding within the meaning of Section 193 and Section 228 of the IPC. As per sub-section (4) of Section 63, a person who intentionally disobeys any direction issued

under Section 50 is liable to be proceeded against under Section 174 of the IPC.

22. As transpiring from the Status Report submitted by the Deputy Director, Directorate of Enforcement, New Delhi, pursuant to the Order passed by this Court on 18.07.2024, the Appellant No.2 – Rujira Banerjee had not appeared and not produced the documents as required vide the Summons dated 04.08.2021 and 18.08.2021. The ED therefore had filed the Complaint in the Court of Chief Judicial Magistrate, Patiala House Courts, New Delhi against her under Section 63 PMLA r/w Section 174 IPC. It is also pertinent to note that though the Appellant No.2 by filing the Crl. M.C. No. 2442 of 2021 before the High Court had challenged the Order dated 18.09.2021 passed by the said Court taking cognizance of the said Complaint and the Order dated 30.09.2021 summoning her before the Court, she has not even bothered to produce the said Orders before this Court in the instant Appeals. Since the said Complaint is pending before the concerned Court of Chief Judicial Magistrate, we do not express any opinion on the merits of the said Complaint. Suffice it to say that we do not find any illegality in the said orders passed by the concerned court and that the said complaint shall be proceeded further by the said Court in accordance with law.

23. For the reasons stated above, both the Appeals being devoid of merits are dismissed.

.....J.
[BELA M. TRIVEDI]

.....J.
[SATISH CHANDRA SHARMA]

NEW DELHI
09.09.2024