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

% **Date of order: 11th November, 2024**

\+ CRL.M.C. 3146/2022 & CRL.M.A. 13287/2022

SANJAY AGGARWAL .....Petitioner

Through: Mr. Naveen Malhotra and Mr. Ritvik Malhotra, Advocates

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Anupam S Sharma, Special Counsel, ED along with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Vashisht Rao, Advocates with Mr. Syamantak Modgil, AD (Through VC)

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1993 (hereinafter "CrPC") (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been filed on behalf of the petitioner seeking the following relief:

> *"a. That This Hon'ble court may be pleased to set aside the Order dated – 07.04.2022 passed by the court of Ms. Kiran Gupta Asj-03 Northwest district Rohini Courts Delhi, as well as pass necessary directions for returning the file to the respondents as complaint has been filed without completing/concluding the investigation and also pass necessary directions for discharge of the accused no. 3 in cc no. 01/15 dated 15.12.2015 title Assistant Director, Enforcement*

Directorate vs. Kamal Kalra and Ors. for the offences under section 3& 4 of PMLA and section 71 of the act ibid."

2. The brief facts that led to the filing of the instant petition are that on the basis of a complaint received from DGM, Bank of Baroda dated 24th September, 2015, Central Bureau of Investigation (hereinafter "CBI") registered an FIR bearing No. RC.BD1/2015/E/0009 dated 9th October, 2015 against 59 current account holders (proprietor/director/partner of the 59 firms/companies) and other unknown bank officials/private persons for commission of the offences under Sections 420/120B of the Indian Penal Code, 1860 (hereinafter "IPC") read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter "PC Act").

3. It is stated in the above-mentioned complaint that during the internal audit carried out by Zonal Internal Audit Division (ZIAD) of Bank of Baroda, New Delhi at their Ashok Vihar Branch, certain serious irregularities were observed/reported pertaining to foreign exchange transactions in current accounts of various firms/companies amounting to approximately Rs. 6,000 Crores. It was further revealed during the audit that huge amount of advance import remittances were sent from the newly opened accounts without ensuring compliance of banking guidelines.

4. On the basis of the FIR/RC registered by the CBI, an ECIR No. DLZO/20/2015 was recorded on 9th October, 2015 by the respondent Directorate of Enforcement (hereinafter "ED") for investigation under the provisions of Prevention of Money Laundering Act, 2002 (hereinafter "PMLA").

5. It is stated that during the course of investigation by the ED, search operations were conducted under Section 17 of the PMLA and arrests were made under Section 19 of the PMLA. Various incriminating documents were gathered and examined, and statements of the various accused and witnesses were recorded under Section 50 of the PMLA.

6. Upon conclusion of the investigation, prosecution complaint under the PMLA was filed on 11th December, 2015 for the commission of offences under Section 3/4 of the PMLA against several persons including the petitioner herein and the cognizance was taken by learned Special Judge/Trial Court/Court concerned vide order dated 11th December, 2015 which is disputed by the petitioner in the present petition.

7. Subsequently, first supplementary complaint was filed against one Mr. Rajeev Wadhwa before learned Special Judge/Trial Court on 29th March, 2016 for the commission of offences under Sections 3/4 of the PMLA. Pursuant to the same, second supplementary complaint was filed against various persons on 23rd April, 2016. It is stated that a third supplementary complaint was also filed against various persons on 7th April, 2018.

8. Further supplementary complaint was filed against one Mr. Rakesh Bansal and others on 17th July, 2018 before the learned Special Judge wherein it was submitted by the ED that given the quantum of money involved in the present case, fraud and spectrum of the scam, which has international ramifications, further investigation to trace the entire proceeds of crime are going on and for that purpose, a letter of request in the form of letter of rogatoreis were sent to Hong Kong and Dubai for obtaining

documentary evidences in order to trace out rest of the beneficiaries involved in this fraud and in view thereof, it was stated that the investigation is continuing.

9. In the meanwhile, the petitioner filed an application seeking dropping of the proceedings against him pending before the learned Special Judge as no cognizance has been taken by the Court concerned. Vide order dated 7th April, 2022, the said application was dismissed by the learned Special Judge stating to the effect that the petitioner's contention has no merit and the matter was listed for arguments on charge for 21st May, 2022.

10. Hence, the present petition has been filed on behalf of the petitioner seeking setting aside of the order dated 7th April, 2022 passed by the learned Trial Court as well as his discharge.

11. Learned counsel appearing on behalf of the petitioner submitted that the impugned order dated 7th April, 2018 has been passed without taking into consideration the entirety of the matter and thus, the same is liable to be set aside as it is wholly erroneous and the learned Trial Court has taken an unreasonable view while considering the statutory provisions regarding taking cognizance of the alleged offence under the PMLA.

12. Learned counsel relies on the description of *'taking cognizance of an offence'* as observed by the Hon'ble Supreme Court in the matter of ***R.R. Chari v. State of U.P.*, 1951 SCC 250,** wherein, it was held that cognizance of an offence is not taken through any formal action but it occurs as soon as the magistrate applies his mind to the alleged offence.

13. It is submitted that it is relevant to note that the Hon'ble Court in ***Devarapally Lakshminarayana Reddy v. V. Narayana Reddy,*** **(1976) 3 SCC 252**, observed that taking cognizance of an offence is nowhere defined in any statute, however, from the perusal of Section 190 and heading of Chapter XIV of the CrPC, it is clear that a case can be said to be committed to a Court only when the magistrate concerned takes cognizance of the alleged offence and when the said magistrate applies his mind on the receipt of a complaint so as to proceed under Section 200 of the CrPC and the subsequent Sections under Chapter-XV of the CrPC.

14. Learned counsel also relies on the decision of the Hon'ble Supreme Court passed in in ***State of W.B. v. Mohd. Khalid,*** **(1995) 1 SCC 684**, submitting to the effect that cognizance refers to the first judicial notice by the magistrate and it is a prerequisite for initiation of proceedings by a Magistrate or Judge.

15. It is submitted that despite the settled position of law, in the present case, the name of the petitioner is not mentioned in the FIR No. RC.BD1/2015/E/0009 registered by CBI as well as in ECIR No. DLZO/20/2015/AD(DR)/YS registered by the ED.

16. It is submitted that the complaint dated 11th December, 2015 filed before the learned Special Judge has been filed without completing the investigation. Further, on a perusal of the cited judgments and facts of the present case, it is conspicuous that there is no order of cognizance in the present case and consequently, no trial can proceed thereto as it is evident

that the impugned order of learned Special Judge is bad in law and liable to be set aside.

17. It is submitted that the ED has not concluded the investigation yet and the same is still in progress, therefore, the complaint filed by the ED is in violation of the statutory provisions enshrined under Section 44(1)(b) of the PMLA.

18. It is submitted that upon a plain reading of Section 44(1)(b) of the PMLA, it's clear that a complaint is a culmination of investigation, and as such the first complaint filed before the learned Trial Court is unlawful in terms of Section 44(1)(b) of the PMLA, as the same was filed during the course of investigation. The Explanation – II of Section 44(1)(b) of the PMLA was inserted by an amendment in the year 2019 which allows for filing of supplementary complaints and it does not have any retrospective effect, therefore, the same cannot be applied to the complaint in question.

19. It is further submitted that even if the Explanation-II of Section 44(1)(b) of the PMLA were to have retrospective effect, the provisions enshrined therein cannot be interpreted in a manner to assume that the initial complaint can be filed without completing the investigation.

20. It is submitted that in ***P.M.C. Mercantile Private Ltd. v. State,*** **2014 SCC OnLine Mad 10242**, the Madras High Court observed that under Section 173(2) of the CrPC, a final report should only be submitted when the police have completed the investigation and if any report is filed before investigation is complete, it is considered as "incomplete report" and consequently, the incomplete report doesn't meet requirement in terms of

Section 173(2) of the CrPC, based on which no cognizance of the offence can be taken by the Court concerned.

21. It is submitted that in contemplation of Section 173 of the CrPC and Section 44(1)(b) of the PMLA, the complaint filed by the ED in the instant case is bad in the eyes of law and no cognizance can be taken based on the complaint as the investigation is still pending. Therefore, in view of the foregoing submissions, it is prayed that the instant petition be allowed and the reliefs be granted as prayed for.

22. *Per Contra*, the learned counsel appearing on behalf of the respondent ED submitted that the instant petition is liable to be dismissed being devoid of any merits as the same is a gross misuse of the process of law.

23. It is submitted that cognizance of the offence was taken by the learned Trial Court on the same date when the complaint was filed, i.e., 11th December, 2015. It is further submitted that the learned Special Judge need not to issue a formal order mentioning therein that cognizance of the offence alleged against an accused is taken, rather, the cognizance should be inferred from the intention of the Court concerned to proceed further with the case.

24. It is submitted that vide the impugned order dated 11th December, 2015, the learned Special Judge ordered that the complaint filed by the ED to be checked and registered and the same indicates that the cognizance has been duly taken under the PMLA.

25. It is submitted that Section 44(1)(b) of the PMLA allows the concerned Court to take cognizance of the alleged offence(s) and the complaint under the said provision is different from typical private

complaint filed under the provisions of CrPC as the same is filed by the ED after thorough investigation, and the Court concerned can peruse all the evidence at the time of taking cognizance of the offence alleged under the PMLA.

26. It is further submitted that unlike a private complaint, where reasons for taking cognizance have to be recorded, the Special Judge does not need to do that in the complaint made by the ED under the PMLA. Moreover, this process is *pari materia* to Section 190(1)(b) of the CrPC, which allows a Court to take cognizance based on a police report after their investigation.

27. It is submitted that as per the Explanation-II of Section 44(1)(b) of the PMLA, an investigating agency has a statutory right to conduct further investigation. Furthermore, the said Explanation is merely clarificatory in nature, therefore, it applies retrospectively as held by the Hon'ble Supreme Court.

28. It is submitted that in accordance with the established legal precedents in ***State of Maharashtra v. Sharadchandra Vinayak Dongre,* (1995) 1 SCC 42**, ***Narendra Kumar Amin v. CBI,* (2015) 3 SCC 417** and ***Vinay Choudhary v. State,* 1989 SCC OnLine Del 87**, a police report under Section 173(2) of the CrPC is filed to facilitate the Magistrate to determine whether there's ample evidence to take cognizance of the offence alleged regardless of how the police has labeled the report.

29. It is submitted that under Section 44(1)(b) of the PMLA, once the investigation is complete, the prosecution must submit a complaint to the Court as was done in the instant case and the said complaint should include

the names of the parties, details of the information, a list of witnesses, and relevant documents. It is further submitted that the present complaint meets all these requirements for the Court concerned to take cognizance, and the case has now proceeded to the next stage wherein the matter was listed for arguments on charge on 21st May, 2022.

30. It is submitted that no objection was ever taken by the petitioner with respect to taking of cognizance. It is further submitted that on 4th May, 2018, the petitioner, after participating in proceedings for two and a half years without objection, filed an application to drop proceedings or return the case file. The said application was maliciously moved much later with the motive to delay the trial proceedings. Furthermore, on 17th July, 2018, the learned Trial Court confirmed that cognizance had already been taken and thus, deemed it appropriate to dismiss the said application. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed.

31. Heard learned counsel appearing on behalf of the parties and perused the material placed on record.

32. The petitioner contends that the impugned order dated 7th April, 2018, is erroneous as it fails to consider all the relevant facts and statutory provisions under the PMLA regarding the cognizance of an alleged offence. Relying on various judgments, it has been argued that cognizance is only taken once the magistrate applies their mind to the alleged offence, which is a prerequisite for initiating judicial proceedings and the same is absent in the present case.

33. It has been contended that neither the petitioner's name is in the FIR nor an order of cognizance been passed by the Court concerned rendering further proceedings invalid. It has been asserted that the ED filed a complaint without concluding its investigation, violating Section 44(1)(b) of the PMLA, which mandates that complaints be only filed post-investigation. The petitioner also argues that the amendment brought in the year 2019 to Section 44(1)(b) allowing supplementary complaints is not retrospective and the same does not permit filing the initial complaint prematurely.

34. In rival submissions, it has been contended on behalf of the ED that cognizance of the offence was taken by the learned Trial Court on 11th December, 2015, when the complaint was filed, which can be inferred from the Court's actions to register and proceed with the case without needing a formal order. Therefore, the instant petition is nothing but a gross misuse of the process of law and the same may be dismissed.

35. At this stage, it becomes relevant to discuss the impugned order dated 7th April, 2022, relevant portion of which is as under:

> "..*Vide present application, the applicants are seeking dropping of proceedings against them on the ground that no cognizance has been taken in the present matter till date. The expression 'cognizance' has not been defined in the Court. It has no esoteric or mystic significance in criminal law. It merely means ' become aware of ' and when used with reference to a Court or a Judge, it connotes ' to take notice of judicially'. It indicates the point when the Court takes judicial notice of an offence with a view to initiating proceedings in respect of such offence alleged to have been committed by someone.*

It is no more res- integra that taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as the Court applies its mind to the suspected commission of an offence. Cognizance therefore, takes place at a point when the Court first takes judicial notice of an offence. The cognizance is taken at the initial stage when the Court peruses the complaint with a view to ascertain whether the commission of any offence is disclosed or not. Once1 the Court on perusal of the complaint is satisfied that the· complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it is held to have taken cognizance of the offence.

In the present matter, the complaint was filed on 11.12.2015. The Court on receipt of the complaint , registered it and supplied the copies of the complaint and the allied documents to the respective defence counsels appearing on behalf of the accused persons. Thereafter, . the matter was taken up on various dates by the Court. When the supplementary complaint was filed qua accused Rajiv Wadhwa on 31.03.2016 and Rakesh Bansal on 17.08.2018, the Court duly noted that the cognizance of the offence has been duly taken.

As discussed above, the cognizance does not involve any formal action or indeed action of any kind but occurs as soon as the Court applies its mind to the suspected commission of an offence. In the present case, the Court on receipt of the present complaint got it registered and duly supplied the copies to the accused persons. The Court at that time applied its mind to the suspected commission of the offence alleged against the accused persons. Merely because there is no formal order, it cannot be said that the Court has not applied its mind or taken cognizance of the offence.

The application filed on behalf of the applicants being devoid of any merits is accordingly dismissed…"

36. Upon perusal of the aforesaid contents of the impugned order, it is made out that an application was filed seeking dropping of proceedings on the ground that no formal cognizance had been taken by the Court concerned.

37. It was observed by the Court concerned that the concept of 'cognizance' is not defined in law and holds no mystic or esoteric meaning in criminal proceedings. Instead, it denotes the moment a Court takes judicial notice of an offence to initiate proceedings against an alleged offender. Established legal principles assert that cognizance does not necessitate formal or specific action; rather, it is taken when a Court applies its mind to the alleged commission of an offence, particularly when the complaint is reviewed to determine if it discloses the commission of an offence.

38. It was observed by the learned Court that in the present case, the complaint was filed on 11th December, 2015, after which the Court registered it, supplied copies of the complaint and supporting documents to the defense counsel of the accused and subsequently took up the matter on multiple occasions.

39. Further, when supplementary complaints were filed against accused Mr. Rajiv Wadhwa on 31st March, 2016, and Rakesh Bansal on 17th August, 2018, the Court acknowledged that cognizance of the offence had already

been taken. Consequently, the Court found no merit in the applicant's contention that cognizance had not been taken and dismissed the application stating that formal orders are not essential to establish the taking of cognizance.

40. In light of the aforesaid submissions and the observations of the learned Trial Court in the impugned order, the issue that comes up for adjudication is *'**whether any cognizance was taken by the learned Trial Court and whether the learned Trial Court could have taken cognizance upon the complaint filed by the ED while the investigation is still ongoing? If answer to the same is in affirmative, then whether the Explanation-II of Section 44(1)(b) of the PMLA introduced by way of amendment applies retrospectively?'***

41. Before adverting into the merits of the case, this Court deems it appropriate to reproduce the extracts of Sections 44 of the PMLA. The relevant portion of the same is as under:

> "***Sectio**n 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];*

[(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 regarding 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…"

42. The issues put forth before this Court lies in the contention of the petitioner that his name is neither mentioned in the FIR, nor in the initial complaint filed by the ED. Furthermore, till date no cognizance of the offence alleged against the petitioner has been taken by the Court concerned as no order to that respect has been passed. It has also been argued that even if cognizance has been taken, the same is illegal and erroneous as the ED filed its complaint without completion of the investigation which is not the mandate of the statutory provisions of the PMLA. Moreover, filing of supplementary complaints, allowed by the insertion of Explanation – II to Section 44 of the PMLA does not apply to the facts of the instant case as the same does not have any retrospective applicability.

43. Therefore, this Court shall first discuss the concept of 'taking cognizance of an offence' which is the subject matter of the dispute in the instant petition.

44. In one of the earliest judgments passed in ***R.R. Chari v. State of U.P.*,1951 SCC 250,** the Hon'ble Supreme Court observed that, '<u>taking cognizance</u>' means that the concerned Court must apply his mind judicially to the concerned materials, oral or documentary as well as other information present and brought before to the attention of the Court. Furthermore, the critical test for taking cognizance of offence is to assess the particulars

presented before the Court thoroughly and thus, analyze the commission of alleged offence.

45. In ***Devarapally Lakshminarayana Reddy v. V. Narayana Reddy*, (1976) 3 SCC 252,** the Hon'ble Supreme Court elucidated the scope and purview of the term 'taking of cognizance' and gave a detailed explanation thereof. It was observed that the stage, at which cognizance of an offence is taken, depends upon the facts and circumstance of the particular case.

46. It was held that taking cognizance of an offence is subjective to each case and mere issuance of a search warrant or a warrant of arrest does not, by itself, mean that cognizance of the offence has been taken rather cognizance of the offence is said to be taken only when the Court applies his mind to proceed further under Section 200 (now Section 223 of the BNSS) or under Section 204 of Chapter XVII of the CrPC (now Section 227 of the BNSS).

47. In one of the recent judgments passed in ***Yash Tuteja v. Union of India*, (2024) 8 SCC 465**, the Hon'ble Supreme Court clarified as to when cognizance of an offence is deemed to be taken in a complaint filed under the PMLA. Relevant portion of the said judgment is as under:

> *"6.* ***The only mode by which the cognizance of the offence under Section 3, punishable under Section 4 of the PMLA, can be taken by the Special Court is upon a complaint filed by the Authority authorized on this behalf****. Section 46 of PMLA provides that the provisions of the Cr.PC (including the provisions as to bails or bonds) shall apply to proceedings before a Special Court and for the purposes of the Cr.PC provisions, the Special Court shall be deemed to be a Court of*

Sessions. However, sub-section (1) of Section 46 starts with the words "save as otherwise provided in this Act." Considering the provisions of Section 46(1) of the PMLA, save as otherwise provided in the PMLA, the provisions of the Code of Criminal Procedure, 1973 (for short, Cr. PC) shall apply to the proceedings before a Special Court. ***Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 of the Cr.PC will apply to the Complaint****. There is no provision in the PMLA which overrides the provisions of Sections 200 to Sections 204 of Cr.PC.* ***Hence, the Special Court will have to apply its mind to the question of whether a prima facie case of a commission of an offence under Section 3 of the PMLA is made out in a complaint under Section 44(1)(b) of the PMLA****. If the Special Court is of the view that no prima facie case of an offence under Section 3 of the PMLA is made out, it must exercise the power under Section 203 of the Cr.PC to dismiss the complaint. If a prima facie case is made out, the Special Court can take recourse to Section 204 of the Cr. PC."*

48. Perusal of the aforesaid extracts shows that under the PMLA, a Special Court can only take cognizance of an offence under Section 3 of the PMLA, punishable under Section 4 of the PMLA, based on a complaint filed by the ED. It was held that while Section 46 of the PMLA stipulates that the provisions of the CrPC apply to proceedings before the Special Court as well since it functions like a Sessions Court as the phrase "save as otherwise provided in PMLA" allows exceptions.

49. Therefore, in the absence of any overriding provision in the PMLA, Sections 200 to 204 of the CrPC (now Section 223 to 227 of the BNSS) duly applies to complaints filed under the PMLA. This means that the Special

Court must assess if a *prima facie* case exists for an offence under Section 3 of the PMLA. If no such case is found, the Court can dismiss the complaint under Section 203 of the CrPC, however, if a *prima facie* case is established, the Court may proceed under Section 204 of the CrPC (now Section 227 of the BNSS).

50. Adverting to the facts of the instant petition, it is imperative to peruse the order dated 11th December, 2015 passed by the learned Trial Court since it has been contended on behalf of the ED that the cognizance was duly taken by the learned Special Court vide the said order.

51. This Court has perused the aforesaid order and the contents of the same shows that the complaint filed by the ED was checked and registered by the learned Special Judge. Relevant portion of the same states as under:

> *"Fresh complaint has been filed. An application seeking permanent exemption from personal appearance of complainant also moved. Taken on record.* ***Complaint be checked and registered.*** *..."*

52. It is observed by this Court that subsequent to the investigation in the present matter, the ED filed its complaint on 11th December, 2015 and cognizance was taken on the same day.

53. As per the material on record, the learned Trial Court took judicial notice of the offence vide the aforesaid order and decided to proceed further with the matter when it ordered the complaint to be checked and registered following which it was directed by the learned Court that copies of the

complaint be supplied to the concerned defense counsel and the said act depicts taking cognizance of the offence under the PMLA.

54. As per the settled position of law, cognizance under Section 44 (1) (b) of the PMLA is based on the prosecution complaint filed by the ED pursuant to an investigation and the said complaint duly incorporates the gist of the offences and the manner in which the offences were committed by the accused persons, accompanied with the evidence collected during the statement along with the statement of witnesses and accused.

55. At this stage, this Court deems it appropriate to refer to the judgment of the Hon'ble Supreme Court in ***Pradeep S. Wodeyar v. State of Karnataka,* (2021) 19 SCC 62**, wherein, it was held that provisions of CrPC would apply to the procedure undertaken before a Special Court enacted under a special statute unless the said special statute explicitly prohibits the application of provisions of the CrPC. The relevant part of the said judgment reads as under:

> *"**58.**……Moreover, bearing in mind the objective behind prescribing that cognizance has to be taken of the offence and not the offender, a mere change in the form of the cognizance order would not alter the effect of the order for any injustice to be meted out.*
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> ***
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> *66. Therefore, on a combined reading of Sections 4 and 5CrPC along with Section 30-C of the MMDR Act, it is apparent that the procedure prescribed under the Code shall be applicable to proceedings before the Special Court unless the MMDR Act provides anything to the contrary. These provisions incorporate the principle of express repeal — i.e. unless any provision of*

the CrPC is expressly repealed by the provisions of the MMDR Act, the procedure prescribed under the CrPC would apply to the proceedings before the Special Court. Provisions of the PC Act, the Pocso Act and the NIA Act which expressly provide that the Special Court may try offences under the statute along with other offences is only clarificatory. It is settled law that while contextually interpreting a provision, reference to other statutes which are pari materia can be made. [Harshad S. Mehta v. State of Maharashtra, (2001) 8 SCC 257 : 2001 SCC (Cri) 1447] However, since the provisions in the similar statute on combined trial are only clarificatory, the reference to external aids offer no support to the argument of the appellant.

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68. Since there is no express provision that excludes the application of Section 220CrPC, it needs to be examined if the MMDR Act has by necessary implication excluded the application of Section 220CrPC. In this context, it needs to be determined if Section 30-B of the MMDR Act while establishing the Special Court for the offences under Section 4 of the MMDR Act, by necessary implication excludes the application of Section 220CrPC."

56. Applying the aforesaid principle to the facts of the instant case, specifically the observation made in paragraph no. 58 and 66, it is pertinent to state here that it is not necessary for the Special Court under the PMLA to record its reasons for the cognizance since the said complaint is filed by an investigating agency unlike the private complaint under Section 190 of the CrPC (now Section 210 of the BNSS).

57. Without delving into the merits of the offence alleged against the petitioner, this Court is of the considered view that the Court concerned has duly taken cognizance of the alleged offence.

58. The complaint dated 11th December, 2015 discloses the role of the petitioner that he had allegedly set up numerous fake companies to send foreign currency abroad under the pretext of advance import payments, facilitating fraudulent export-import practices which resulted in huge financial loss for the National Exchequer. The petitioner's conduct allegedly involved concealing, acquiring, and using proceeds of crime while projecting them as untainted property, constituting the offence of money laundering under Section 3 and punishable under Section 4 of the PMLA.

59. As per the contents of the impugned order, it was observed by the learned Court below that when supplementary complaints were filed against accused Rajiv Wadhwa on 31st March, 2016, and Rakesh Bansal on 17th August, 2018, the Court acknowledged that cognizance of the offence had already been taken. In this regard, this Court is inclined to upheld that observations of the learned Court below as the same are in accordance with the law and specifically denotes that cognizance of the offence/complaint has been duly taken.

60. Therefore, as the Court concerned registered the complaint upon *prima facie* satisfaction that there exist sufficient grounds to proceed under the PMLA, the petitioner's contention thereto does not hold any water and the same are thus rejected.

61. The petitioner has also contended that the learned Judge which passed the order dated 11th December, 2015 was not empowered under the PMLA to pass any order as he was merely a Link Judge. In this regard, the respondent ED has placed reliance on a notification dated 28th June, 2012 *(Annexure R1)* submitting to the effect that all the Courts of Sessions or ASJ in Delhi are designated as Special Courts for the purposes of Section 43 of the PMLA, and as such, all Courts are duly empowered to try offences under the PMLA. Therefore, this Court does not find any merit in the contention of the petitioner.

62. Now adverting to the next part of the issue raised before this Court that even if cognizance has been taken, the same is illegal as investigation is still incomplete and the complaint has been filed without completion of investigation, thus, the same cannot be considered as a complaint under Section 44(1)(b) of the PMLA. Further, the Explanation – II of Section 44(1)(b) cannot be applied retrospectively in the present case.

63. On the perusal of definition of "investigation", as contained in Section 2 (h) of the CrPC (now Section 2(1)(l) of the BNSS), it is made out that an investigation includes all the proceedings under the CrPC for 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" has been defined under Section 2(na) of the PMLA to include all the proceedings conducted by the Director or by an authority authorised by the Central Government under the Act for collection of evidence.

64. When both the aforesaid provisions are examined together, it becomes evident that the proceedings conducted by the ED for the purpose of collection of evidence are to be qualified as "investigation".

65. Section 65 of the PMLA provides that the provisions of the CrPC would apply, insofar as, they are not inconsistent with the provisions of the PMLA to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act.

66. Consequently, the CrPC provisions related to investigation are applicable to investigations under the PMLA. Furthermore, Section 46 of the PMLA states that the provision of the CrPC applies to proceedings in Special Courts under the PMLA, making the Special Court equivalent to a Court of Sessions. Unless stated otherwise in the PMLA, CrPC provisions, including those on bail and preliminary procedures (Sections 200 to 204 of the CrPC), apply to PMLA cases.

67. This interpretation is further supported from the Explanation – II to sub section (1) of Section 44 of the PMLA, which provides that the complaint would 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.

68. Thus, there is no doubt that a supplementary complaint can certainly be filed by the respondent ED against an accused, who is already facing

prosecution for offence under Section 3 of the PMLA before the Special Judge.

69. Based on the above legal analysis, it is evident that when an investigating agency is authorized to conduct the investigation and carries out additional investigation to collect further evidence, the concerned agency has the right to submit a supplementary complaint to present the newly collected material on record.

70. Now adverting to the other part of the instant issue, i.e. the Explanation-II of Section 44(1)(b) of the PMLA which was added by the Amendment Act of 2019 is not applicable to the facts of the instant case as although the complaint was filed prior to this amendment, nevertheless it cannot have retrospective effect.

71. Explanation-II to Section 44(1)(b) of PMLA reads as under:

> *"44. Offences triable by Special Courts.—****
> ***
> *[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.]…"*

72. Upon the perusal of Explanation-II to Section 44(1)(b) of the PMLA, it is revealed that it has been explicitly stated that the ED has the right to include any subsequent complaint in order to conduct further investigation into an alleged offence against the accused persons. This is to bring forth additional evidence, oral or documentary against any accused person for which a complaint has been already filed, whether named in the original complaint or not.

73. Here, it is imperative to refer to the judgment of the Hon'ble Supreme Court passed in ***State of Bihar v. Ramesh Prasad Verma*, (2017) 5 SCC 665** where the following was observed:

> *"19. In CIT v. Gold Coin Health Food (P) Ltd. [CIT v. Gold Coin Health Food (P) Ltd., (2008) 9 SCC 622] , a three-Judge Bench of this Court, while dwelling on the sweep of a clarificatory or declaratory legal provision, relied on the following extract from the celebrated treatise "Principles of Statutory Interpretation", 11th Edn., 2008 by Justice G.P. Singh : (SCC p. 630, para 19)*
> *"19. ... 'The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court:"For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such acts are usually held to be retrospective. ..." ...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" or "shall be deemed never to have included" 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 amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law.'
(emphasis supplied)"

74. Thus, from the aforesaid judgment it is evident that an explanatory provision, when added in a statute, merely clarifies the meaning of the provisions already enshrined under Act. Therefore, it is a well settled position in law that if a provision is meant to correct, clarify, or declare what the previous law intended, it generally applies retrospectively. In summary, Explanation-II to Section 44(1)(b) of PMLA has retrospective effect and coherently applies to the instant case.

75. The aforesaid view, particularly with respect to the Explanation – II of Section 44 (1) (b) of the PMLA, was also observed by the Hon'ble Supreme Court in the landmark case of ***Vijay Madanlal Chaudhary (Supra)***, wherein, the Hon'ble Court has clarified that the said explanation is merely clarificatory in nature and thus, the same shall be applicable retrospectively.

76. In the said case, while addressing several constitutional challenges to the PMLA, the Hon'ble Supreme Court underscored the rigorous standards set by the PMLA for evidence in complaints, permitting initial complaints based on prima facie evidence while accommodating supplementary complaints as investigations progress. In essence, Explanation-II permits the

parallel processing of trials and investigations, avoiding indefinite postponement of trials solely for the completion of the investigation. This approach is also in line with Section 173(8) of the CrPC (now Section 193 of the BNSS), which allows the police to submit additional chargesheets *(analogous to supplementary complaints)* post-filing of the initial report.

77. The addition of this explanation clarifies the legislature's intent to enable ongoing investigative processes while simultaneously advancing the trial of available evidence. The Hon'ble Supreme Court and High Courts have interpreted Section 44 and Explanation-II of the PMLA in ways that facilitate the ED's ability to initiate prosecution promptly, thereby preventing undue delays that could arise if completion of the entire investigation were required.

78. In light of the aforesaid observations, this Court is of the view that an initial complaint can be filed under Section 44 of the PMLA, even if the investigation is not fully completed, especially in light of the Explanation-II, introduced in the year 2019, which permits the filing of a supplementary complaint.

79. Accordingly, the petitioner's contention that the cognizance was taken illegally and the Explanation – II introduced in the year 2019 by way of amendment is not applicable herein is rejected in view of the aforesaid terms.

80. At this juncture, it is pertinent to mention here that since this Court has rejected the case of the petitioner, there arises no question to discharge the petitioner at this stage, and therefore, this Court shall not deal with the

same hereon and the petitioner is at liberty to approach the appropriate forum in accordance with the law.

81. Therefore, in view of the discussions made hereinabove, this Court does not find any force in the arguments of the petitioner that the cognizance has been taken illegally as the complaint was filed pending investigation due to filing of subsequent complaints.

82. The aforesaid discussions on facts as well as on law clearly states that there is no illegality committed by the learned Court below while passing the impugned order and the propositions put forth by the petitioner is rejected.

83. In view of the above facts, circumstances, and reasoning coupled with the established legal proposition, it is held that there is no illegality in the order dated 7th April, 2022 passed by the learned ASJ-03, North West District, Rohini Courts, Delhi, in Ct. Case No. 515651/2016 and the same is, hereby, upheld.

84. Accordingly, the instant petition stands dismissed along with the pending applications, if any.

85. The order be uploaded on the website forthrwith.

CHANDRA DHARI SINGH, J

NOVEMBER, 11, 2024
na/ryp/av