Santosh Naik S/O Late Shri Vithal Naik vs Deputy Director on 23 February, 2018

Author: Z.K.Saiyed

Bench: S.G. Shah, Z.K.Saiyed

R/CR.RA/1175/2017 CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY SUBORDINATE COURT) NO. 1175 of 2017
With
CRIMINAL REVISION APPLICATION NO. 1176 of 2017
With
CRIMINAL REVISION APPLICATION NO. 1177 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.G. SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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SANTOSH NAIK S/O LATE SHRI VITHAL NAIK....Applicant(s)
Versus
DEPUTY DIRECTOR & 1....Respondent(s)

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Appearance:
MR SUJAY KANTAWALA, ADVOCATE WITH MR. MALAV MULANI, ADVOCATE WITH DIGANT M POPAT, ADVOCATE for the Applicant(s) No. 1
MR SIDHARTH DAVE ADVOCATE FOR MR. DEVANG VYAS, ASST. SOLICITOR GENERAL OF INDIA for the Respondent(s) No. 1

MR. MANAN MEHTA, APP AND MR. K.L. PANDYA, APP for the Respondent(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE S.G. SHAH

Date : 23 /02/2018

CAV JUDGMENT

1. Heard learned advocates Mr. Sujay Kantawala with Mr. Malav Multani and learned advocate Mr. Digant Popat for the applicants, whereas learned advocate Mr. Sidharth Dave for Mr.Devang Vyas, learned Asst.Solicitor General of India and learned APP Mr. Manan Mehta and Mr. K.L.Pandya, APP for respondent - State. Perused the record.

2. All these applications are arising out of the same order being order dated 18.07.2014 by the Special Court for Prevention of Money Laundering Act, 2002 (hereinafter referred as to 'the PMLA') in PMLA Complaint No. 3 of 2014, whereby the Special Court has, relied upon written complaint filed by the Deputy Director of Ahmedabad Zonal Office of Director of Enforcement for issuing summons against the applicants. Therefore, by such impugned order below Exhibit □ 1, the Sessions Judge, Ahmedabad (Rural) being Special Judge under PMLA has taken a cognizance of alleged offence by passing following order.

> "ORDER BELOW EXH□1 OF P.M.L.A. COMPLAINT NO.3 OF 2014
> Complainant Shri Jain as well as his advocate are present. I have heard learned advocate Shri Sudhir Gupta, for Complainant. I have perused the Complaint as well as gone though all the documents. Considering above all facts in the ligh of provisions laid down in the PMLA 2002, I think it just and proper to issue summons to the accused side which will serve the object of filing this Complaint. Hence, I pass the following order.
>
> ORDER Complaint be registered as PMLA case, against all the accused for the offence punishable u/s. 3 and 4 of the Prevention fo Money Laundering Act, 2002.
>
> Accused No.1 and 2 be informed about lodging as well as the next date of hearing of complaint.
>
> Issue Summons against accused No.3 to 79, for the above, offence, with direction that they shall deposit their passport in the present court and shall also furnish security for Rs.50,000/□ before this Court.

Summons returnable on 02.08.2014."

3. The bare reading of such order makes it clear that cognizance has been taken based upon the hearing the complainant and his advocate and referring some documents without naming those documents. By such impugned order, practically summons is issued against all the accused including present applicants for the offences punishable under Sections 3 and 4 of the PMLA. Therefore being aggrieved by taking cognizance of offence by the Sessions Judge, applicants have challenged such order in present revision application praying to quash and set aside such order dated 18.07.2014 with interim relief to stay the further proceedings of the case.

4. In addition to detail arguments on facts and merits of the case, applicants have mainly relied upon the detail judgment in Criminal Revision Application No.926 of 2016 dated 16.02.2017 between Jafar Mohammed Hasanfatta & 4 vs. Deputy Director & 1, wherein the Coordinate Bench of this Court has already quashed and set aside the impugned oder regarding issuance of summons against accused Nos. 4, 5, 6, 7 and 8.

5. It is undisputed fact that at present a applicants before us are co-accused of those applicants-accused inasmuch as applicant in Criminal Revision Application No.1175 of 2017 is accused No.18, applicant in Criminal Revision Application No.1176 of 2017 is accused No.20 and applicant in Criminal Revision Application No.1177 of 2017 is accused No.14 in the same PMLA Case No.3 of 2014.

6. Therefore, when all the applicants are co□ accused and when impugned order is common against all of them and more or less, except minor factual details, all the allegations so also submissions of both the sides are common in all these three applications, these applications are heard together, dealt with and decided by this common judgment, to avoid multiplication in disclosing similar fact in different orders though it is done by the applicants separately in their applications. As aforesaid when order by which cognizance is taken and summons was ordered to be issued, is common amongst all the litigants before the Court including applicants in Criminal Revision Application No.926 of 2016 and when such impugned order is quashed and set aside qua each of the applicants with consequential reliefs in such revision petition, such order is not only relied upon by the applicant but it becomes certainly a base for the present revision petition, more particularly, when by such judgment, order to take cognizance against main accused was quashed and set aside and such judgment dated 16.02.2017, is yet not challenged successfully before the higher authority i.e. the Honourable Supreme Court of India. Therefore, such judgment is become final and having full force unless it is reversed by the higher authority and when there is no such order by any higher authority viz., the Honourable Supreme Court of India had neither stayed the implementation, execution and effect of such judgment nor quashed and set aside such judgment, its effect and validity of judgment is certainly holds the field and it would be applicable to all

similarly situated persons including present applicants, who are non but co-accused with those applicants. It is also evident from record that in fact charges levelled against those applicants are similar to charges leveled against present sets of applicants.

It would be appropriate to recollect such judgment dated 16.02.2017 in Criminal Revision Application No.926 of 2017 which reads as under:

> "1. The petitioners are accused in PMLA Complaint No. 3 of 2014 dated 18.7.2014 arising out of ECIR no. 01/SRT/2014. They have challenged in Revisionary Jurisdiction of this Court, the Order dated 18.7.2014 issued by the Special Court for PMLA at Ahmedabad, issuing summons against them by taking cognizance of the offence under Section 3 alleged in the said Complaint dated 18.7.2014, which is punishable under Section 4 of PMLA. It is the case of the petitioners that the impugned Order was passed despite there being no prima facie ground and absolute lack of any material evidence qua any of the petitioners to satisfy the necessary pre-requisites for invoking Section 3 of PMLA against them and essential for taking cognizance and proceeding against each of the petitioners. The PMLA Complaint, subsequently filed two Supplementary Complaints Nos. 4/2014 and 9/2015 dated 29.10.2014 and 27.08.2015 respectively, Charge-Sheet filed against others in the Scheduled Offence and statements recorded under PMLA before and even after cognizance are placed by the petitioners on record amongst other documents to buttress this position.
>
> 2.It is undisputed fact that none of these petitioners are arraigned as accused in the Scheduled Offences in which after investigations Charge Sheet has been filed. Therefore, trial of each of these accused petitioners is sought only on the alleged commission of the offence of money laundering as prescribed under Section 3 of PMLA. Now, it is settled position of law that offence under PMLA is a distinct offence as compared to the Scheduled Offence as held by a Division Bench of this Court vide Judgment dated 16.1.2016 in Rakesh Manekchand Kothari vs Union of India in SCRA 4496 and 4672 of 2014. Whereas the generating or deriving proceeds of crime from the Scheduled offence is not offence punishable under PMLA, but knowingly projecting such proceeds of crime as untainted would amount to an offence of money laundering. Therefore, merely not being an accused of Scheduled Offence would not absolve the petitioners, if there is any material to show the involvement of any of the accused petitioners in knowingly projecting proceeds of crime as untainted.
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> 3.Mr.Devang Vyas, learned Assistant Solicitor for the respondent No.1 has submitted that present revision is not maintainable at law. He has contended that the amount was remitted to the Company (Page 431) Para-31 whereby property belonging to his family members were attached,

including those of present applicant Rs.139 crores in the name of applicant No.2 was attached. This have been confirming by the adjudicating authority. He has submitted that properties are involved in the money laundering and during the investigation in respect of having knowledge and they received the payment and made further payment were in their name and they were signatory and having power to operate account and thereby they are involved in the case of money laundering and, therefore, it is denied that ingredients of offence are lacking.

4.He has further submitted that petitioners miserably failed to prove any sufficient ground as to why the petitioners failed to take any action since July, 2014 though the petitioners were aware of the fact that learned Sessions Judge, Ahmedabad Rural had issued summons against the petitioners on 18.7.2014. The date of aforementioned order is not disputed by the petitioners. He has submitted that petitioners are neither in a position to dispute the fact of knowledge or order of issuance of summons nor in a position to raise contents of knowledge of remedy available to the petitioners.

5.He has also submitted that petitioners were aware about the aspect that they were require to file their appearance before the returnable date. It would not be proper for the petitioners to contend that the petitioners are illiterate persons and were not aware about the remedy available to the petitioners.

6.He has submitted that information was received from the Joint Commissioner of Customs, Surat vide letter dated 27.2.2014 and 6.3.2014 which reveals that Surat based diamond companies M/s.Harmony Diamonds Pvt. Ltd., M/s.Agni Gems Pvt. Ltd., and M/s.R.A.Distributors Pvt. Ltd., have filed fake bills of entry before the ICICI Bank for making foreign remittance through bank accounts with ICICI Bank, Surat. From the information so received it has come to the notice that within a span of two months i.e. January and February, 2014 remittance worth more than Rs.1000/□ crores against fake import documents viz. bills of entry and invoices were made from the said accounts to Hongkong and Dubai. The customs Department, Surat have confirmed that the bills of entry in question did not originate from their offices. Thus, the said bills of entry etc., against which the said remittance were attached were apparently fake.

7.He has also submitted that initially investigation was carried out under the FEMA, 1999. Enquiries revealed that Shri Afroz Mohammed Hasanfatta alongwith Shri Madanlal Jain and Shri Bilal Haroon Gilani are involved in this racket of sending remittances outside India on the basis of forged bills of entry.

8.He has further submitted that from Shri Madanlal Jains whatsapp message to Shri Afroz Mohammed Hasanfatta is about the companies, namely, Aarzoo Enterprises, Vandana & Co., M.D.Enterprises, Millenium & Co., Maruti Trading. The investigation has revealed that the said companies were used in this case for making RTGS credits for siphoning off the funds.

9.He has also submitted that complaint was received by the Crime Branch, Surat from ICICI Bank against M/s.R.A.Distributors Pvt. Ltd., and its Directors alleging that the Company had prepared 17 fake bills of entry and presented the same before ICICI Bank for outward remittances based on which FIR No.I□16 of 2014 dated 11.4.2014 and FIR No.I□17 of 2014 dated 13.4.2014 were registered by the detection of Crime Branch. He has submitted that investigation under PMLA, 2002 have been initiated as the offences under Section 420, 467, 471 and 120(B) of the Indian Penal Code are scheduled offences in terms of Section 2(1)(y) of the PMLA which have been registered against the directors of the said companies.

10.He has submitted that during the course of investigation it has been revealed that one of the entities viz. Natural Trading Co., had made RTGS credits to the Companies having accounts in ICICI Bank from which remittances were sent out of India. It was also revealed that the said Company has made payments to the tune of Rs.7 crores to Shri Afroz Mohammed Hasanfatta and Rs.3 crores to his brother Shri Jafar Mohammed Hasanfatta during January to March 2014. The investigation further revealed transactions between M/s.Natural Co., and M/s.Gangeshwar Mercantile Pvt. Ltd. It was further seen that on 17.2.2014 M/s.Gangeshwar Mercantile Pvt. Ltd. had made payments to M/s.Nile Trading Corporation, a proprietary concern of Shri Afroz Mohammed Hasanfatta.

11.He has submitted that statement of Shri Afroz Mohammed Hasanfatta was recorded where in relation to the funds received from the aforesaid entities, he has stated that in 2014 he had requested Shri Madanlal Jain for some financial help and accordingly he had arranged unsecured loan which was received by him in his personal account with Union Bank of India, Nanpura, Surat and Rs.3 crores to his brother Shri Jafar Mohammed Hasanfatta. In relation to the amount of Rs.6.31 crores received in his firms account he has stated that this amount was received on sale of diamonds to M/s.Gangeshwar Mercantile Pvt. Ltd. He has also produced invoices to show that these diamonds were purchased by him from M/s.Vidhatri Exim Pvt. Ltd., at the

office of Shri Madanlal Jain but the payments for this purchase was yet to be made. On enquiries it revealed that M/s.Natural Trading Company and M/s.Gangeshwar Mercantile Pvt. Ltd., did not exist at the given addresses.

12.He has further submitted that Shri Madanlal Jain his statement has denied having arranged any unsecurd loan to Shri Afroz Mohammed Hasanfattaor Shri Shri Jafar Mohammed Hasanfatta from M/s.Natural Trading but stated that the amounts were paid to them for their role in the illegal foreign remittances sent abroad. Out of this amount of Rs.16.31 crores some amounts were transferred by Shri Afroz Mohammed Hasanfatta to his family members and others for the purpose of investment.

13.He has also submitted that Shri Jafar Mohammed Hasanfatta has given instructions to Shri Madanlal Jain for transferring funds to the ICICI Bank accounts from which funds were ultimately remitted to UAE and Hong Kong on the basis of forged bills of entry. He has received the proceeds of crime in his bank account and made investments in the stock market. He has He has also made two payments of Rs.55,68,750/☐ each on 5.2.2014 and 6.2.2014 to M/s.Aalay Developers as advance for books of two flats in Mumbai. He has made payment of Rs.30 lacs to Shri Abdul Karim Jaka on 24.3.2014. Thus, he has knowingly involved himself in the process of money laundering.

14.He has submitted that Shri Ahmed Mohammed Hasanfatta has received the proceeds of crime from his brothers Shri Shri Afroz Mohammed Hasanfatta and Shri Jafar Mohammed Hasanfatta in his bank account and has made further payment of Rs.2 crores to M/s.Fancy Builders Pvt. Ltd., for purchase of a flat in Mumbai. He has made payments totalling Rs.47,50,000/☐ during January, 2014 to March, 2014 towards purchase of a flat in Mumbai. He has made payment of Rs.68,53,457 to M/s.Muskan Realities on 15.1.2014 as his contribution for becoming a partner of the said firm whereby he has acquired 22.7272% share in the firm. He has also made payment of Rs.31 lacs to Shri Abdul Karim Jana on 24.3.2014. He has also made an investment of Rs.16,00,000/☐ on 28.2.2014 in M/s.Oasis Developers for becoming a partner of the said firm. Thus he has knowingly involved himself in the process of money laundering.

15.He has further submitted that Shri Fazaleumer Aziz Pothiawala has received the proceeds of crime from Shri Afroz Mohammed Hasanfatta in his bank account and made further payment to Shri Abdul Karim Jaka. He has

invested Rs.16,00,000/☐ in M/s.Oasis Developers on 28.2.2014. Thus he has knowingly involved himself in the process of money laundering.

16.He has also submitted that Smt.Foziya Samir Godil has received the proceeds of crime amounting to Rs.1,15,00,000/☐ in her bank account from M/s.Nile Trading Corporation, proprietory concern of Shri Afroz Mohammed Hasanfatta and she has made investment in the stock market. She has also made payments to Shri Abdul Karim Jaka as well as payments to M/s.Huda Enterprises and has thereby knowingly involved herself in the process of money laundering.

17.He has further submitted that Shri Samir Godil had full control of his wife Smt. Foziya Godils bank accounts and was operating the same and was aware of all the transactions. The proceeds of crime amounting to Rs.1,15,00,000/☐ received in his wifes bank account was claimed by him as unsecured loan. He has further admitted having made payment as unsecured loan. He has further admitted having made payment to Shri Abdul Karim Jaka on instructions of Shri Afroz Mohammed Hasanfatta. Thus he is involved alongwith his wife for the purpose of receiving the proceeds of crime and its further transfer and thus knowingly involving himself in the process of money laundering.

18.He has submitted that provisional attachment Order (PAO) No.1 of 2014 dated 17.7.2014 was issued whereby properties worth Rs.8.35 crores belonging to Shri Afroz Mohammed Hasanfatta and his family members were attached including those of the present applicant Nos.1 to 4. He has submitted that another PAO No.4 of 2015 dated 31.3.2015 was issued whereby property valued at Rs.1.39 crores in the name of applicant No.2 Ahmed Mohammed Hasanfatta was attached. Both these PAOs have been confirmed by the adjudicating authority, PMLA vide orders dated 7.11.2014 and 21.7.2015 by holding that the properties are involved in money laundering.

19.He has submitted that bank accounts in which the petitioners received payments and made further payments were all in their names and they were signatories having power to operate the accounts. It is worthwhile to note that none of them had slightest hesitation in allowing their accounts to be used as a transit point for further transfer of the proceeds of crime. Thus they have helped in the process of layering and thereby they are involved in the process of money laundering.

20.He has also submitted that learned Judge has taken cognizance after perusing the complaint, documents as well as legal provisions and passed the impugned order dated 18.7.2014. It is, therefore, denied that ingredients of Section 3 of the PMLA are lacking.

21.He has further submitted that petitioners have allowed the use of their bank accounts for layering of the proceeds of crime received by Shri Afroz Mohammed Hasanfatta by further transfer/use of the funds on his instructions and thus they are involved in the process of money laundering which is substantiated by the bank account statements as well as statements recorded under Section 50 of the PMLA, 2002.

22.He has also submitted that all the petitioners have knowingly allowed the use of their bank accounts and knowingly involved themselves in this activity having full knowledge of the purpose and intent of the transactions. Thus they have helped in the process of laying and thereby they are involved in the process of money laundering. He has submitted that though the amounts were received in the bank accounts of the petitioners on the instructions of Shri Afroz Mohammed Hasanfatta the fact remains that they were operating these accounts and they alone were capable of carrying out any transaction in these accounts.

23.He has further submitted that the scheduled offence relates to the commission of crime whereas investigation under PMLA, 2002 is related to the proceeds of crime generated as a result of commission of the scheduled offence. The proceeds of crime may be found in the possession of any person who may not have committed the scheduled offence. He has submitted that except making bald allegations the applcants have failed to substantiate in what manner the said order is bad in law.

24.He has also submitted that the scheduled offence relates to the commission of crime whereas investigation under PMLA, 2002 is related to the proceeds of crime generated as a result of commission of the scheduled offence. The proceeds of crime may be found in the possession of any person who may not have committed the scheduled offence. It is difficult to believe that the applicant were not aware and had no knowledge of the purpose and intent of the transactions as they have willingly allowed the use of their accounts for the purpose of laying the proceeds of crime with an intention to conceal the source of the funds and thus the provisions of Sections 23 and 24 of the PMLA, 2002 will apply. Lastly he has prayed to dismiss the revision application.

25.Both sides have made lengthy arguments on factual and legal issues including the issue of maintainability of the instant Revision Petition. I have carefully perused the records and have considered the rival submissions.

26.Delay in invoking Revisionary Jurisdiction has already been condoned in the interest of justice after hearing both sides on that aspect.

27.Before adverting to the oral and written submissions on facts and merits, on the issue of maintainability an objection was raised by the Respondent by placing reliance on the following decisions□i.Subramanium Sethuraman vs State of Maharashtra, (2004) 13 SCC 324, ii.Bholu Ram vs State of Punjab, (2008) 9 SCC 140 // 2009 (1) GLH 39, and iii.Adalat Prasad vs Rooplal Jindal, (2004) 7 SCC 338.

It was contended that in view of these judgments the impugned Order shall be considered as an interlocutory order and hence the Revision Petition is not maintainable and shall not be entertained.

28. Mr.Vikram Chaudhary, learned Senior Counsel appearing on behalf of the petitioners relied upon the judgment of the Honble Supreme Court in Urmila Devi v. Yudhvir Singh, (2013) 15 SCC 624, in which all these judgments relied upon by the Respondents amongst various other judgments were considered in detail, while declaring the legal position that the Revision shall be maintainable.

29.I have seen that the Honble Supreme Court in Urmila Devi (supra) has clearly declared the legal position in regard to maintainability of a Revision Petition against an order taking cognizance and issuance of summons under Sections 200 to 204 CrPC as follows□

21. Having regard to the said categorical position stated by this Court in innumerable decisions resting with the decision in Rajendra Kumar Sitaram Pande, as well as the decision in K.K. Patel, it will be in order to state and declare the legal position as under:

21.1. The order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 200 to 204 CrPC would be an order of intermediatory or quasi□final in nature and not interlocutory in nature.

21.2. Since the said position viz. such an order is intermediatory order or quasi-final order, the revisionary jurisdiction provided under Section 397, either with the District Court or with the High Court can be worked out by the aggrieved party.

21.3. Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power under Sections 200 to 204 CrPC, can always be subject-matter of challenge under the inherent jurisdiction of the High Court under Section 482 CrPC.

22. When we declare the above legal position without any ambiguity, we also wish to draw support to our above conclusion by referring to some of the subsequent decisions. In a recent decision of this Court in Om Kumar Dhankar v.

State of Haryana, the decisions in Madhu Limaye, V.C. Shukla, K.M. Mathew, Rakesh Kumar Mishra v. State of Bihar ending with Rajendra Kumar Sitaram Pande, was considered and by making specific reference to para 6 of the judgment in Rajendra Kumar Sitaram Pande, this Court has held as under

in para 10: (Om Kumar Dhankar case, SCC p. 255)

10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 CrPC was available to Respondent 2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the appellant accordingly.

23. Therefore, the position has now come to rest to the effect that the revisional jurisdiction under Section 397 CrPC is available to the aggrieved party in challenging the order of the Magistrate, directing issuance of summons.

30.I have also considered the following judgments of the Honble Supreme Court in the matters concerning challenge in a Revision Petition to the order taking cognizance and issuing process. When the concerned High Court had declined to interfere in Revision Petition, the Honble Supreme Court had observed as follows- i.Suresh v. Mahadevappa Shivappa Danannava, (2005) 3 SCC 670

2. The present appeal was filed against the final judgment and order dated 17-2-2004 passed by the High Court of Karnataka at Bangalore in Criminal Revision Petition No. 932 of 2000 dismissing the said petition filed by

the appellant herein (Accused 1).

6&&..On 4□8□2000 the IVth Additional Chief Metropolitan Magistrate passed the following order:

> Perused the record. Cognizance of the offence alleged against the accused is taken under Section 190(1)(b) CrPC. Office to register the case in CC register and issue SS to accused by 30□9□2000. sd/□ 4□8□2000

7. Aggrieved by the order dated 4□8□2000 passed by the IVth Additional CMM, the appellant□accused preferred a criminal revision under Section 401 CrPC praying the High Court to set aside the said order. The said revision was dismissed by the High Court by the impugned order dated 17□2□2004.

11&&&&In our view, the complaint does not disclose the ingredients of Section 415 CrPC and, therefore, we have no hesitation to set aside the order passed by the Magistrate taking cognizance of the offence alleged. It is also not clearly proved that to hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. The order of the Magistrate and of the High Court requiring Accused 1□appellant herein to face trial would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for setting aside the order of the Magistrate as confirmed by the High Court for issuance of process and the proceedings itself.

ii.Indseam Services Ltd. v. Bimal Kumar Kejriwal (HUF), (2001) 8 SCC 15 :

> 2. M/s Indseam Services Limited, an accused in Complaint Case No. C□ 1628 of 1996 pending before the Metropolitan Magistrate, XIIth Court, Calcutta, has filed this appeal assailing the order dated 10□7□2000 of the Calcutta High Court dismissing the revision petition filed by it for quashing the order of the Magistrate taking cognizance of the offence under Section 420 of the Indian Penal Code, and issuing process to the accused.

4&&&&The order passed by the Magistrate is quoted hereunder:

> I have also gone through the order of the Honble High Court. On careful scrutiny of the materials on record, I find that there is sufficient ground to proceed against the accused persons under Sections 120□B/420 IPC.
>
> Issue summons against all the accused persons under Sections 120□ B/420 IPC; requisites are to be put in at once.

5. The appellant filed a revision petition in the High Court assailing the said order&&&

8. On a perusal of the order under challenge it is clear that the learned Single Judge disposed of the revision petition filed by the appellant for setting aside the cognizance order and for quashing the criminal proceedings without entering into the merits of the case. The learned Single Judge did not consider the nature of the contract between the parties, the arrangement for payment of dues by the accused persons to the complainant, nor did he record a finding that the ingredients of the offence of cheating defined under Section 415 IPC were prima facie made out from the averments in the complaint petition and the statement on oath by the complainant before the learned Magistrate&&&&&&..While judging the question whether the cognizance order passed by the learned Magistrate was sustainable in law it was incumbent for the learned Single Judge to go into the question whether the complainant has been able to make out a prima facie case for the offence of cheating on the averments in the complaint petition and his statement on oath. The matter should have been examined in the light of the contentions raised by the accused applicant in the revision petition and finding recorded&&&&.

9. We are constrained to observe that there has been an avoidance of the function of judicial determination of the question of acceptability or otherwise of the plea raised by the accused persons for setting aside the cognizance order and for quashing the criminal proceedings&&&&&..

30.I therefore have no hesitation in holding that it is not only within the jurisdiction but is an obligation of this Court to look into as to whether the taking of cognizance and issuance of process was mechanical without there being any prima facie case for bringing home the charge of the offence punishable under Section 3 of PMLA from the averments in the Complaint, and whether the Complaint discloses or not, the necessary ingredients of Section 3 of PMLA qua each of the petitioners.

32.The Ld. Senior Counsel appearing for the petitioners had rightly relied upon the judgment in Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749, wherein the Honble Supreme Court delineated the duties and obligations cast while summoning of an accused in a criminal case as follows□

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for

the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

33.In view of this clear pronouncement by the Honble Supreme Court, I shall now ascertain whether such duties and obligation cast on the Special Court were duly discharged while issuing summons against all or any of the accused petitioners or whether the criminal law was set into motion as a matter of course without applying mind to the facts, nature of allegations, sufficiency of evidence both oral and documentary in bringing charge home to these accused petitioners and the law applicable in context of the facts.

34.The brief facts of the case which led to the issuance of the impugned Order are as follows□ i.Crime Branch, Surat registered two FIRs NO. I/16/2014 dtd. 11.04.2014 and I/17/2014 dtd. 13.04.2014 under Sections 120(B), 420, 465, 467, 468, 471, 477 A of IPC on receipt of Complaint from IClCI bank against certain Companies (Indian Entities) and their directors alleging preparation of fake bills of entry and making outward remittances from ICICI Bank to Hong Kong and Dubai on the basis of the such fake Bills of Entry. After investigations Charge Sheet has been filed against several persons. The main accusations in the Scheduled Offence are inter alia against Shri Madanlal Jain, Shri. Afroz Mohammed Hasanfatta and Shri Bilal Haroon Gilani and others. However, none of the petitioners are arraigned as accused in the said Scheduled Offence.

ii.Since the Offences under Section 420, 467, 471 and 120(B) of IPC are scheduled offences in terms of Section 2(1)(v) of the PMLA, upon scrutiny of the said two FIRs, investigation under PMLA,2002 was initiated by the office of the Respondent vide ECIR 1/SRT/2014□15 dated 17.04.2014.

iii.The investigations under PMLA revealed that Indian Entities had received amounts through RTGS Credits in their respective bank accounts with ICICI Bank primarily from certain other Indian firms from their accounts with Axis Bank held at Mumbai and Surat which included amongst others one M/s. Natural Trading Co., which had transferred some of the above said amounts. These firms in turn had received RTGS Credits into their bank accounts form various other firms based in New Delhi, Mumbai and Surat. There is absolutely no evidence whatsoever to show role of any of the petitioners in arranging or sending these RTGS credits or in making fraudulent remittances on the strength of fake bills of entry.

iv.It was also revealed that from the bank account of the said Natural Trading Co., payments to the tune of Rs. 7 crore to Shri. Afroz Mohammed Hasanfatta and Rs. 3 crore to his brother Shri. Jafar Mohammed Hasanfatta were made during January to March 2014 as under:

> Sr. Date Amount Name of the beneficiary No. Rs.) 1 6/1/2014 1 Crore Shri Jafar Mohammed Hasanfatta 2 6/1/2014 1 Crore Shri Afroz Mohammed Hasanfatta 3 31/01/2014 2 Crore Shri Jafar Mohammed Hasanfatta 4 6/3/2014 1.25 Crore Shri Afroz Mohammed Hasanfatta 5 6/3/2014 1.75 Crore Shri Afroz Mohammed Hasanfatta 6 7/3/2014 1.55 Crore Shri Afroz Mohammed Hasanfatta 7 7/3/2014 1.45 Crore Shri Afroz Mohammed Hasanfatta Total 10. crores
> i.It is a matter of record that the receipts of amounts in the account of accused petitioner no. 1 Shri Jafar Mohammed Hasanfatta to the tune of Rs. 3 Crores at the instance of his real brother Shri Afroz Hasanfatta is also noticed in the Charge Sheet for the Scheduled Offence in Para (7) at Page 355□ 356, however, merely on that basis he has not been arraigned as a co□ accused in the Scheduled Offence.

ii.The investigation further revealed transactions between M/s Natural Trading Co and one M/s. Gangeshvar Mercantile Pvt. Ltd., both managed by Shri Madanlal Jain. It was further seen that on 17.02.2014 M/s. Gangeshwar Mercantile had made payments to M/s Nile Trading Corporation proprietary concern of Shri Afroz Mohammed Hasanfatta as under:

SR NO.	DATE	AMOUNT IN RS.
1	17/02/2014	1,71,90,517
2	17/02/2014	1,44,36,831
3	17/02/2014	1,44,98,627
4	17/02/2014	1,69,93,966
	TOTAL	6,31,19,941

vii.The said amount is also reflected in the Charge Sheet for the Scheduled Offence in Para (8) at Page 356, however, merely on that basis none of the accused petitioners have been arraigned as a co□accused in the Scheduled Offence.

viii.In PMLA proceedings this total amount of Rs. 16,31,19,941/□ is alleged as proceeds of crime relatable to Shri Afroz Hasanfatta and the petitioners, and laundering thereof is alleged by the petitioners.

ix.One Shri Trivedi, an accountant of Shri. Madanlal Jain, has on 28/03/2014, during the search operations, stated that he had frequently seen Shri Afroz Mohammed Hasanfatta visiting the office of Shri Madanlal Jain at 416A & 417A, Panchratna Tower, Opera House, Mumbai in the last couple of months. He however has not implicated any of the accused petitioners including Shri Jafar Mohammad Hasanfatta. Some further evidence was gathered against Shri Afroz Mohd Hasanfatta.

x.All the petitioners are admittedly close relatives of said Shri Afroz Mohd.

Hasanfatta. Shri Afroz Hasanfatta is real brother of Petitioner No. 1 and 2. Other petitioners are also amongst his close relatives. It is alleged that from his Bank Accounts, Shri Afroz Hasanfatta transferred money to the Bank Accounts of Petitioner No. 2 to 4 for further investments or payments to others. However, there is no allegations of any transfer of money out of the said amount of Rs 16,31,19,941/□to the petitioner no. 5.
xi.Statements of each of the accused petitioners were recorded under PMLA. None of the petitioners gave any inculpatory statement. Their statements recorded under PMLA, do not even reflect any knowledge of commission of any Scheduled Offence, much less about any proceeds of crime.

xii.Statement of Shri. Afroz Mohammed Hasanfatta was recorded where in relation to the funds received from the aforesaid firms he has stated that in 2014 he had requested Shri Madanlal Jain for some financial help and accordingly he had arranged unsecured loan which was received by him Rs. 7 crores) in his personal account with Union Bank of India, Nanpura, Surat and Rs. 3 crores in the account of his brother Shri. Jafar Mohammed Hasanfatta. In relation to the amount of Rs. 6.31 crors received in his firm's account, Shri Afroz has stated that this amount was received on sale of diamonds to M/s. Gangeshwar Mercantile Pvt.Ltd. He has also produced invoices to show that these diamonds were purchased by him from M/s Vidhatri Exim Pvt. Ltd at the office of Shri Madanlal Jain but the payment for this purchase was yet to be made. Enquiries however revealed that M/s. Natural Trading Co and M/s. Gangeshwer Mercantile Pvt. Ltd., did not exist at the given addresses.

xiii.The petitioner No. 1 in his statement recorded under Section 50 of PMLA had stated that he had not heard of M/s. Natural Trading Co and his brother Shri Afroz had arranged Rs. 3 Crore in his account. He further stated that he has no business dealings with M/s Natural Trading Co. and Rs. 3 Crore have been invested in share trading. He also stated that he neither knew M/s. Natural Trading Co nor Shri Madanlal Jain.

xiv.Statement dated 05.05.2014 of Shri Madanlal Jain (at Page 281□282) contain the following relevant questions and answers□i.Q.2 Do you know Shri Hasan Fatta Afroj Mohammed, If so How?

i.A.2 In this regard, I Know Shri Hasan Fatta Afroj Mohammed since last 04 years, I was introduced to him by Shri Amratmadav Angadiya located at 4th

Floor, Pnchratna, Opera House, Mumbai. I further state that I do not have any official dealing with him.

ii.Q.5 Whether you had arranged loan from M/s Natural Trading Co. And M/s Gangeshwar Mercantile Pvt. Ltd. For Shri Hasan Fatta Afroj Mohammed, Shri Jafar Mohammed Hasanfatta, Nile Trading Co. or family members of Shri Hasan Fatta Afroj Mohammed?

iii.A.5 In the regard, I state that neither I had arrange any fund as lone from M/s. Gan Gangeshwar Mercantile Pvt. Ltd and M/s Natural Trading Co. nor from Shri Pukhraj Anandmal Mutha. I further state that I am not aware whether Shri Hasan Fatta Afroj Mohammed has taken any loan from M/s. Natural Trading Co. and M/s. Gangeshwar Mercantile Pvt. Ltd and Shri Pukhraj Anandmal Mutha.

Thus, although in the question no. 5 reference was made to accused petitioner no. 1 or family members of Shri Afroz Hasanfatta, in his answer Shri Madanlal Jain had neither shown any acquaintance nor alleged any dealings with any of the accused petitioners.

(xv) That the petitioner no. 2 in his statement had stated that he had an account with Union Bank of India, Nanpura, Surat and the transactions were made on the directions of his brother Shri Afroz Mohamed Hasanfatta. He further stated that payments made to Shri Abdul Karim Jaka and M/s. Fancy Builders Pvt. Ltd. were made as per the directions of Shri Afroz Mohamed Hasanfatta.

(xvi) The petitioner No. 3 who is the brother□in□law of Shri Afroz in his statement had stated that Shri Afroz had made a payment of Rs. 3,00,00,000/□ in his savings account with the Union Bank of India, Nanpura, Surat and Shri Afroz had directed him to make a RTGS credit amounting of Rs.2,50,00,000/□ to Shri Abdul Karim Jaka. It is a matter of record that even the balance Rs 50,00,000/□ were immediately paid back to Sh. Afroz Hasanfatta.

(xvii) That the petitioner No. 4 in her statement inter alia stated that she had bank accounts with Union Bank of India and Tex□Co bank, Surat and had no business relationship with M/s. Nile Industries Pvt. Ltd. and M/s. Nile Trading Corporation. She further stated that her husband Shri. Samir Godil (Petitioner No. 5) would answer the transactions made from her bank account with Union Bank of India, the details of transactions made with M/s. Angel Broking Pvt. Ltd. and with Shri Abdul Karim Jaka.
(xviii) The petitioner No. 5 in his statement stated that he operates all the accounts of his wife (petitioner No. 4) and she had no knowledge of the transactions in her accounts at all. He further stated that Shri Afroz gave an unsecured loan amounting to Rs.1,15,00,000/□ to Petitioner No. 4 from M/s. Nile Trading Corporation and on the directions of Shri Afroz, he had made an RTGS transfer to Shri Abdul Karim Jaka from the Account of Petitioner No. 4.

(xix) Thus, the evidence available shows that all the petitioners had received amounts in their accounts through banking channels from or through their close relative Shri Afroz Mohammed Hasanfatta. It is also seen that amounts so received in bank account was further invested or utilized under instructions of Shri Afroz Mohammed Hasanfatta. However, neither statements of Shri Afroz Mohammed Hasanfatta, nor those of the petitioners impute against any of the accused petitioners, any culpable knowledge of Scheduled Offence or proceeds of crime or motive to project proceeds of crime as untainted.

(xx) On the basis of the above investigations, a Criminal Complaint no. 03/2014 dated 18.7.2014 was filed under PMLA inter alia against the petitioners herein. In the said criminal complaint the following is alleged against each of the petitioners:

1.Sh. Jafar Mohammed Hasanfatta (Petitioner No

1):

62&..Shri Jafar Mohamed Hasanfatta has knowingly involved himself in the process and the activity connected with the proceeds of crime including its concealment and possession and has therefore projected the same as untainted. It is apparent from the fact that he had received Rs. 3 Crore from M/s. Natural Trading Co and has invested the same on the directions of his brother Shri. Afroz in the Stock Market and Real estate&&

2.Ahmed Hasanfatta (Petitioner No. 2):

62&&.Shri Ahmed Hasanfatta, brother of Shri Afroz Mohamed Hasanfatta has knowingly involved himself in the process and activity connected with the proceeds of crime including its concealment and possession and has therefore projected the same as untainted. He received the funds from Shri Afroz Mohamed Hasanfatta and Shri Jafar Mohamed Hasanfatta and has invested Rs. 2,00,00,000/□ with Fancy Builders Pvt. Ltd., Mumbai. The flat at 1101 on the 11th floor at Hicon Grande, Bandra (W) was purchased on 6/3/2014 with the amount so received from his two elder brothers. In this case, the POC has been invested in an immovable property thereby projecting the same as untainted. Shri Ahmed fatta, therefore, is also guilty of money laundering under the PMLA&&

3.Fazaleumer Pothiawala (Petitioner No. 3):

62&&Shri Fazaleumer Pothiawala, brother□in□law of Shri Afroz Mohamed Hasanfatta, has knowingly involved himself in the process and activity connected with the proceeds of crime including its concealment and possession and has therefore projected the same as untainted. He too had parked the part of the proceeds of crime amounting to Rs.3,00,00,000/□ received from Shri Afroz Mohamed Hasanfatta with Shri Abdul Karim Jaka who one of the directors of M/s. I.B. Commercial Pvt. Ltd., Mumbai. It is humbly submitted that the exact purpose for the said investment with Shri Jaka is under investigation&&.

4.Foziya Samir Godil (Petitioner No. 4):

62&&&Smt Foziya Samir Godil has knowingly involved herself in the process and activity connected with the proceeds of crime including its concealment and possession and has therefore projected the same as untainted. She had involved herself in investing in stock market and parking the part of the proceeds of crime amounting to Rs.1,15,00,000/□ received from Shri Afroz Mohamed Hasanfatta which was invested with Shri Abdul Karim Jaka who one of the directors of M/s. I.B. Commercial Pvt. Ltd., Mumbai. It is humbly submitted that the exact purpose for the said investment with Shri Jaka is under investigation&&.

5.Samir Godil (Petitioner No. 5):

62&&Shri Samir Godil Jikar has admitted in his statement dtd 13.05.2014 that he had full control over the bank account in the name of his wife Smt. Foziya Samir Godil and has knowingly involved himself in the process and activity connected with the proceeds of crime including its concealment and possession and therefore projected the same as untainted. It is humbly submitted that Shri Samir Godil admittedly had received the amount of Rs.1,15,00,000/□which was claimed to be unsecured loan. However no supporting document could be produced by the said Shri Godil leaving no room for the doubt of the said amount forming part of the proceeds of crime&&.

(xxi) On the same date i.e. on 18.7.2014, the impugned Order was passed. Cognizance was taken and process by way of summons was issued against inter alia each of the accused petitioners.

34.The allegation against each of the petitioner is of commission of offence under Section 3 of PMLA, which is punishable under Section 4 of PMLA. Section 3 of PMLA reads as under:

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.

36.The proceeds of crime is defined in Section 2(u) of PMLA as under-(u) proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;

37.A holistic reading of this definition of proceeds of crime and the penal provision under Section 3 of PMLA, which uses conjunctive and, makes it luminous that any persons concerned in any process or activity connected with such proceeds of crime relating to a scheduled offence including its concealment, possession, acquisition or use can be guilty of money laundering, only if both of the two prerequisites are satisfied i.e. i.Firstly, if he-

1.directly or indirectly attempts to indulge,

2.knowingly either assists or is a party, or

3.is actually involved in such activity;

and

(ii) Secondly, if he also projects or claims it as untainted property;

37.the first of the two pre-requisite to attract Section 3 of PMLA shall thus satisfy any of the following necessary ingredients-

1.Re: Direct or Indirect attempt:

In State of Maharashtra v. Mohd. Yakub, (1980) 3 SCC 57, the Honble Supreme Court observed that-

13. Well then, what is an attempt? &&& In sum, a person commits the offence of attempt to commit a particular offence when (i) he intends to commit that particular offence and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence

but must be an act during the course of committing that offence.

Thus, an attempt to indulge would necessarily require not only a positive intention to commit the offence, but also preparation for the same coupled with doing of an act towards commission of such offence with such intention to commit the offence. Respondent failed to produce any material or circumstantial evidence whatsoever, oral or documentary, to show any such intention and attempt on the part of any of the petitioners.

2.Re:

Knowingly assists or Knowingly is a party:

In Joti Parshad v. State of Haryana, 1993 Supp (2) SCC 497 the Honble Supreme Court has held as follows□

5. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of intention or knowledge or reason to believe. We are now concerned with the expressions knowledge and reason to believe. Knowledge is an awareness on the part of the person concerned indicating his state of mind. Reason to believe is another facet of the state of mind. Reason to believe is not the same thing as suspicion or doubt and mere seeing also cannot be equated to believing. Reason to believe is a higher level of state of mind. Likewise knowledge will be slightly on a higher plane than reason to believe. A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same.

The same test therefore applies in the instant case where there is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to show that any of the petitioners, Knowingly, assisted or was a party to, any offence.

3.Actually involved:

Actually involved would mean actually involved into any process or activity connected with the proceeds of crime and thus scheduled offence, including its concealment, possession, acquisition or use. There is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to substantiate any such allegation qua the petitioners.

D. Neither any of the petitioners is arraigned as accused in the Scheduled Offences punishable under Indian Penal Code for direct or indirect involvement, abetment, conspiracy or common intention, nor is any such case made out even on prima facie basis against any of them.

38.the second of the two pre-requisite to attract Section 3 of PMLA would be satisfied only if the person also projects or claims proceeds of crime as untainted property. For making such claim or to project proceeds of crime as untainted, the knowledge of tainted nature i.e. the property being proceeds of crime derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence, would be utmost necessary, which however is lacking in the instant case.

39.Great emphasis was laid on behalf of the Respondent on Section 24 of PMLA which reads after amendment vide Act 2 of 2013 as under-

24. Burden of Proof.In any proceeding relating to proceeds of crime under this Act,

(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or court, may presume that such proceeds of crime are involved in money-laundering.

40.On the basis of the said Section 24 read with Section 3 of PMLA, it was contended on behalf of the Respondent that knowledge of the Scheduled Offence or proceeds of crime is not essential under Section 3, and mere assistance in handling proceeds of crime even without knowledge would attract offence of money laundering, and burden would shift on the accused to prove that he is not involved in money laundering. It was submitted that the petitioners are all adults having knowledge of right and wrong. The bank accounts in which they received payments and- made further payments were all in their names and they were the signatories having power to operate the accounts. None of them had the slightest hesitation in allowing their account to be used as a transit point for further transfer of the proceeds of crime. It shall thus be presumed that they have thus knowingly allowed the use of their bank accounts and knowingly involved themselves in this activity having full knowledge of the purpose and intent of the transactions and helped in the process of layering. Thereby they are involved in the process of money laundering.

41.I find no merit in this stand of the Respondent. I am of the view that this amended Section 24 shows legislative intent of attachment and confiscation of proceeds of

crime by presuming involvement of proceeds of crime in money laundering irrespective of whether the person concerned is or not charged with the offence of money laundering. Thus, there shall be a legal presumption in any proceeding relating to proceeds of crime under PMLA that such proceeds of crime are involved in money-laundering. Burden would be on the person concerned to show to the contrary. However, as rightly pointed out by the Learned Senior Counsel for the petitioners, there is no legal presumption in this Section 24 that

1.The concerned property is proceeds of crime,

2.The person accused has knowledge that the property is proceeds of crime, and

3.The person is involved in or is guilty of money-laundering merely for possessing or having any concern with the proceeds of crime.

In fact this Section 24 clearly indicates that even a person in possession or connected with any proceeds of crime may or may not be charged with the offence of money laundering. Whether a person shall be charged with money laundering or not shall thus depend only upon satisfying the requirements of Section 3 of PMLA as already explained above.

42.In the instant case, neither there is anything to raise a presumption of fact or law that any of the petitioners was aware that the monies received in their bank accounts through banking channels were proceeds of crime derived from any scheduled offence, nor is there anything to further presume that the petitioners were intentionally projecting or claiming any proceeds of crime as untainted one. In absence of the same, merely because the petitioners are close relatives of Shri Afroz and had banking transaction with him or at his instance would not attract offence of money laundering under Section 3 of PMLA even on prima facie basis.

43.Section 50 of PMLA is pari materia to Section 108 of the Customs Act, 1962. However, in the instant case even the statements recorded under Section 50 are not sufficient for taking cognizance against each of the petitioner. Even the oral evidence of the petitioners or of co-accused or any witness, which were available before the Special Court, do not make out even a prima facie case of money laundering against the petitioners. Perusal of complaint do not reveal that there was any evidence regarding requisite knowledge on the part of any of the Petitioners.

44.The impugned Order dated 18.7.2014 is thus mechanically passed against the petitioners without due application of mind on the material available before the Court and is thus wholly illegal. There is manifest error in mechanically taking cognizance and issuing process without there being any prima facie case against the petitioners for the offence punishable under Section 3 of PMLA from the averments made in the Complaint, and the material placed on record.

45.The Respondents submitted that the Provisional Attachment Order (PAO) Nos. 01/2014 dated 17.07.2014 and 04/2015 dated 31.03.2015 have been confirmed by the Adjudicating Authority, PMLA vide orders date 07.11.2014 and 21.7.2015 respectively by holding that the, properties are involved in money laundering. Reliance was also placed on para 30 and 36 of Gautam Kundu vs Directorate of Enforcement, (2015) 16 SCC 1.

46.I am of the view that prima facie findings of adjudicating authority are not substitute for the requisite satisfaction required by the Special Court for taking cognizance. Final confiscation of proceeds of crime or value thereof under PMLA would always be subject to final outcome of trial and is not final merely by Adjudication. Moreover, the Respondent failed to point out any prima facie material against each of the petitioner even at this stage to show requisite knowledge with each of them, of commission of Scheduled offence to derive or generate any proceeds of crime and of knowingly attempting or indulging in projecting the same as untainted.

47.So far as the judgment in Gautam Kundu (supra) is concerned, the observations regarding Section 45 and limitations in grant of bail do not help the Respondent in the instant petition where challenge is against the Order taking cognizance and issuing process by way of summons.

48.On behalf of the Respondent great emphasis was laid on the statements of main accused Shri Madanlal Jain recorded under Section 50 of PMLA on 22.7.2014 (Page 287 to 297), 23.07.2014 (Page 283 to 286) and 24.7.2014 (Pages 298 to 300) i.e. after taking cognizance of the offence vide the impugned Order. It was submitted that in view of these statements of the co-accused, though recorded subsequent to taking cognizance, there is sufficient evidence against the petitioner no. 1 Shri Jafar Hasanfatta to bring home the charge against him. The Learned Senior Counsel appearing for the petitioners have fairly shown the said statements annexed with the petition even before the said contention was advanced on behalf of the Respondent.

49.I am not impressed with this stand taken by the Respondents. In these statements the officer of the Respondent has again asked response of main accused Shri Madanlal Jain inter alia regarding payment from the account of Natural trading Co. to the account of petitioner no. 1 Shri Jafar Hasanfatta, which was already asked in statement dated 5.5.2014 in question nos 3 to 5 (at Page 281). The extract from these statements referred by the Respondents is as follows- i.Q.38. Why was Rs.3 Crore paid to Shri. Jafar Mohamed Hasanfatta and Rs. 7 Crore paid to Shri. Afroz Mohamed Hasanfatta from M/s. Natural Trading Co.?

ii.Ans. I have not given any unsecured loan amounting to Rs. 3 Crore to Shri. Jafar Mohamed Hasanfatta and Rs. 7 Crore paid to Shri. Afroz Mohamed Hasanfatta from M/s. Natural Trading Co. The amount was paid to them as a part of illegal proceeds in the enduing fraudulent foreign remittances abroad.

It is thus seen that the main accused Shri. Madanlal Jain in his subsequent statements has not only denied having arranged any unsecured loan to co-accused Shri Afroz Mohammed Hasanfatta or Shri Jafar Mohammed Hasanfatta from M/s.Natural Trading but has also stated that the amounts were paid to them as a part of illegal proceeds in the ensuing foreign remittances abroad. He has also stated that commission was also paid to Afroz Mohammed Hasanfatta through cheque discounters.

50.Firstly, such an exercise after cognizance on the Complaint is prima facie alien to any criminal jurisprudence. Moreover, it remains uncorroborated statement of a co-accused in respect of which a Constitution Bench of the Honble Supreme Court in Haricharan Kurmi v. State of Bihar, (1964) 6 SCR 623 // AIR 1964 SC 1184 has clearly laid down the law in this regard with the following observations:

13. As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. &&&.. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. &..

15. The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against and accused person, the court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the court has to adopt in dealing with these two types of evidence is thus clear, well understood and well-established&

17. It is true that the confession made by Ram Surat is a detailed statement and it attributes to the two appellants a major part in the commission of the offence. It is also true that the said confession has been found to be voluntary, and true so far as the part played by Ram Surat himself is concerned, and so, it is not unlikely that the confessional statement in regard to the part played by the two appellants may also be true; and in that sense, the reading of the said confession may raise a serious suspicion against the accused.

But it is precisely in such cases that the true legal approach must be adopted and suspicion, however grave, must not be allowed to take the place of proof. As we have already indicated, it has been a recognised principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. &..

51.In the instant case, there is absolutely no evidence against any of the petitioners to have any occasion to turn to the confession of co-accused in order to receive assurance to the conclusion of guilt. Therefore, trial on such statement of co-accused collected subsequent to cognizance would be futile and abuse of process of law. In the material before the Special Court for PMLA, none of the statements of any witness even remotely referred to the petitioners. None of the statements either of the petitioners, or of any witness or even of any co-accused imputed on any of the petitioners even remote knowledge of commission of Schedule Offence and knowingly laundering of any Proceeds of Crime. Moreover, there is not even any circumstantial evidence garnered in the entire investigation to remotely impute such pre-requisite knowledge or mens rea, existence of which is essential at least on prima facie basis for taking cognizance of offence against the petitioners.

52.The Learned Senior Counsel for the petitioner has rightly pointed out that the judgment in Pepsi Foods Ltd (supra), was applied in Rukmini Narvekar v. Vijaya Satardekar, (2008) 14 SCC 1, and the Honble Supreme Court while upholding the Order passed by the High Court which allowed a petition against dismissal of Criminal Revision Petition filed against order taking cognizance and issuing process, observed in favour of Respondent accused Smt. Vijaya Satardekar as follows □

7. The allegation in the FIR was that Ranjit Satardekar had falsely misrepresented to the complainant and her husband that the document which was being executed by them was for enabling Ranjit to represent them in the inventory proceedings in progress on the death of Andre Andrade, although what was actually executed by them was a power of attorney. This power of attorney was used by the accused for executing a sale deed in favour of his wife Vijaya Satardekar and Sadiq Sheikh in the year 1991, but the said sale deed was presented for registration only in the year 2001. It is alleged that the complainant came to know only in August 2001 for the first time about the execution of the sale deed in 1991. Thus it is alleged that the property of the complainant was purported to have been sold away by Ranjit Satardekar, Advocate, by deceit and misrepresentation for which he deserved to be punished under Sections 409, 420 and other provisions of IPC.

8. On the basis of the aforesaid FIR, the police investigated the case and filed a charge-sheet against both Ranjit Satardekar and Smt Vijaya Satardekar as well as two others.

Thereafter, cognizance was taken of the offence alleged in the charge-sheet and process was issued by the Judicial Magistrate, First Class, Panaji under Sections 468/471/420/120-B read with Section 34 of the Penal Code, 1860.

9. Against the order taking cognizance and issuing process against the accused, they filed a criminal revision before the Sessions Judge, Panaji, which was dismissed by his judgment dated 19-6-2007. Against that order a writ petition was filed which was allowed by the impugned judgment of the learned Single Judge of the High Court dated 3-8-2007. Hence this appeal.

26. As regards the other criminal appeal in which Smt Vijaya Satardekar, wife of Ranjit Satardekar, is the respondent, we are of the opinion that there is no material whatsoever either mentioned in the FIR or produced by the prosecution to show that Vijaya Satardekar was in any way involved in the alleged criminal offence committed by her husband Ranjit Satardekar. The only allegation against her is that the sale deed was in her favour. In our opinion this does not prima facie make out any offence. In our opinion, therefore, the criminal proceeding against Vijaya Satardekar was rightly quashed by the High Court and the criminal appeal in which Vijaya Satardekar is the respondent is dismissed.

39. However, as indicated by my learned Brother, the complaint made does make out a prima facie case against accused Ranjit Satardekar and the cognizance taken by the learned Magistrate cannot be faulted and the appeal as far as he is concerned, must be allowed. However, even prima facie, none of the offences referred to in the charge-sheet can be made out against accused Vijaya Satardekar and she has been roped in only with the aid of Section 120-B which is also not substantiated. The appeal as far as she is concerned, must be dismissed.

Thus, in a case of executing sale deed in favour of wife by deceit and misrepresentation, the Honble Supreme Court upheld the interference with the cognizance order in Revision Jurisdiction as there was no material whatsoever either mentioned in the FIR or produced by the prosecution to show that the wife Vijaya Satardekar was in any way involved in the alleged criminal offence committed by her husband Ranjit Satardekar. The only allegation against her was that the sale deed was in her favour, which in the opinion of the Honble Supreme Court did not prima facie make out any offence.

53.The same test is applicable in the facts of the instant case. By the impugned order dated 18.7.2014, the Special Court for PMLA mechanically took cognizance of the alleged offence punishable under Section 4 of PMLA qua each of the accused petitioner, without even prima facie material showing existence of any mens rea or culpable knowledge with all or any of them, of the subject Scheduled Offence investigated separately by Crime Branch, Surat in FIR Nos. I-16/2014 dated 11.04.2014 and I-17/2014 dated 13.4.2014, or of any proceeds of crime emanating from the said scheduled offences. Neither there is any tangible evidence, nor even any circumstantial

material to impute culpable knowledge on the petitioners and to even prima facie conclude that they were either aware of the commission of the Schedule Offence or the generation of the alleged proceeds of crime by or out of such Schedule Offence. As per the material adduced, it cannot be even prima facie held that the petitioners had any reason to even have any reasonable doubt regarding commission of alleged schedule offence and generation of any proceeds of crime in relation thereto. The same is also fortified by the fact that none of the petitioners were made an accused in the scheduled offence. Even though the accused petitioners received in their bank accounts certain amounts at the instance of or from their close relative Shri Afroz Hasanfatta, the statements if taken on their face value, do not satisfy even on prima facie basis the pre□requisite for trying any person on allegation of money laundering i.e. mens rea or culpable knowledge of the Scheduled Offence and Proceeds of Crime derived therefrom, and projection of such proceeds of crime as untainted. Even on prima facie basis no offence is made out against any of the accused petitioners. Therefore, I find merit in the submissions made on behalf of the accused Petitioners and I have no hesitation in holding that the impugned Order was passed mechanically and deserves to be set aside.

54.I deem it proper to clarify that I have neither decided the correctness or otherwise of any provisional attachment or adjudication order in that regard by any authority under PMLA, nor have I decided the issue as to whether alleged proceeds of crime amounting to Rs. 16,31,19,941/□ received by Shri Afroz Hasanfatta directly or indirectly is involved in money laundering. These issues are subject matter of different proceedings and trial. The issues decided in the instant petition is limited to the legality or otherwise of the impugned Order dated 18.7.2014 taking cognizance and issuing process by way of summons qua each of the petitioners herein.

55.The instant Revision Petition is accordingly allowed and the impugned Order dated 18.7.2014 is set aside qua each of the petitioners with consequential reliefs. Rule is made absolute to the aforesaid extent. Bail bond, if any, shall stand cancelled.

(Z.K.SAIYED, J.) KKS After pronouncement of the judgment Mr.Amin, learned advocate appearing for Mv.Vyas, learned Assistant Solicitor General for the respondent No.1 has requested to stay this judgment and order for a period of six weeks. Mr.Buch, learned advocate for the applicants has objected to such request. Looking to the facts and circumstances of the case, operation and implementation of present judgment and order shall stand stayed for a period of four weeks from today."

7. Pursuant to above decision when facts are very much available on record in the form of courts order, I do not wish to reproduce the factual details which would nothing but reproduction of the same facts. Therefore, factual details should be

considered from the above quoted final details in Criminal Revision Application No.926 of 2016. However, factual details with reference to the present petitions would be referred while considering the rival submissions on such facts.

8. When such judgment and order dated 16.02.2017 in Criminal Revision Application No.926 of 2016 is in force, whereby summons and thereby charges under the PMLA, has been canceled against prime accused who are applicants, in Criminal Revision Application No.926 of 2016; thus, accused Nos.4, 5, 6, 7 and 8 have been discharged from such charges against them and similarly so far as charges for the Scheduled Offence under the Indian Penal Code is concerned, by judgment and order dated 03.05.2017 in Criminal Revision Application No.264 of 2017, the Coordinate Bench has quashed and set aside the charges for the scheduled offences against the main accused viz., Afroz Mohammed Hasanfatta; now practically charges and allegations against the present applicants are laking of substance so as to continue with such proceedings.

9. So far as judgment and order dated 16.02.2017 in Criminal Revision Application No.926 of 2016 is concerned, when the applicants are strongly relying upon such details and seeking parity in treatment due to such judgment with co□accused, by order dated 27.12.2017 in connected Criminal Revision Application No.10207 of 2017, this Court has observed that it would be appropriate for the respondent□investigating/ prosecuting agency, to disclose on oath that "whether such judgment and order dated 16.02.2017 in Criminal Revision Application No.926 of 2016 has been challenged by them or not. Pursuant to such direction, when the respondents have filed an affidavit, unfortunately respondent has disclosed on oath that the order dated 16.02.2017 passed by this Hon'ble High Court in Criminal Revision Application No.926 of 2016 is with respect to certain co□accused whose role are different from those played by the applicants herein, magnitude and impact of role played by each and every accused is different with respect to its severity and effect on the economic and there is no parity applicable. Therefore, the said order cannot be considered as proceeded. Even otherwise the said order is not final and department is entitled to avail remedy as is available under law. In this regard, the department has already initiated the process of filing Special Leave Petition before the Hon'ble Supreme Court and the matter is pending to the Department of Revenue, Government of India".

10. Therefore, even if there is substance in such submissions, though there is not, facts remain that instead of simple disclosing the factual details about challenging the order dated 16.02.2017 in Criminal Revision Application No.926 of 2016, whereby similar situated co□accused were discharge from the charges under the PMLA, the Assistant Director of the Department of Revenue viz., K.S.R.L.Dixitkumar has an audacity to say, even after a year, that such order has not been challenged before the

Hon'ble Supreme Court and the matter is pending with their department.

11. Similar statement is made by another Assistant Director viz., Gigimon Philip while filing his affidavit, in similarly situated and connected Criminal Revision Application No.10207 of 2017, wherein, with reference to the case of Jafar Mohammed Hasanfatta applicant in Criminal Revision Application No.926 of 2016, it is stated that, "a proposal for filing an appeal against the said order before Hon'ble Supreme Court is under consideration of Government. Therefore, the order of Jafar Mohammed Hasanfatta has not obtained finality. Further in compliance of the affidavit, the status against the order dated 16.02.2017 of Hon'ble High Court in Criminal Revision Application No.926 of 2016 in case of Jafar Mohammed Hasanfatta & 4 vs. Dy. Director, is that a request has made to the Department of Revenue, to take up the matter with the Ministry of Law and Justice for challenging the impugned order dated 16.02.2017 by way of Special Leave Petition under Article 136 of the Constitution before the Hon'ble Supreme Court at the earliest and also to obtain stay on the operation of order dated 16.02.2017. The same is presently under consideration of the government".

12. It cannot be ignored that for the purpose of challenging such judgment, the Coordinate Bench has accepted the request by the respondent to stay the operation and implementation of such judgment for the period of four (4) weeks. However, even thereafter, the respondent could not take decision to challenge such judgment before Hon'ble Supreme Court for 12 months and therefore, they have no right to say that such judgment is not applicable.

13. Therefore, now it is clear and certain that judgment and order dated 16.02.2017 in Criminal Revision Application No.926 of 2016 whereby co□accused have been discharged from the charges under the PMLA, is yet not challenged before Hon'ble Supreme Court and when now one year has lapsed from such order, there is no reasons to say that such order has not attained finality and that Court should take different view already taken by Coordinate Bench which is yet not stayed or quashed and set aside by Hon'ble Supreme Court, when it is not challenged at all till date. Therefore, such stand, submissions and argument of the respondents are not only unwarranted but against the settled principal of law, that all the accused are entitled to equal treatment and parity in deciding the case against them and there cannot be different decision for different persons when the facts, circumstances and evidence are common amongst them, though the factual details like the name of the companies and amount involved are different.

14. In support of such submission, the learned advocate for the applicant has relyed upon the judgment, in case of Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association reported in (1992) 3 SCC 1, wherein it has been made clear that the stay of operation of order does not lead to consider that such order is quashed, it only means that the order which has been stayed could not be operative from the date of passing stay order and it does not mean that the said order is wipe out from existence.

Therefore, when there is no stay against the judgment and order dated 16.02.2017 in Criminal Revision Application No.926 of 2016 and even if the respondents were not able to challenge the operation of such judgment pending this revision, even then the existence of order under reference would remains as such and it would be applicable and binding to similarly situated person. Whereas in the present case, as already admitted by the respondents, they have yet not filed Special Leave Petition challenging the order seeking stay against the said order and therefore, there is no substance in the submission by the respondents that judgment and order dated 16.02.017 in Criminal Revision Application No.926 of 2016 cannot be relied upon. Similarly when the order dated 03.05.2017 in Criminal Revision Application No.264 of 2017, discharging the main accused from the Scheduled Offence has not been challenged till date by the respondents, there is reasons to believe that the such order also obtained finality thereby when no case for scheduled offence is made out against the main accused, prima□facie, there is no reason to initiate proceeding under the PMLA against the different persons including the present applicants under the PMLA only because they have some transaction amongst them or with other accused, who are now discharged. It is undisputed fact that there is no charges of scheduled offences against the present applicants and therefore, when main accused is discharged from the scheduled offence, there is no reasons to continue proceeding against the present applicants.

15. The fact also remains that even such judgment and order dated 03.05.2017 in Criminal Revision Application No.264 of 2017, discharging main accused from the Scheduled Offences is either not challenged or at list there is neither stay nor any direction by Hon'ble Supreme Court against such judgment and therefore, such judgment would also remain in force and benefit of such judgment is available to all concerned including present applicants.

16. I have also gone through the judgment dated 03.05.2017 in Criminal Revision Application No.264 of 2017, I do not find any irregularity so as to discard such judgment.

17. Thereby though facts and circumstances are now very much clear in favour of the present applicants, for the reasons best known to the respondent when they could not challenged and get the judgment and order dated 16.02.2017 in Criminal Revision Application No.926 of 2016, stayed from its operation or effect for at least for last one year, they contested this revision petition with all zeal and made irrelevant and unwarranted submissions which does not suit to the litigant like present respondent being Statutory Government Agency. Such practice and attitude by the Statutory Authority simply results into wastage of precious judicial hours of working, when same issues are repeatedly pressed before different court and thereby court has to dictate such lengthy judgment at the cost of adjourning other matters, more particularly when there is shortage of judges and huge pendency of old cases in all courts. At the same

time such matters needs to be disposed off at the earliest instead of keeping it pending for year together, which would simply increase the pendency and arrears.

18. It is also surprising to note that though such revisions are to be dealt with based upon the documentary evidence produced before the Trial Court with the complaint or charge-sheet, and thereby though no additional documents can be looked into at such revisional stage, and attempt is made to rely upon some documents without making it clear that those documents are part of the record of the trial court or not. However, before examining further factual details pursuant to submission by the respondent, it would be appropriate to recollect settled law on the subject by referring judicial pronouncement referred by both the sides.

19. Learned advocate for the respondents is relying upon decision in the case Bholu Ram vs. State of Panjab reported in 2008 (9) SCC 140 , it is practically a judgment based upon the provision of sections 319 and 258 of the Code of Criminal Procedure, 1973, wherein Hon'ble Supreme Court of India has considered that whether the magistrate has power to recall an order of summoning an accused and held that once an order is passed by a competent court issuing summons or process, it cannot be recalled. However, the respondent has failed to read further since in the same judgment, the Hon'ble Supreme Court has also clarify that such order can be questioned by aggrieved party before the Hon'ble High Court which can invoke inherent jurisdiction under section 482 of the Code. The Hon'ble Supreme Court after such observations, in para-55 of the judgment, make a precise determination that "if the High Court is satisfied that the order passed by the Magistrate was illegal, improper or arbitrary, it can exercise inherent powers and quash criminal proceedings initiated against the party." Therefore, even if order can not be recalled by the Magistrate the Trial Court, such order can certainly be challenged before the Hon'ble High Court, if there is prima facie evidence that the order is illegal or improper or arbitrary. Therefore, only because of cited case, it cannot be held that impugned order cannot be challenged in revisional jurisdiction. The cited decision is in view of typical facts and circumstances before Hon'ble Supreme Court inasmuch as there was an order of addition of accused and summonsing him under section 319 of the Criminal Procedure Code, which was not challenged by such accused but challenged made by the State was failed and thereafter, after long time such accused approached the Revisional Court. However when the Hon'ble Supreme Court has found that order passed by the Judicial Magistrate was inconsonance with law, the learned Sessions Court should have refrained from exercising revisional jurisdiction. Therefore, entire decision rest on the factual merit of that case, and hence, such judgment would not help the respondents to any extent.

20. The respondents are also relying upon decision dated 25.09.2013 in the case of M.Shobana vs. Government of India in W.P.Nos.14083 to 14085 of 2013 reported in 2013 SCC Online (Mad) 2961, wherein Hon'ble Madras High Court has dealt with the issue

of 'double jeopardy', holding that the adjudication proceedings under the PMLA and summons issued under the said Act cannot attract the ambit of Article 20(2) of the Constitution. Whereas there is no such issue raised by either side in the present petitions and therefore, only because once such petition by some accused under the PMLA has been rejected by one of the Hon'ble High Court, it cannot be said that all the complaint registered or filed under the PMLA can never be dismissed, even if there is no proper evidence to proceed further. Issue before Hon'ble Madras High Court was to the effect that when the proceeding under sections 419 and 420 of the Indian Penal Code has been initiated, there cannot be proceedings under the PMLA against the same person from the same transaction since it may amounts to double jeopardy, whereas there is no such issue in the present case inasmuch as in the present case the applicants have specifically came forward with specific facts and evidence that in fact they are nowhere involved in any illegal activity and they have not committed any offence as prescribe under the PMLA. Thus, when the applicants are not accused for the Scheduled Offences registered against the main accused, such judgment would not help the respondents, because the judgment in Criminal Revision Application No.926 of 2016 so also submission by the applicants herein make its clear that there is no prima facie evidence to proceed further against the present applicants under the PMLA and therefore, when the applicant in Criminal Revision Application No.926 of 2016 were discharged on such ground, the present applicants are praying to discharge them on same ground. Therefore, the cited judgment would not help the respondents.

21. The respondents have also relied upon the decision in the case of Basawaraj and Anr. Vs. Special Land Acquisition Officer reported in 2013 (14) SCC 81 [2013 (3) GLH 163], submitting that equality cannot be claimed in illegality and cannot be enforced in a negative manner, submitting that wrongs or illegality or irregularity has been committed in earlier proceedings, then similarly situated persons cannot invoke jurisdiction of courts for repeating or multiplying such illegality. Though such observations cannot be challenged, the facts remains that first of all, one has to verify and clarify that how to decide that there is wrong or illegality or irregularity in earlier proceedings which cannot be repeated. Such issues can be decided by the higher Authority and not by the equal Authority. Moreover, in absence of any stay or other order against any such judgment and order of Coordinate Bench which are relied upon by the applicants, those judgments are certainly holds the field till it is overruled. Therefore, an attempt of the respondents to challenge such judgment before this court would result into setting in appeal against the judgment of Coordinate Bench, which is not permissible at all.

22. With this reference regarding judicial discipline, precedent so also for binding effect, observation by the Hon'ble Bombay High Court in the case of Kuresh Taherbhai Rajkotwala vs. Union of India, is relevant to recollect here, living aside factual detail which is not material at this stage. The following relevant lines are from

Para 7 of such judgment which read thus.

> "7. xxx xxx xxx ...However, the Hon'ble Supreme Court has cautioned all throughout that a co-ordinate bench cannot ignore a decision which is binding upon it. Merely because some arguable point is raised it is not possible to ignore a binding precedent. Judicial discipline and propriety demands that another learned Single Judge of this Court should follow the prior view unless it is shown that the same is per incuriam. That aspect has not been highlighted. Even otherwise, the matter being pending before the Supreme Court, it would not be proper to brush aside the judgment of the learned Single Judge. More so, when it is followed by Punjab and Haryana High Court and a Special Leave Petition from its decision is summarily dismissed. I would therefore proceed to decide the matter on the touch stone of the law laid down by the learned Single Judge of this Court (Shri Khanwilkar, J.) ... xxx xxx xxx"

23. As against that the applicants have relied upon the decision in case of Nikesh Tarachand Shah vs. Union of India reported in 2017 SCC On-line 1355, wherein recently the Hon'ble Supreme Court, while dealing with the PMLA cases observe as under in Para-7 of the judgment which needs to be referred, it reads thus:

> "7. Having heard learned counsel for both sides, it is important to first understand what constitutes the offence of money laundering. Under Section 3 of the Act, the kind of persons responsible for money laundering is extremely wide. Words such as "whosoever", "directly or indirectly" and "attempts to indulge"

would show that all persons who are even remotely involved in this offence are sought to be roped in. An important ingredient of the offence is that these persons must be knowingly or actually involved in any process or activity connected with proceeds of crime and "proceeds of crime" is defined under the Act, by Section 2(u) thereof, to mean any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence (which is referred to in our judgment as the predicate offence). Thus, whosever is involved as aforesaid, in a process or activity connected with "proceeds of crime" as defined, which would include concealing, possessing, acquiring or using such property, would be guilty of the offence, provided such persons also project or claim such property as untainted property. Section 3, therefore, contains all the aforesaid ingredients, and before somebody can be adjudged as guilty under the said provision, the said person must not only be involved in any process or activity connected with proceeds of crime, but must also project or claim it as being untainted property. Under Section 4 of the Act, the offence of money laundering is punishable with rigorous imprisonment for a minimum period of three years which may extend to 7 years and fine. Also, under 23 the proviso, where the proceeds of crime

involved in money laundering relate to a predicate offence under paragraph 2 of Part A of the Schedule, the sentence then gets extended from 7 years to 10 years."

24. Though entire judgment is based upon the constitutional validity of section 45 of the PMLA, the Hon'ble Supreme Court has while considering overall provisions of the PMLA foreseen the possibility of different type of possible charges that may be imposed upon by investigating/ competent authority. It would be interesting to recollect such example, even at the cost of making this judgment lengthy, which read as under:

> "29. xxx xxx xxx ...The first would be cases where the charge would only be of money laundering and nothing else, as would be the case where the scheduled offence in Part A has already been tried, and persons charged under the scheduled offence have or have not been enlarged on bail under the Code of Criminal Procedure and thereafter convicted or acquitted. The proceeds of crime from such scheduled offence may well be discovered much later in the hands of Mr. X, who now becomes charged with the crime of money laundering under the 2002 Act. The predicate or scheduled offence has already been tried and the accused persons convicted/acquitted in this illustration, and Mr. X now applies for bail to the Special Court/High Court. The Special Court/High Court, in this illustration, would grant him bail under Section 439 of the Code of Criminal Procedure - the Special Court is deemed to be a Sessions Court - and can, thus, enlarge Mr. X on bail, with or without conditions, under Section 439. It is important to note that Mr. X would not have to satisfy the twin conditions mentioned in Section 45 of the 2002 Act in order to be enlarged on bail, pending trial for an offence under the 2002 Act.
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> 30. The second illustration would be of Mr. X being charged with an offence under the 2002 Act together with a predicate offence contained in Part B of the Schedule. Both these offences would be tried together. In this case, again, the Special Court/High Court can enlarge Mr. X on bail, with or without conditions, under Section 439 of the Code of Criminal Procedure, as Section 45 of the 2002 Act would not apply. In a third illustration, Mr. X can be charged under the 2002 Act together with a predicate offence contained in Part A of the Schedule in which the term for imprisonment would be 3 years or less than 3 years (this would apply only post the Amendment Act of 2012 when predicate offences of 3 years and less than 3 years contained in Part B were all lifted into Part A). In this illustration, again, Mr. X would be liable to be enlarged on bail under Section 439 of the Code of Criminal Procedure by the Special Court/High Court, with or without

conditions, as Section 45 of the 2002 Act would have no application.

31. The fourth illustration would be an illustration in which Mr. X is prosecuted for an offence under the 2002 Act and an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule. In this illustration, the Special Court/High Court would enlarge Mr. X on bail only if the conditions specified in Section 45(1) are satisfied and not otherwise. In the fourth illustration, Section 45 would apply in a joint trial of offences under the Act and under Part A of the Schedule because the only thing that is to be seen for the purpose of granting bail, under this Section, is the alleged occurrence of a Part A scheduled offence, which has imprisonment for over three years. The likelihood of Mr. X being enlarged on bail in the first three illustrations is far greater than in the fourth illustration, dependant only upon the circumstance that Mr. X is being prosecuted for a Schedule A offence which has imprisonment for over 3 years, a circumstance which has no nexus with the grant of bail for the offence of money laundering. The mere circumstance that the offence of money laundering is being tried with the Schedule A offence without more cannot naturally lead to the grant or denial of bail (by applying Section 45(1)) for the offence of money laundering and the predicate offence.

32. Again, it is quite possible that the person prosecuted for the scheduled offence is different from the person prosecuted for the offence under the 2002 Act. Mr. X may be a person who is liable to be prosecuted for an offence, which is contained in Part A of the Schedule. In perpetrating this offence under Part A of the Schedule, Mr. X may have been paid a certain amount of money. This money is ultimately traced to Mr. Y, who is charged with the same offence under Part A of the Schedule and is also charged with possession of the proceeds of crime, which he now projects as being untainted. Mr. X applies for bail to the Special Court/High Court. Despite the fact that Mr. X is not involved in the money laundering offence, but only in the scheduled offence, by virtue of the fact that the two sets of offences are being tried together, Mr. X would be denied bail because the money laundering offence is being tried along with the scheduled offence, for which Mr. Y alone is being prosecuted. This illustration would show that a person who may have nothing to do with the offence of money laundering may yet be denied bail, because of the twin conditions that have to be satisfied under Section 45(1) of the 2002 Act. Also, Mr. A may well be prosecuted for an offence which falls within Part A of the Schedule, but which does not involve money laundering. Such offences would be liable to be tried under the Code of Criminal Procedure, and despite the fact that it may be the very same Part A scheduled offence

> given in the illustration above, the fact that no prosecution for money laundering along with the said offence is launched, would enable Mr. A to get bail without the rigorous conditions contained in Section 45 of the 2002 Act. ... ... xxx xxx xxx"

In addition to the above illustration, it is also observed that when we go to Part A of the Schedule as it now exists, it is clear that there are many sections under the Indian Penal Code punishable with life imprisonment which are not included in Part A of the Schedule, and which may yet lead to proceeds of crime. For example, Sections 232 and 238 of the Indian Penal Code, which deal with counterfeiting of Indian coin and import or export of counterfeited Indian coin, are punishable with life imprisonment. These sections are not included in Part A of the Schedule, and a person who may counterfeit Indian coin is liable to be tried under the Code of Criminal Procedure with conditions as to bail under Section 439 being imposed by the High Court or the Sessions Court. As against this, a person who counterfeits Government stamps under Section 255 is roped into Part A of the Schedule, which is also punishable with life imprisonment.

25. Thereafter, Hon'ble Supreme Court has considered the different offences under different acts and observes as under:

> "A reference to paragraph 23 of Part A of the Schedule would also show how Section 45 can be used for an offence under the Biological Diversity Act, 2002. If a person covered under the Act obtains, without the previous approval of the National Biodiversity Authority, any biological resources occurring in India for research or for commercial utilization, he is liable to be punished for imprisonment for a term which may extend to 5 years under Section 55 of the Act. A breach of this provision, when combined with an offence under Section 4 of the 2002 Act, would lead to bail being obtained only if the twin conditions in Section 45 of the 2002 Act are satisfied. By no stretch of imagination can this kind of an offence be considered as so serious as to lead to the twin conditions in Section 45 having to be satisfied before grant of bail, even assuming that classification on the basis of sentence has a rational relation to the grant of bail after complying with Section 45 of the 2002 Act."

Thereafter, the Hon'ble Supreme Court has struck down section 45 of the PMLA of 2002.

26. Therefore, though it can be stated that such judgment is not dealing with section 3 of the PMLA and dealing with section 45 only, the facts remains that in Para 7 of the judgment, which is quoted hereinafter, the Hon'ble Supreme Court has categorically observe that under section 3 of the Act, kind of persons responsible for money laundering is extremely wide and words use in

such section would show that all persons who are even remotely involved in this offences are sought to be roped in. However, it is made clear in this judgment that section 3, confirms that any persons must not only involved in any process or activity connected with proceeds of crime but also project or claim such property as untainted property.

27. Therefore, in absence of prima facie and sufficient evidence as discussed by the Hon'ble Supreme Court in above para, it cannot be said that there is sufficient material before the Trial Court/ Special Court to proceed further against anyone / everyone who is even remotely connected with prime accused for Scheduled offence under the Act. For the sake of argument, the assumption can be made that if section is read in the way in which the respondents have acted in filing complaint against numbers of persons, it seems that probably all the counsel who are appearing for prime accused who have committed Schedule offences or any other accused in such connected cases may also be terms as a co□accused because they would certainly receive legal fees from such accused who would have paid it from some money which is alleged to be the money transacted for illegal purpose by illegal means since that is the basic ingredient of PMLA. In that case, probably wherever such accused spent some money which may be for petrol, grocery, cloths, traveling and transporting etc., basically every money spent by such accused is to be terms as tainted money and everyone has to prove that they have not used such tainted money for any illegal act. However, it can certainly be argued by respondents that if such accused travel by the help of the tainted money so as to continue the offence and committed the offence then, such traveler help the accused in doing his illegal activity. Though this may be extreme example and not possible to be considered as such, the fact remains that the provisions of the Act and it's interpretation of the respondent certainly lead to the such situation, which is described herein in above as an illustration.

28. At this stage, it would be appropriate to record that so far as factual details of present case is concerned and the issues raised by the respondents are concerned, the judgment and order dated 16.02.2017 in Criminal Revision Application No.926 of 2016 is answering each and every issued raised by the respondents herein and therefore, when such judgment has been reproduced hereinabove, I am endorsing those discussion and determination as part of this judgment also, instead of rewriting it in different words.

29. So far as precedent to rely upon judicial pronouncement is concerned, the applicants are relying upon the decision in case of National Insurance Co.Ltd. vs. Pranay Sethi and Ors. (Supra).

30. Though the respondents have drag the matter by referring factual details, the reference of factual details which are discussed in the pleading nowhere proves any

criminal activity, knowledge or mens rea on the part of the applicants so as to commit any offences either Scheduled Offences under Indian Penal Code or under the PMLA. Though, it is submitted that the huge amount has been transferred between the few companies wise i.e. M/s. Avon Organics (Ajit Kamath), M/s. Sudar Industries (Deepak Shenoy), M/s Jyoti Structure (Santosh Naik), M/s. GT Traders, M/s. Aarzoo Enterprises, M/s Jash Traders, M/s.MD Enterprises, M/s. Maruti Trading, M/s Millennum & Co., M/s Vandana & Co., M/s. Natural Trading Co., M/s. Sidh Corporation, M/s. Saloni Enterprises, M/s Saibaba, M/s. Pushpa Enterprises, M/s. R A Distributors Pvt. Ltd., M/s. Agni Gems Pvt.Ltd., M/s.Harmony Diamonds PL, M/s.M.B. Offshores Distributors Pvt. Ltd., M/s. Hem Jewels Pvt. Ltd., M/s. Riddhi Exim Pvt. Ltd., M/s. Trinetra Trading Pvt. Ltd., M/s.Maa Mumba Devi Gems Pvt.Ltd., M/s.Ramshyam Exports Pvt. Ltd., between India, Hong Kong and Dubai when all such transactions are through bank, unless it is proves that all such amount is collected or earn by anyone by indulging in any Scheduled Offences, only because, huge money transaction between different companies, more particularly through bank, would not amount to commission of any offence either under the Indian Penal Code or under the PMLA. It seems that the respondents have failed to realize the requirement of business house for requisite fund even for short period and getting such fund from friends and known persons for short period so as to avoid administrative difficulties in managing such fund, more particularly when such fund are transferred through bank only and return was also through bank transaction. So far as receiving money from one company and paying to another company is concerned, when such transaction is through bank, law does not restrict such transaction, inasmuch as if 'A' received money from 'B' and at the time of returning such money if 'B' has to pay some money to 'C' and therefore, 'B' directs 'A' to remit the money directly to 'C', it cannot be said to be an illegal transaction.

31. With reference to the above submissions, it would be appropriate to recollect the observes by the Hon'ble Jharkhand High Court in case of Binod Kumar Sinha vs. State of Jharkhand, reported in 2013 CRI.L.J. 2230, wherein it is observes as under in Para 38.

> "38. xxx xxx xxx ...Keeping in view of the provision as is enshrined in Section 3 postulating therein that whoever is connected with the proceeds of the crime projecting it as untainted property would be committing offence of Money Laundering Act and further that the proceeds of crime must have been derived or obtained, directly or indirectly by any person as a result of criminal activity relating to scheduled offence in terms of sub Section (u) of Section 2 of the Prevention of Money Laundering Act, there has been no doubt that unless one is held guilty for the scheduled offences, he cannot be held guilty of the offence punishable under Section 4 of the Prevention of Money Laundering Act but hardly there appears to any embargo for the special Court to proceed with the

> trial of the scheduled offences as well as offence under Section 4 of the Prevention of Money Laundering Act simultaneously particularly when there has been nothing in the Act nor intention of the legislator seem to be there of taking of the trial of the offence punishable under Section 4 after one is found guilty for the scheduled offence. Of course, the Special Court trying the offence under PMLA Act will have to wait for the result of the trial relating to scheduled offence. This recourse not only seems to be the practical solution of the matter but it will also expedite the trial."

Therefore, though Jharkhand High Court has also considered that there cannot be double jeopardy and simultaneous proceeding is permissible under both the Act i.e. for the scheduled offence and also under PMLA, the facts remain that there has been no doubt that unless one is held guilty for the scheduled offences, he cannot be held guilty of the offence punishable under the PMLA. If it is so, there is no reasons to continue the proceeding simultaneously or in any case unless the proceeding for scheduled offence are over either by conviction or even by acquittal, but living prime facie evidence that though accused cannot convicted for scheduled offence, there is prima facie evidence that the proceeds of the crime has been deprived and obtained, directly or indirectly as a result of criminal activity relating to scheduled offence, the Special Court can proceed further under PMLA. However, it is also made clear in above observes that the Special Court trying the offence under the PMLA will have to wait for the result of the trial relating to scheduled offence. Therefore, only because of absence of specific provision under PMLA, though Special Court can proceed further for the offence under PMLA, in absence of decision by the trial Court for the scheduled offence, there is no reasons to proceed further under PMLA and as already recorded herein above when the complaint for scheduled offence against prime accused has already been dismissed by judgment and order dated 03.05.2017 in Criminal Revision Application No.264 of 2017, there is no reasons to continue the trial against the present applicant , since it would result into nothing but futile exercise in recording of evidence of several witness and dealing with huge record and number of transaction by the applicants are considered to be huge amount by the complaint. It cannot be ignored that volume of amount is subjective, it may be huge for some person but it may be routine for well doing business house and if only amount to be checked then the amount transacted by Fortune 500 Company, it would always huge and therefore, if they have any dealing with any person who has involved himself in any scheduled offences would result in initiating proceeding under PMLA against such top business tycoon. It is quite clear and obvious that this could never be the intention of the legislature or the statute in any manner whatsoever.

32. Learned Advocate for the respondent has explained the factual details of all the applicants which is described in the chargesheet so also in affidavit in reply by the respondent, contending that some of the transactions are not disclosed by some of the applicants in their books of accounts and to the Income Tax Department and therefore, there is reason to believe that the amount which transferred from

different companies of main accused is proceed of the criminal activities by main accused and if it is use for the business of the applicant then the applicants have certainly committed offence under the PMLA. The details of such transaction are not much material and therefore, it is not reproduced herein. Since it is admitted fact and part of the pleading so also supported by the documentary evidence to confirm such transaction. However, the basic principal to consider the involvement of any person in committing crime under the PMLA, if it is to be verified with provision of section 3 of the Act and as is submitted by the respondent is that if anybody either directly or indirectly but knowingly and actual involved in concealment, possession, acquisition, use of proceed of scheduled offence; the facts remain that though quantum of amount of transactions are not small, there is no evidence to prove the involvement of the applicant either directly or indirectly in the commission of either scheduled offences or offence under the PMLA and when there is lack of evidence regarding actual involvement or knowledge of all the applicants, with reference to concealment of proceed or direct involvement in any scheduled offence any manner whatsoever, only possession of huge amount with its transaction through Bank, cannot considered as a evidence so as to initiate the proceeding under the PMLA. On the contrary, due to such huge transaction through Bank, there is list chance of concealing such fact by anyone. Therefore, there may be an irregularity in dealing with such amount but such activity can never be termed as proof to confirm that offence under the PMLA has been committed. Though it is submitted by the respondent that for such transaction's false companies were created and therefore it amount to forgery; when the complaint under scheduled offence against main accused has been quashed, now there no evidence regarding forgery. Learned Advocate for the respondent has also referred section 24 of the PMLA regarding burden of proof submitting that presumption is permissible under PMLA and when the applicant has paid for air ticket of main accused, there is reasons to believe that all that they have common intention to commit such offence. However, there is no substance in such submission.

33. Learned Advocate for the applicant has also read out several statement of the applicants submitting that there is admission in such statement and such admission is permissible in law since section 15 of the PMLA Act is equal to section 108 of the Customs Act and thereby, the statement of accused is permissible and can utilize against him. However, there is no substance in such submission for the simple reason that admitting a statement based upon settled legal position is different then existence of such evidence in the papers of charge-sheet, inasmuch as except disclosing the actual details of certain transaction, there is no admission regarding commission of crime by any of the applicant and therefore, what is stated by them in their statement does not amounts to proof of criminal activity and therefore, there cannot be presumption of criminal activity as per wisdom and desires of the complaint.

34. So far as interpretation and consideration of requirement of section 3 of the Act regarding (i) direct or indirect attempt to indulge; (ii) knowledge of such illegal activity and (iii) actual involvement , concealment, possession, acquisition or use of proceeds of crime and projecting or claiming it as untainted property are concerned, in judgment dated 16.02.2017 in Criminal Revision Application No. 926 of 2016, the Coordinate Bench has dealt with all such issued in details in Para 35 to 39. So far as burden of proof is concerned in the same judgment details consideration in Para 40 to 47 which are already reproduced hereinabove and therefore, I do not need to re-discuss the same. The Coordinate Bench has infact dealt with all the issues raised by the respondent before it, and when the respondents have raised only those issues again before this Court, there is no need to reproduce such issues when I am endorsing the judgment dated 16.02.2017. More particularly, now when the complaint against prime accused under scheduled case is also quashed and set aside as per judgment dated 3.05.2017 in Criminal Revision Application No.264 of 2017. The factual details regarding statement referred and relied upon by the respondents are also taken care and discussed in the judgment dated 16.02.2017. Therefore, when there is no substance in the complaint itself, it becomes clear that the respondents have drag the matter unnecessarily for no valid reasons.

35. If we perused the documents attached with the affidavit in rely, it becomes clear that the transaction are through bank and therefore, there is no reasons to say that such transaction are illegal, at the most, if such transaction are not disclosed then Income Tax Department may imposed liability of tax upon concerned party but it doest not amount to commission of either scheduled offence or offence under PMLA.

36. The respondent are also relying upon the decision in case of Bhushan Kumar & Anr. vs. State (NCT of Delhi) & Anr., reported in (2012) 5 SCC 424, wherein, while dealing with Sections 190 and 204 of the Code of Criminal Procedure, on the contrary the Hon'ble Supreme Court had held that such order is challengable but refuse to quash and set aside the order of summons on merit of the case and therefore, inasmuch as merit of that case if scrutinize, only because of such judgment, it cannot be said that order to issue summons cannot be challenged and quashed. It was case of property dispute regarding distribution of the assets left behind by late Shri Gulshan Kumar (of T-Series fame) when aggrieved party has filed complaint for challenging the signature of some of the executor of settlement deed amongst them and therefore, such judgment would not help the respondents.

37. The respondent are also relying upon the decision of Hon'ble Supreme Court of India in case of Sunil Bharti Mittal vs. Central Bureau of Investigation reported in (2015) 4 SCC 609, wherein infact the Hon'ble Supreme Court has quashed and set aside the order summonsing appellant before it and by dismissing complaint filed to prosecuting appellant. Therefore, I do not see any reasons to scrutinies and factual details when the order is in favour of quashing and setting aside the order of summons

against the accused. It is surprising to note that the Constitutional Authorities are attaching such judgments with affidavit in reply without any reasons whatsover.

38. The respondents are also relying upon the judgment by Hon'ble Supreme Court of India in case of M.N.OJHA & Ors. vs. Alok Kumar Srivastav & Anr. reported in (2009) 9 SCC 682, wherein also the Hon'ble Supreme Court has quashed and set aside the complaint, therefore, the judgment would also not help respondent in any manner whatsoever.

39. The respondents are also relying upon the decision in case of ANZ Grindlays Bank Limited & Ors. vs. Directorate fo Enforcement & Ors. in Civil Appeal No.1748 of 1999, decided on 05.05.2005, wherein to issue summons with reference to offence under the Foreign Exchange Regulation Act, 1973, it is held that since the company cannot be sentenced to imprisonment, the Court can always impose a sentence of fine and sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. But holding that there is no immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. Therefore, also this judgment would not help the respondent herein in any manner whatsoever. However, the dependent, an Assistant Director of the respondent□ department has pick and chose few lines of such different judgment and molded his submission as per his perception in his affidavit in reply. However, it is settled legal position that the single sentence from judgment could not be considered as a binding decision but entire judgments needs to be checked so as to rely upon ratio of such judgment with reference to law involves in such cited case.

40. In view of above facts and circumstance, it becomes clear that by the impugned order dated 18.7.2014, the Special Court for PMLA mechanically took cognizance of the alleged offence punishable under Section 4 of PMLA qua each of the accused applicants, without even prima facie material showing existence of any mens rea or culpable knowledge with all or any of them, or of any proceeds of crime emanating from the said scheduled offences. Neither there is any tangible evidence, nor even any circumstantial material to impute culpable knowledge to the applicants and to even prima facie conclude that they were either aware of the commission of the Schedule Offence or the generation of the alleged proceeds of crime by or out of such Schedule Offence by main or other accused. As per the material produced, it cannot be even prima facie held that the applicants had any reason to even have any reasonable doubt regarding commission of alleged schedule offence and generation of any proceeds of crime in relation thereto. The same is also fortified by the fact that none of the applicants were made an accused in the scheduled offence. Even though the accused applicants received in their bank accounts certain amounts at the instance of or from Shri Afroz Hasanfatta, the statements if taken on their face value, do not satisfy even on prima facie basis the pre□requisite for trying any person on allegation of

money laundering i.e. mens rea or culpable knowledge of the Scheduled Offence and Proceeds of Crime derived therefrom, and projection of such proceeds of crime as untainted. Even on prima facie basis no offence is made out against any of the accused applicants. Therefore, I find merit in the submissions made on behalf of the accused applicants and I have no hesitation in holding that the impugned Order was passed mechanically and deserves to be set aside.

41. I deem it proper to clarify that I have neither decided the correctness or otherwise of any provisional attachment or adjudication order in that regard by any authority under PMLA, nor have I decided the issue as to whether alleged proceeds of crime if any received by Shri Afroz Hasanfatta directly or indirectly is involved in money laundering. These issues are subject matter of different proceedings and trial. The issues decided in the instant petition is limited to the legality or otherwise of the impugned Order dated 18.7.2014 taking cognizance and issuing process by way of summons qua each of the applicants herein.

42. The instant Revision Petition is accordingly allowed and the impugned Order dated 18.7.2014 is set aside qua each of the applicants with consequential reliefs. Rule is made absolute to the aforesaid extent. Bail bond, if any, shall stand cancelled. Direct service is permitted.

(S.G. SHAH, J.) jignesh FURTHER ORDER Learned advocate Mr. Sidharth Dave for learned Assistant Solicitor General Mr. Devang Vyas for the respondents is requesting to stay this order, so as to enable them to challenge this order before the Honourable Supreme Court. It is further submitted that since the co- ordinate bench has approved similar request in Criminal Revision Application No.926 of 2016 by further order dated 16.02.2017 and, therefore, this Court should stay this order. However, I do not find any substance in such submissions since, even after granting time for four weeks to challenge such judgment, till date no petition is preferred before the Honourable Supreme Court as disclosed by two officers of the respondents. Therefore, such request is rejected.

(S.G. SHAH, J.) jignesh