IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR
W.P. (Cr.) No. of 2020

IN THE MATTER OF:

PETITIONER ... ALOK SHUKLA

VERSUS

RESPONDENTS ... DIRECTORATE OF ENFORCEMENT & ORS.

INDEX

Sl. No	Particulars	Annexure No.	Page No.
01	Synopsis with list of dates		A-D
02	Writ Petition under article 226/227 Constitution of India with Certificate and affidavit.		1-59
03	Application for grant of ad- interim stay with Affidavit		60-62
04	Copy of the FIR No. 09/2015 registered by the Economic Offences Wing (EOW), Raipur under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Section 120B of the Indian Penal Code, 1860	P/1	63-67
05	Copy of Charge-sheet bearing no. 26/2015 dated 06.06.2015	P/2	68-113
06	Copy of the Supplementary Charge-sheet dated 05.12.2018.	P/3	114-140
07	Copy of the Order dated 24.09.2019 passed	P/4	141

	by the Hon'ble High Court of Chhattisgarh in CRR No. 730 of 2019		
08	Copy of the Order dated 16.10.2019 passed by the Hon'ble High Court of Chhattisgarh in M. Cr. C. A No. 788 of 2019	P/5	142 -145
09	Copy of the Summons dated 05.03.2020 bearing S. No. 1101 issued by the Respondent No. 2 to the Petitioner, along with the Speed Post envelope and the tracking report.	P/6 (Colly)	146 -151
10	Copy of the Summons dated 13.03.2020 bearing S. No. 1104 issued by the Respondent No. 2 to the Petitioner, along with the Speed Post envelope and the tracking report.	P/7 (Colly)	152-157
11	Copy of the Order dated 19.03.2020 passed by this Hon'ble Court in MCRCA No. 484 of 2020	P/8	158
12	Copies of the Order dated 25.07.2019 passed by the Hon'ble High Court of Chhattisgarh in W.P. (C) No. 2371 of 2019.	P/9	159 -161
13	Vakalatanama		162

Bilaspur **Aayush Bhatia, Advocate**

Date: 18.06.2020 **COUNSEL FOR THE PETITIONER**

IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR
W.P. (Crl.) No. of 2020

IN THE MATTER OF:

PETITIONER ... ALOK SHUKLA

VERSUS

RESPONDENTS ... DIRECTORATE OF ENFORCEMENT & ORS.

SYNOPSIS

That, the petitioner is a law abiding citizen of India, a permanent resident of the above-mentioned address and a highly educated IAS officer of 1986 Batch having served in various departments of the Govt. of Chhattisgarh and is currently serving on a contractual basis upon his retirement on 30th of May 2020 as the Principal Secretary in the Department of Parliamentary Affairs to the Government of Chhattisgarh and also holding an additional charge of Principal Secretary in School Education Department along with additional charge of Chairman of Board of Secondary Education, Chairman of Professional Examinations Board and Principal Secretary Technical Education Department. The petition is being preferred under Articles 226 and 227 of the Constitution of India, 1950 by the Petitioner, Shri Alok Shukla, permanently residing at the above-mentioned address in the cause title, who has been arraigned as an Accused in the ECIR being ECIR/RPSZO/01/2019 dated 09.01.2019 which was initially registered with the Sub-Zonal Office, ED, Raipur but as per the Respondent ED, it now stands transferred to its Head Office at New Delhi for reason of alleged administrative convenience. The said ECIR was registered by the Directorate of Enforcement, Sub-Zone - Raipur, Zone – Panaji, Goa against the Petitioner Qua others for the alleged commission of an offence under Section 3 of the Prevention of Money Laundering Act, 2002 in relation to an alleged Scheduled Offence under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Section 120B of the Indian Penal Code, 1860, arising out of FIR No. 09/2015 dated 12.02.2015

registered by the Economic Offences Wing (EOW), Raipur. The said ECIR is currently being investigated by the Respondent No. 2. The Present Petition is also being preferred *inter alia* challenging the constitutional validity of various provisions of the Prevention of Money Laundering Act, 2002, as amended, and seeking a writ of certiorari, quashing the abovementioned ECIR registered by the Respondent No. 3 herein and all consequential investigation and proceedings conducted by the Respondents against the Petitioner herein under the Prevention of Money Laundering Act, 2002 or alternatively, seeking a writ of certiorari seeking quashing of the order *vide* which the investigation in the said ECIR was transferred from Raipur to Delhi. Hence, the present petition before this Hon'ble High Court.

DATE OF EVENTS

SL.	DATE	PARTICULAR OF THE EVETNTS AND ANNEXURES
1.	12.02.2015	Copy of the FIR No. 09/2015 registered by the Economic Offences Wing (EOW), Raipur under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Section 120B of the Indian Penal Code, 1860. P/1
2.	06.06.2015	Copy of the chargesheet filed by the EOW, Raipur bearing Chargesheet no. 26/2015 under Section 173(2) Cr.P.C. in relation to the FIR No.09/2015 under Sections 109, 120B, 409, 420 Indian Penal Code, 1860 and Section 13(1)(d) r/w Section 13(2) and Section 11 of the Prevention of Corruption Act, 1988. P/2
3.	05.12.2018	Copy of the supplementary Chargesheet filed by the EOW, Raipur *inter alia* arraigning the Petitioner herein as an accused. P/3

4.	25.07.2019	Copy of Order passed by the Hon'ble High Court of Chhattisgarh in W.P. (C) No. 2371 of 2019, whereby, Respondent ED has itself previously availed of the jurisdiction of the courts in the State of Chhattisgarh in relation to the Impugned ECIR. The Respondent No. 3 had preferred an application before the Ld. Trial Court in Chhattisgarh trying the predicate offence proceedings seeking certified copies of certain information/ documents in the predicate offence case. **P/9**
5.	24.09.2019	Copy of the Order passed by the Hon'ble High Court of Chhattisgarh to stay the proceedings before the trial court in the predicate offence proceedings arising out of the FIR 09/2015 and the consequent Chargesheet and the Supplementary Chargesheet. Pertinently, the said Order of stay of proceedings is continuing as on date. **P/4**
6.	16.10.2019	Copy of the Order passed by the Hon'ble High Court of Chhattisgarh to grant anticipatory bail to the Petitioner herein in the FIR No. 09/2015. **P/5**
7.	05.03.2020	Copy of the summons bearing no. F. No. ECIR/RPSZO/01/2019/1127 (S. No. 1101), issued after about 14 months from the date of registration of the ECIR under Section 50 PMLA by the Respondent No. 2 directing the Petitioner to appear in person before the Respondent No. 2 on 13.03.2020 at 11.30 AM and furnish the information/ documents

		sought in Annexure A thereto. The said summons was issued requiring the Petitioner to appear on 13.03.2020, was dispatched by the Respondent No. 2 by way of speed post only on 13.03.2020 and was received by the Petitioner on 16.03.2020. **P/6 (Colly)**
8.	13.03.2020	Copy of the another Summons issued by Respondent No.2 bearing no. F. No. ECIR/RPSZO/01/2019/1173 (S. No. 1104), purportedly under Section 50 PMLA, directing the Petitioner herein to appear in person or through an authorized representative before the Respondent No. 2 on 19.03.2020 at 11.30 AM and also furnish the information/ documents sought in Annexure A thereto. **P/7 (Colly)**
9.	19.03.2020	Copy of the Order passed by this Hon'ble Court in MCRCA No. 484 of 2020 granting the Petitioner an interim order in the nature of 'no coercive steps till the next date of hearing' **P/8**
10.	18.06.2020	Hence, Present Petition.

Bilaspur
Date: 18.06.2020

Aayush Bhatia, Advocate
COUNSEL FOR THE PETITIONER

IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR
[*EXTRAORDINARY CRIMINAL WRIT JURISDICTION*]
W.P. (Cr.) No. of 2020

IN THE MATTER OF:

PETITIONER — **ALOK SHUKLA**

Versus

RESPONDENTS

1. **DIRECTORATE OF ENFORCEMENT**

   Through its Director, Ministry of Finance, Government of India, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi – 110 003

2. **SH. SUMAT PRAKASH JAIN**

   Assistant Director, Directorate of Enforcement, Ministry of Finance, Government of India, 10-A, Jam Nagar House, Akbar Road, New Delhi – 110 001.

3. **SH. SREEKANT PUROHIT**

   Assistant Director, Directorate of Enforcement, Ministry of Finance, Government of India, Sub-Zonal Office, 2nd Floor, A-1 Block, Pujari Chambers, New Dhamtari Road, Pachpedinaka, Raipur, Chhattisgarh.

4. **UNION OF INDIA**

Through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110 001

Raipur, Chhattisgarh
ECIR/RPSZO/01/2019 dated 09.01.2019
under the Prevention of Money Laundering Act, 2002

WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA FOR ISSUIANCE OF WRIT IN NATURE OF CERTIORARI, QUO WARRANTO OR ANY OTHER LIKEWISE WRIT IN THE NATURE FOR QUASHING THE ECIR/RPSZO/01/2019 DATED 09.01.2019, ALL CONSEQUENTIAL INVESTIGATION AND PROCEEDINGS *INTER ALIA TO* DECLARE THE PREVENTION OF MONEY LAUNDERING ACT, 2002, AS AMENDED, ULTRA VIRES BEING VIOLATIVE OF ARTICLES 14, 19, 20, 21 AND 300A OF THE CONSTITUTION OF INDIA; AND TO DECLARE, WITHOUT PREJUDICE, THE EXPLANATION ADDED BY THE 2019 AMENDMENT *VIDE* THE FINANCE (NO. 2) ACT 2019 TO SECTION 2(U) OF CHAPTER I OF THE ACT, THE EXPLANATION ADDED BY THE 2019 AMENDMENT *VIDE* THE FINANCE (NO. 2) ACT 2019 TO SECTION 3 OF CHAPTER I OF THE ACT, SECTIONS 5 TO 11A OF CHAPTER III OF THE ACT,

SECTIONS 17, 18, 19 AND 24 OF CHAPTER IV OF THE ACT, THE EXPLANATION ADDED BY THE 2019 AMENDMENT *VIDE* THE FINANCE (NO. 2) ACT 2019 TO SECTION 44 OF CHAPTER VII OF THE ACT, SECTION 45 OF CHAPTER VII OF THE ACT, AND SECTION 50 OF CHAPTER VIII OF THE ACT, AS AMENDED, AS UNCONSTITUTIONAL, ULTRA VIRES AND VOID;

The petitioner most humbly and respectfully, submits as under:-

1. **PARTICULAR OF THE PETITIONER (S)**

   As mentioned in the cause title.

2. **PARTICULAR OF THE RESPONDENT (S)**

   As mentioned in the cause title.

3. **PARTICULARS OF THE ORDER AGAINST WHICH THE PETITION IS MADE**

   The present petition is being preferred under Articles 226 and 227 of the Constitution of India, 1950 (hereinafter referred to as the "**Constitution**") by the petitioner, Shri Alok Shukla,

   permanently residing at the above-mentioned address in the cause title, who has been arraigned as an Accused in the ECIR being ECIR/RPSZO/01/2019 dated 09.01.2019 (hereinafter referred to as the "**Impugned ECIR**"). The impugned ECIR was initially registered with the Sub-Zonal Office, ED, Raipur but as per the Respondent ED, it now stands transferred to its Head Office at New Delhi for reason of alleged administrative convenience. The impugned ECIR

is currently being investigated by the Respondent No. 2. The Present Petition is also being preferred *inter alia* challenging the constitutional validity of various provisions of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the "**PMLA**"), as amended, and seeking a writ of certiorari, quashing the Impugned ECIR registered by the Respondent No. 3 herein and all consequential investigation and proceedings conducted by the Respondents against the Petitioner herein under the PMLA or alternatively, seeking a writ of certiorari seeking quashing of the order *vide* which the investigation in the Impugned ECIR was transferred from Raipur to Delhi.

SUBJECT MATTER IN BRIEF

That, the petitioner is a law abiding citizen of India, a permanent resident of the above-mentioned address and a highly educated IAS officer of 1986 Batch having served in various departments of the Govt. of Chhattisgarh and is currently serving on a contractual basis upon his retirement on 30th of May 2020 as the Principal Secretary in the Department of Parliamentary Affairs to the Government of Chhattisgarh and also holding an additional charge of Principal Secretary in School Education Department along with additional charge of Chairman of Board of Secondary Education, Chairman of Professional Examinations Board and Principal Secretary Technical Education Department.. That an ECIR being ECIR/RPSZO/01/2019 dated 09.01.2019 was registered by the Directorate of Enforcement, Sub-Zone - Raipur, Zone – Panaji, Goa against the Petitioner for

alleged commission of an offence under Section 3 of the PMLA in relation to an alleged Scheduled Offence under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "**PC Act**") and Section 120B of the Indian Penal Code, 1860 (hereinafter referred to as the "**IPC**"), arising out of FIR No. 09/2015 dated 12.02.2015 registered by the Economic Offences Wing (EOW), Raipur (hereinafter referred to as the "**subject FIR**"). That the abovementioned ECIR was initially registered with the Sub-Zonal Office, ED, Raipur which now stands transferred to its Head Office at New Delhi for reason of alleged administrative convenience. The impugned ECIR is currently being investigated by the Respondent No. 2. **Hence the present petition before this Hon'ble High Court** being preferred against the curt, callous, arbitrary, highhanded and malice action of the respondents.

4. **WHETHER CAVEAT FILED, IF YES, WHETHER COPY OF THE PETITION SUPPLIED TO THE CAVEATOR.**

To the best knowledge of the petitioner, no caveat has been filed by the any concerning party.

5. **DETAILS OF REMEDIES EXHAUSTED**

The petitioner further declares that he has no alternative and efficacious remedy available except to approach this Hon'ble Court by way of this instant petition.

6. **MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT OF LAW**

The petitioner further declares that so far as the subject matter of this petition is concerned; the matter is not pending before any Court of law.

7. **DELAY IF ANY, IN FILING THE PETITION**

The petitioner declares that there is no delay in filing the present writ petition.

8. **FACTS OF THE CASE**

8.1. That, the petitioner is a citizen of India and a permanent resident of the above-mentioned address, being a citizen of India, he is entitled for all the rights as enshrined and guaranteed by the Constitution of India. The respondents are "the State" under the definition of Article 12 of the Constitution of India and they all are amenable to the writ jurisdiction of this Hon'ble Court.

8.1.1. That, the Petitioner is a law-abiding citizen dedicated to his work to the hilt and a highly educated IAS officer of 1986 Batch having served in various departments of the Govt. of Chhattisgarh and is currently serving on a contractual basis upon his retirement on 30th of May 2020 as the Principal Secretary in the Department of Parliamentary Affairs to the Government of Chhattisgarh and also holding an additional charge of Principal Secretary in School Education Department along with additional charge of Chairman of Board of Secondary Education, Chairman of Professional Examinations Board and Principal Secretary Technical Education Department.

8.1.2. The Petitioner is a recipient of the Prime Minister's Award for excellence in Administration for his outstanding work in streamlining and computerizing paddy procurement and PDS in the State of Chhattisgarh. This is the highest award for bureaucrats in the country. Petitioner is **also a highly acclaimed author. His books - Ambush, tales of ballot and EVM, the true story have been very well received.**

8.1.3. The public distribution system of Chhattisgarh developed by the Petitioner also received the National E-Governance Award for 2008-09 for excellence in PDS process re-engineering. This system has received several other National Level Awards. This system is still considered the best in the country and has been adopted by many other States. This system has been praised by the Honourable Supreme Court as well. In the matter of People's Union for Civil Liberties (PDS Matters) Vs. Union of India & Ors. (2011) 14 SCC 559 the Honourable Supreme Court has observed as follows–

> *"3. It is mentioned in the affidavit that Chhattisgarh has made considerable progress in computerisation of Public Distribution System. Chhattisgarh is one of the pilot States under the Government of India's project on "Computerisation of TPDS operations." Unified Ration Card database: New computerized ration Cards are issued having two unique identifiers, a numeric code and a bar code printed on the ration cards. The maintenance of the ration cards database is now done through a web-based module. Thus. Ration card issue process has been streamlines in the State of Chhattisgarh.*
>
> .....

6. Mr. Gonsalves, learned Senior Counsel for the petitioner submitted that the Chhattisgarh model seems to be quite advanced model and the Committee may seriously consider this model and according to him, with some modification, this model can be applied for the entire country."

8.1.4. The Petitioner was posted as Deputy Election Commissioner of India from the year 2009 to 2014. During this period, he assisted the Election Commission of India in conduct of 2 Parliament Elections and several State Legislative Assembly Elections. Petitioner has contributed immensely in the development of the Third generation Electronic Voting Machines and the Voter Verified Paper Audit Trail (VVPAT), which has now been mandated by the Supreme Court of India for use in all elections.

8.1.5. The Petitioner has also successfully completed many International assignments in his tenure in Election Commission of India. He headed the delegation of Election Commission of India to help the Maldives in developing its Election Law. He also served as International Election Observer in Egypt, Venezuela and Australia. The Petitioner is regarded very highly for his effectiveness in delivery of public services in Government Systems.

8.1.6. Recently the Petitioner in his capacity of being a Principal Secretary School Education Department in Government of Chhattisgarh, developed a complete system of online education for students during closure of educational

institutions due to Nation-wide Lockdown because of Global Spread of COVID-19 Pandemic. This scheme in Native Chhattisgarhi is Called "Padhai Tunhar Duar" (Education at your door step) and can be accessed at https://cgschool.in. The whole web portal was developed in house under the leadership of the Petitioner in a short time period of 15 days and was launched for the public by the Honourable Chief Minister of Chhattisgarh on 7th April 2020. This web-portal provides on-line education not only to school students but also to college students. More than 20 lakh students have registered on the portal and are being given on-line classes by more than 2 lakh teachers all over the state. This is a complete system of education which includes not only on-line interactive classes, but also on-line video lessons and other learning material available for free download, home assignment by students with constant feedback from teachers for continuous improvement and also clearing of doubts of students. The system has been a boon to the students of the state during the lockdown period. The Petitioner is now working on systems to enable outreach to students in remote areas without internet access and without access to smart phone, though devices like feature phones and use of Bluetooth for networking, which does not require Internet.

8.1.7. The Petitioner has also helped the State Government in development of a website for home delivery of

fruits, vegetables and other essential commodities during lockdown period. This website is accessible at http://cghaat.in. This website has also been particularly useful to the citizens and has been highly acclaimed.

8.1.8. The Petitioner developed a phenomenally successful Community Health Volunteers programme as Health Secretary of Chhattisgarh in the year 2003-04. This programme is called the Mitanin programme and is successfully providing public health services to the Community in Chhattisgarh even now. The ASHA programme of Government of India is modelled after this programme.

8.1.9. Currently Government of Chhattisgarh has given the very important task of developing an on-line telemedicine application for use by the citizens which will be very useful for treatment of poor patients in remote areas of the State especially during the period of restricted movement due to Corona Pandemic.

8.1.10. The Petitioner has also been given the task of dovetailing vocational education in the school education curriculum so that the students who pass out from class 12th have adequate skills and opportunities for getting employment. He is working for convergence between schools and ITS for this purpose. This convergence model is likely to be started from this academic session itself.

8.2. The instant petition is being presented under Articles 226 and 227 of the Constitution, by the petitioner Shri Alok Shukla, aged about 59 years, permanently residing at the above-mentioned address, who has been arraigned as an Accused in the ECIR being ECIR/RPSZO/01/2019 dated 09.01.2019. The impugned ECIR was initially registered with the Sub-Zonal Office, ED, Raipur but as per the Respondent ED, it now stands transferred to its Head Office at New Delhi for reason of alleged administrative convenience. The impugned ECIR is currently being investigated by the Respondent No. 2.

8.3. The instant petition has been filed *inter alia* challenging the constitutional validity of various provisions of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the "**PMLA**"), as amended, and seeking a writ of certiorari quashing the Impugned ECIR registered by the Respondent No. 3 herein and all consequential investigation and proceedings conducted by the Respondents against the Petitioner herein under the PMLA or alternatively, seeking a writ of certiorari seeking quashing of the order *vide* which the investigation in the Impugned ECIR was transferred from Raipur to Delhi. At this stage, it is pertinent to point out that the Petitioner has not been supplied with a copy of the Impugned ECIR till date and as such, the Petitioner is unable to place a copy of the Impugned ECIR before this Hon'ble Court and craves leave to do so as and when a copy of the Impugned ECIR is supplied to him.

8.4. It appears that the Impugned ECIR was registered by the Directorate of Enforcement, Sub-Zone - Raipur, Zone – Panaji, Goa under the provisions of the PMLA against the Petitioner for alleged commission of an offence under Section 3 of the PMLA in relation to an alleged Scheduled Offence under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Section 120B of the Indian Penal Code, 1860, arising out of FIR No. 09/2015 dated 12.02.2015 registered by the Economic Offences Wing (EOW), Raipur. However, in a procedure unknown to the law, the Impugned ECIR was transferred to the Respondent No. 2 herein for alleged administrative reasons.

8.5. **The facts leading up to the filing of the instant Petition are as under:**

8.5.1. **That, on 12.02.2015, a First Information Report (FIR) being FIR No. 09/2015 (i.e. the subject FIR) was registered at PS – EOW, Raipur under Sections 109 and 120B IPC and Section 13(1)(d) r/w Section 13(2) of the PC Act inter alia against Sh. Shivshankar Bhat and other officers of the Nagrik Apurti Nigam (NAN), Raipur. Pertinently, the Petitioner herein was neither named as an Accused or a suspect in the said subject FIR.** True copy of the subject FIR being FIR No. 09/2015 dated 12.02.2015 (PS – EOW, Raipur) is annexed herewith as **ANNEXURE-P/1**.

8.5.2. In the subject FIR, it was inter alia alleged as under:

"[...] It has been found in verification of source that Shivshankar Bhat an officer close to senior officers of NAN, who was earlier trapped while taking bribe but has escaped challan because of being saved by officers, does the collection and distribution of illegal money openly and with audacity on his own instruction and consent of senior officers with the help of his trusted officers/employees Arvind Dhruv, Jeetram Yadav, Trinath Reddy and Kritikant Bareek, D K Chandrawanshi AO, and G K Dewangan AO and distributes illegal money to senior officers every month through Girish Sharma working as PA to MD and is confidant of senior officers. [...]

Similarly there is information that Sandeep Agrawal Company Secretary, who has no qualifications for checking quality, is authorized for quality check in the entire state. Along with him, retired officers of FCI D S kushwaha and R P Pathak, who are both working as Assistant Manager quality control on contract have deliberately omitted the work of quality check for illegal collection and these officers are making an illegal collection of approximately two crore rupees every month continuously for their own pecuniary benefit by not ensuring compliance of the orders and instructions of the Government as per rules. Half of this two crore rupees is distributed to senior officers of NAN as their share through Girish Sharma and the rest is distributed to the officers/employees posted in headquarter office. All officers and employees of NAN posted in headquarters and districts are public servants. They are collecting huge amount of illegal money by misusing their official position.

Sources have confirmed in addition to rice purchase of pulses, gram and salt poor quality and different from prescribed standards by manipulating and conspiring some suppliers by the same officers. Huge collection is being done by this as well. It has also been found during verification

that Madhurima alias Reema Shukla who is confidant of Shivshankar Bhat helps him in hiding his share of money and his benami property."

8.5.3. That on 06.06.2015, the EOW, Raipur filed a chargesheet bearing no. 26/2015 (hereinafter referred to as the "**subject Chargesheet**") under Section 173(2) Cr.P.C. in relation to the subject FIR under Sections 109, 120B, 409, 420 IPC and Section 13(1)(d) r/w Section 13(2) and Section 11 of the PC Act. In the subject Chargesheet also, the Petitioner herein was neither named as an accused nor as a suspect, however, the body of the subject Chargesheet contained certain allegations against the Petitioner.

True copy of the subject Chargesheet bearing no. 26/2015 dated 06.06.2015 is annexed herewith as **ANNEXURE-P/2**.

8.5.4. That, it was further stated in the subject Chargesheet that sanction for prosecution under Section 197 Cr.P.C. as well as under Section 19 PC Act is awaited *inter alia* against the Petitioner herein. The sanction for the prosecution was obtained on 17th July, 2015 and 4th July, 2016, by the State and Central Government respectively.

8.5.5. Thereafter, after a gap of over two years, while the Vidhan Sabha election results were awaited, on 05.12.2018, a

supplementary Chargesheet was filed by the EOW, Raipur *inter alia* arraigning the Petitioner herein as an accused.

True copy of the Supplementary Chargesheet dated 05.12.2018 is annexed herewith as **ANNEXURE-P/3**.

8.5.6. That, on 09.01.2019, the Impugned ECIR was registered by the Sub-Zonal Office at Raipur. It is reiterated that the Petitioner has not been supplied with a copy of the Impugned ECIR till date and as such, the Petitioner is unable to place a copy of the Impugned ECIR before this Hon'ble Court and craves leave to do so as and when a copy of the Impugned ECIR is supplied to him.

8.5.7. That *vide* Order dated 24.09.2019, the Hon'ble High Court of Chhattisgarh was pleased to stay the proceedings before the trial court in the predicate offence proceedings arising out of the subject FIR and the consequent subject Chargesheet and the Supplementary Chargesheet. Pertinently, the said Order of stay of proceedings is continuing as on date.

True copy of the Order dated 24.09.2019 passed by the Hon'ble High Court of Chhattisgarh in CRR No. 730 of 2019 is annexed herewith as **ANNEXURE-P/4**

8.5.8. That *vide* Order dated 16.10.2019, the Hon'ble High Court of Chhattisgarh was pleased to grant anticipatory bail to

the Petitioner herein in the subject FIR (i.e. the alleged predicate offence).

True copy of the Order dated 16.10.2019 passed by the Hon'ble High Court of Chhattisgarh in M. Cr. C. A No. 788 of 2019 is annexed herewith as **ANNEXURE-P/5**.

8.5.9. That on 25th July, 2019, the Respondent department, through its investigative office in Raipur, applied for a certified copy of the information / documents in the predicate offence case before the Special Judge, and the same, titled *Enforcement Directorate (FEMA/PMLA) v. State of Chattisgarh*, W.P. (C) No. 2371 of 2019, was dismissed with liberty to approach the Special Court by this Hon'ble Court. There has apparently been no subsequent application for the certified copy from the trial court in the predicate offence, and the purported reliance on the evidence to come to a conclusion to register a ECIR cannot stand scrutiny. A conclusion in a charge sheet cannot be the basis of an ECIR without an independent application of mind on the evidence supporting the ECIR.

8.5.10. That after about 14 months from the date of registration of the ECIR, on 05.03.2020, to the Petitioner's shock, the Respondent No. 2 herein, in a completely illegal and *mala fide* manner, issued a summons bearing no. F. No. ECIR/RPSZO/01/2019/1127 (S. No. 1101), purportedly under Section 50 PMLA, directing the Petitioner herein to appear in person before the Respondent No.

2 on 13.03.2020 at 11.30 AM and also furnish the information/ documents sought in Annexure A thereto. Pertinently, the said summons, though dated 05.03.2020 and requiring the Petitioner to appear on 13.03.2020, was dispatched by the Respondent No. 2 by way of speed post only on 13.03.2020 and was received by the Petitioner on 16.03.2020. As such, the Petitioner was unable to comply with the said Summons, for no fault of the Petitioner herein. Furthermore, there was no occasion for the Respondent No. 2 to send a summons to the Petitioner since the investigation was pending with ED Zonal office at Raipur. At this stage, no communication was given to the Petitioner regarding the alleged transfer order transferring the investigation from Raipur to Delhi.

True copy of the Summons dated 05.03.2020 bearing no. F. No. ECIR/RPSZO/01/2019/1127 (S. No. 1101) issued by the Respondent No. 2 to the Petitioner, along with the Speed Post envelope in which the above Summons dated 05.03.2020 was received by the Petitioner and the tracking report thereof, are annexed herewith as **ANNEXURE-P/6 (COLLY)**.

8.5.11. Thereafter, continuing with its illegal conduct, on 13.03.2020, the Respondent No. 2 herein issued another Summons bearing no. F. No. ECIR/RPSZO/01/2019/1173 (S.

No. 1104), purportedly under Section 50 PMLA, directing the Petitioner herein to appear in person or through an authorized representative before the Respondent No. 2 on 19.03.2020 at 11.30 AM and also furnish the information/ documents sought in Annexure A thereto.

True copy of the Summons dated 13.03.2020 bearing no. F. No. ECIR/RPSZO/01/2019/1173 (S. No. 1104) issued by the Respondent No. 2 to the Petitioner, along with the Speed Post envelope in which the above Summons dated 13.03.2020 was received by the Petitioner and the tracking report thereof, are annexed herewith as **ANNEXURE-P/7 (COLLY)**.

8.5.12. That, it is pertinent to point out that in respect of the Impugned ECIR, the Respondent No. 3 herein (i.e. from the sub-zonal office at Raipur) had earlier issued summons *inter alia* to the other accused persons, however, it appears that prior to issuance of the abovementioned Summons dated 05.03.2020 and 13.03.2020 to the Petitioner herein, the investigation in the Impugned ECIR was transferred from Raipur to Delhi, in a completely illegal and *mala fide* manner, on the ground of alleged administrative convenience.

8.5.13. Despite the above, the Respondent No. 2 is illegally continuing its investigation in the Impugned ECIR. It is

submitted that the actions of the Respondent ED in conducting investigation in the Impugned ECIR are in gross violation of the fundamental rights of the Petitioner under Articles 14, 19 (1) (g) and 21 of the Constitution of India.

8.5.14. That, on 18.03.2020, apprehending arrest at the hands of the Respondent ED, the Petitioner herein was constrained to prefer an anticipatory bail application (being MCRCA No. 484 of 2020) before this Hon'ble Court under Section 438 Cr.P.C., which is currently pending adjudication before this Hon'ble Court.

8.5.15. That, *Vide* Order dated 19.03.2020, this Hon'ble Court was pleased to grant an interim order in the nature of 'no coercive steps till the next date of hearing' to the Petitioner herein in the abovementioned anticipatory bail application. The said interim protection is continuing as on date.

True copy of the Order dated 19.03.2020 passed by this Hon'ble Court in MCRCA No. 484 of 2020 is annexed herewith as **ANNEXURE-P/8**

8.5.16. That the Respondent ED has now filed a Reply dated 28.05.2020 in MCRCA No. 484 of 2020 wherein for the first time, the ED has taken a stand that the investigation in the Impugned ECIR has been transferred from Raipur to Delhi for reasons of purported administrative convenience.

8.5.17. That, in view of the above *mala fide* conduct of the Respondent ED and illegally transferring the investigation in the Impugned ECIR from Raipur to Delhi, the Petitioner is apprehensive that he may be arrested and consequently, his liberty might be curtailed in an illegal, arbitrary and *mala fide* manner by the Respondent ED.

8.5.18. That under these circumstances, the Petitioner is constrained to prefer the instant Petition, on *inter alia* the grounds stated hereinafter, each of which is mutually exclusive and without prejudice to the other grounds.

9. **GROUNDS**

9.1 BECAUSE the order directing transfer of investigation in the Impugned ECIR from Raipur to Delhi on the ground of alleged administrative convenience is bad in law and liable to be set aside. The Respondent, being a specialized investigative agency with draconian powers, must act strictly in accordance with law. The Special Court with competent jurisdiction is in Raipur, and the Respondent has no authority under law to transfer a case to another geographic location. The Respondent ED has failed to even spell out the purported administrative convenience that inures to the agency on account of the said transfer. Even otherwise, the ground of administrative convenience is patently false and arbitrary in

as much as administrative convenience of the agency would have in fact been in retaining the investigation in Raipur since all the alleged transactions have taken place in Raipur and it appears that the summoned persons are also residents of Raipur. The Respondent ED has transferred the investigation from Raipur to Delhi with the sole oblique motive of harassing the Petitioner herein and taking coercive steps against the Petitioner.

9.2 BECAUSE the issuance of the Summons dated 05.03.2020 bearing no. F. No. ECIR/RPSZO/01/2019/1127 (S. No. 1101) and Summons dated 13.03.2020 bearing no. F. No. ECIR/RPSZO/01/2019/1173 (S. No. 1104) by the Respondent No. 2 (from the office at Delhi) is wholly without jurisdiction in as much as the Impugned ECIR has been registered by the sub-zonal office at Raipur and was being investigated by the Respondent No. 3 (from the sub-zonal office at Raipur) prior to its illegal transfer to Delhi.

9.3 BECAUSE the jurisdiction of the Respondent ED to investigate offences under the PMLA is *inter alia* determined on the basis of the 'territorial area' in accordance with Section 51 PMLA. The ED investigative unit with territorial jurisdiction is informed by s. 157 Cr.P.C., 157 Cr.P.C. r/w Section 156 Cr.P.C., whereby the jurisdiction to investigate any offence is

determined on the basis of the territorial jurisdiction of the court having jurisdiction over the local area within whose limits the alleged offence has been committed. Pertinently, the provisions of Cr.P.C. are applicable to the PMLA in terms of Section 65 PMLA. Admittedly, the Impugned ECIR was registered, albeit without application of mind, by the sub-zonal office of the Respondent ED at Raipur and was being investigated by the Respondent No. 3. As such, the Respondent No. 2 is devoid of jurisdiction to investigate the allegations contained in the Impugned ECIR.

9.4 BECAUSE as per Section 44 of the PMLA, any offence committed under the PMLA is triable by the Special Court constituted for the area "*within which the offence has been committed*". As per section 177 Cr.P.C. is also based on the same principle i.e. the offence shall be inquired into and tried by a court within whose local jurisdiction it was committed. Although there are no offences u/ss 3 and 4 of the PMLA, and the offence must arise from a transaction(s) "independent" from the predicate offence. It is thus submitted that pursuant to completion of investigation in the Impugned ECIR, the complaint, if any, shall have to be filed before the courts in the State of Chhattisgarh. As such, it is submitted that the Respondent No. 2 has no jurisdiction to investigate the allegations contained in the Impugned ECIR.

9.5 BECAUSE it is also pertinent to point that the Respondent ED has itself previously availed of the jurisdiction of the courts in the State of Chhattisgarh in relation to the Impugned ECIR. The Respondent No. 3 had preferred an application before the Ld. Trial Court in Chhattisgarh trying the predicate offence proceedings seeking certified copies of certain information/ documents in the predicate offence case. Upon dismissal of the said Application by the Ld. Trial Court in Chhattisgarh, the Respondent No. 3 approached the Hon'ble High Court of Chhattisgarh by way of a writ petition seeking a direction to the Ld. Trial Court to supply the certified copies. The said Writ Petition being W.P. (C) No. 2371 of 2019 was disposed of *vide* Order dated 25.07.2019 by granting liberty to the Respondent No. 3 to again approach the Ld. Trial Court with specific details of the documents for which certified copies are sought. The Respondent No. 3 had also invoked the jurisdiction of the Ld. Trial Court in Chhattisgarh trying the predicate offence proceedings by preferring an Application seeking permission for custodial interrogation of Sh. Shivshankar Bhatt while he was lodged in jail.

True copy of the Order dated 25.07.2019 passed by the Hon'ble High Court of Chhattisgarh in W.P. (C) No. 2371 of 2019 is annexed herewith as **ANNEXURE-P/9**.

9.6 BECAUSE the conduct of the Respondent No. 2 in carrying out an illegal investigation in the Impugned ECIR is wholly without jurisdiction and is aimed at harassing the Petitioner herein and curtailing his liberty, by employing a procedure unknown to law.

9.7 BECAUSE the conduct of the Respondent No. 2 in issuing multiple summons seeking the same information in the manner in which the said summons have been issued (i.e. they have been dispatched after the purported date of appearance) smacks of *mala fide* and arbitrary exercise of power.

The ECIR is seemingly a summary of the chargesheet in the predicate offence, without even an application of mind on the underlying evidence, and contrary to the mandate of *Lalita Kumari versus State of U.P.*, (2014) 2 SCC 1, whereby the registration of a FIR, of which ECIR is the equivalent recording of, initiating an investigation in a criminal matter, is only mandatory if the "information discloses a cognizable offence:". An investigation is not a fishing and roving inquiry, and an ECIR is not a mechanical recording of the chargesheet in a predicate offence, but a *prima facie* finding that the information obtained, based on documents relied upon by a chargesheet, or a closure report for that matter, in a predicate offence, make out that an offence u/s 3 (or 4) of the PMLA

is disclosed, warranting investigation.. *See Navdeep Singh v. Assistant Director*, 2018 SCC Online P&H 6606.

9.8 Section 3 of the PMLA has an essential ingredient the projecting and claiming the tainted property as untainted. further defines money laundering as involvement "in any process or activity connected with the proceeds of crime". Thus, money laundering, defined in PMLA, is a distinct crime inextricably connected to the commission of other crime or crimes [generally referred to as Predicate Crime]. In any view of the matter, therefore, money laundering is a crime and PMLA is part of the criminal law of the country.

9.9 The criminal procedure code generally, unless otherwise specifically prescribed, and the principles of criminal alw are applicable to proceedings, including investigations, carried out under PMLA, Among the recommendations of the Financial Action Task Force in July 1989 the following recommendations are material:-

(i) Declaration of laundering of monies earned through serious crimes as a criminal offence;

(ii) Declaring money laundering to be an extraditable offence.

This also supports the contention that money laundering is a crime and PMLA is part of the criminal law of the country.

9.10 The definition of "proceeds of crime" in Section 2(h) of PMLA further lends support to the contention that money laundering, as defined in PMLA, is a crime and it is a crime that arises upon the commission of another crime or crimes (generally called as predicate crime or predicate offence).

9.11 The scheme of PMLA is as under:

(i) Authorities have been appointed to exercise the powers conferred by the Act [***Section 49***]

(ii) The authorities have the power to enforce the attendance of any person and examine him on oath and compel the production of records. [***Section 50(1)***]

(iii) Every person summoned shall be bound to attend in person and shall be bound to state the truth [***Section 50(3)***]

(iv) Every proceeding is a judicial proceeding within the meaning of Section 193 and 228 of the IPC. [***Section 50(4)***]

(v) Any person who refused to answer any question or refuses to sign any statement made by him in the course of any proceeding under PMLA or who omits to attend or produce

any record pursuant to summon is liable to a penalty [because the refusal is considered an offence] [*Section 63(2)*]

9.12 It is submitted that powers similar to powers conferred upon police officers investigating an offence under any criminal law have been conferred upon authorities under PMLA. The investigation must be conducted by "any authority authorised by the Central Government under this Act for the collection of evidence." Hence, the authorities under PMLA are "police officers".

(i) The power to search a person [*Section 18(1)*]

(ii) The power to arrest [*Section 19*]

(iii) The power to retain seized property [*Section 20*] and seized records [*Section 21*]

(iv) The power to summon persons and compel the production of documents [*Section 50*]

(v) The power to apply for issue of letter rogatory to other countries [*Section 60*]

(vi) The provisions of the Cr.P.C. shall apply to all proceedings under PMLA [*Section 65*]

These are coercive powers ordinarily conferred only on police officers investigating crimes. The conferment of such powers on the

authorities under PMLA makes it abundantly clear that the said authorities, as prescribed by the Central Government, are indeed 'police' exercising powers of police officers under a law dealing with criminal offences.

9.13 Since PMLA is a criminal law and the authorities under PMLA are police officers, the PMLA should be consistent with the provisions of the Constitution of India, especially Articles 13, 14, 19, 20, 21 and 22. It is submitted that for the grounds enumerated hereinafter, several core and key provisions of PMLA are violative of the above provisions of the Constitution and hence the whole of the PMLA is unconstitutional and void.

9.14 The investigating agency, in law, have powers that are violative of the fundamental rights guaranteed by the Constitution of India, in particular Article 14, 21 and 22. The most important violation in the application and enforcement of PMLA is the unreasonable, unregulated and arbitrary procedure followed by the authorities, including the investigating officers, under the Act. In particular,

(i) Section 50 is contrary to the right against self-incrimination in the Constitution of India. While recording the statement of a person summoned under Section 50, the Respondent ED compels the person to

sign the statement [as recorded by the Investigating Officer], whether the statement of the person has been accurately recorded or not. Respondent ED threatens the person with a penalty under Section 63(2) if he refuses to sign the statement. The authority further records that the statement is liable to be used in the prosecution of the case and against the person making the statement or any other person. Undoubtedly, the person summoned is in the "position of an accused" as explained by the Hon'ble Supreme Court in several cases. It is submitted that the procedure followed by Respondent ED is coercive, unreasonable, arbitrary and violative of the fundamental rights of the person summoned under Article 14, 19, 20, 21 and 300A of Constitution of India.

(ii) When a person is arrested under Section 19 of the PMLA, the person is undoubtedly an accused. In fact, the authorised officer, pursuant to s. 19 of PMLA, which requires that a "reason to believe" must be formed, whereby the custodial interrogation of an accused is considered necessary. Even then, the accused has no safeguard equivalent to s. 161 that safeguards the constitutional guarantee against self incrimination, and in the midst of a custodial interrogation, an accused is

summoned under Section 50 of PMLA. Article 20 (3) of the Constitution of India protects and person from being compelled to be a witness against himself. He is questioned, compelled to record a statement [generally in the manner desired by the Investigating Officer], threatened with penalty if he refused to sign the statement as recorded, and forced to sign the statement even if any part of the statement is inaccurate or self-incriminating. The entire procedure followed is arbitrary, unreasonable, coercive and violative of the fundamental rights of the person under Articles 14, 19, 20 and 21 of the Constitution of India.

9.15 It is submitted that no person shall be deprived of his liberty except according to procedure established by law. The Hon'ble Supreme Court has declared that the 'procedure' cannot be any procedure, but the procedure must satisfy the tests of 'due process' and that it must be a fair, transparent and reasonable procedure. *Maneka Gandhi v. Union of India,* 1978 (1) SCC 248 Invasion of constitutional rights must be by procedure that is "reasonable, fair and just." *See State of Punjab v. Baldev Singh,* (1999) 6 SCC 172. It is submitted for the grounds stated hereinabove, as well as at the hearing, the entire procedure of investigation and trial under PMLA is totally arbitrary, unreasonable, fails to satisfy the principles of

due process and hence violative of and unconstitutional under Articles 14, 19, 20 and 21 of the Constitution of India. Consequently, the whole of PMLA is liable to be declared unconstitutional and void.

9.16 The instant ECIR could not have resulted in an investigation without the permission of a judicial officer with competent jusirdiction. The Petitioner submits that the offence under PMLA is non-cognizable, and the procedure for a non-cognizable offence under Section 155 of the Cr.P.C. and related provisions under Chapter XII of the Cr.P.C. applies to the offence under PMLA. However, the Respondent ED, erroneously treats the offence as cognizable and thus violates the procedure laid down under the Cr.P.C.

9.17 It is submitted that no order/ permission has been obtained from the concerned Magistrate prior to commencement of the investigation by the Respondent ED and as such, any investigation in violation of Section 155(2) Cr.P.C. is *ex facie* illegal.

9.18 It is submitted that the offences under the PMLA are non-cognizable after the Amendment Act 20 of 2005 which deleted clause (a) to Section 45(1) and as a result, compliance with the

procedure under Section 155 Cr.P.C. and related provisions under Chapter XII is mandatory.

9.19 It is submitted that the Prevention of Money-Laundering Amendment Act 20 of 2005 deleted clause (a) to sub-section (1) of Section 45 which read "*(a) Every offence punishable under this Act shall be cognizable;*". The Statement of Objects and Reasons of the Amendment Act 20 of 2005 at paragraph 2(c) categorically stated as under:

> *"omit clause (a) of sub-section (1) of section 45 of the Prevention of Money Laundering Act, 2002, which provides that every offence punishable under that Act shall be cognizable;"*

9.20 It is submitted that the Minister of Finance, who introduced the Prevention of Money-Laundering (Amendment) Bill, 2002 in the Lok Sabha on 06.5.2006, and in the Rajya Sabha on 11.5.2005 stated that the offence under the PMLA is being made "non-cognizable". It is submitted that it is no longer *res integra* that a speech of the Minister introducing a legislation in the Parliament is a valid tool for interpretation of a statute. Reference may be made to the judgment of the Hon'ble Supreme Court in ***Union of India v. Martin Lottery Agencies***

Limited, (2009) 12 SCC 209 @ Para 38; and **K.P. Varghese vs ITO, reported in (1981) 4 SCC 173 @ Para 8.**

9.21 It is submitted that the amendment of 2005 which deleted clause (a) to sub-section (1) of Section 45 of the PMLA must be given effect to by a court of law. It is settled law that when an amending Act alters the language of the principal statute, the alteration must be taken to have been made deliberately. Reference may be made to the judgment of the Privy Council in *D.R. Fraser v. The Minister of National Revenue,* **AIR 1949 PC 120**, paragraph 15, which has been followed by a Division Bench of this Hon'ble Court in *Commissioner of Central Excise, Trichy v. Dalmia Cement (Bharat) Ltd.,* **(2006) 126 DLT 597 (DB)**, paragraphs 19-22.

9.22 It is submitted that the insertion of the Explanation by way of an amendment to Section 45 of the PMLA *vide* Part XIII of the Finance Act (No. 2) of 2019 (Act No. 23 of 2019) cannot have the effect of making offences under the PMLA cognizable in as much as the expression "Offences to be cognizable and non-bailable" which is sought to be clarified does not even appear anywhere in the main body of Section 45, even post the aforesaid amendment, and is merely the 'heading' of Section 45, as it stood previously. It is submitted that the headings or marginal notes are not legitimate aid to interpretation,

particularly when the language of the section is clear and unambiguous.

9.23 It is submitted that headings, also called marginal notes, are not part of the statute as enacted by the legislature. That is to say that even though they are present in the Bill under consideration by the legislature, it is not what the legislature is considering to enact or to amend. They are only meant to aid the legislature in categorizing the provisions. In this regard, reliance is placed on the following judgments:

(i) *Guntaiah v. Hambamma,* (2005) 6 SCC 228, paragraph 11;

(ii) Thakurain Balraj Kunwar v. Rae Jagatpal Singh, ILR 26 ALL 393 (PC);

(iii) *Nalinakhya Bysack v. Shyam Sunder Haldar,* AIR 1953 SC 148, paragraph 5 (Three-Judge Bench);

(iv) Chandroji Rao v. Commissioner of Income Tax, M.P., Nagpur, (1970) 2 SCC 23, paragraph 4 (Three-Judge Bench);

(v) *Board of Muslim Wakf, Rajasthan v. Radha Kishan,* (1979) 2 SCC 468, paragraph 24 (Three-Judge Bench); and

(vi) *Tara Prasad Singh v. Union of India,* (1980) 4 SCC 179, paragraph 34 (Seven-Judge Bench).

9.24 It is submitted that by way of addition of an 'Explanation' that seeks to clarify the meaning of a phrase that is not to be found

anywhere in the main body of the provision but is only the heading of such provision, the plain language of the substantive provision cannot be amended or modified. It would be an absurd proposition of law that while a heading/ marginal note cannot be used to construe the meaning of a main provision, an 'Explanation' clarifying the meaning of such heading/ marginal note would have the effect of amending or nullifying an earlier amendment to the main provision. A substantial amendment cannot be in the form of an "explanation", but a substantive provision, and the Explanation is ultra vires on this ground alone.

9.25 It is submitted that without prejudice to the above, the recently inserted Explanation to Section 45 cannot be given effect to as it stands in as much as it creates a deeming fiction that the phrase "*Offences to be cognizable and non-bailable*" shall mean and "*shall be deemed to have always meant*" that all offences under this Act (i.e. the PMLA) shall be cognizable offences. It is submitted that the deeming fiction gives a retrospective operation to the provision, which is otherwise impermissible in law being violative of Article 20(1) of the Constitution. Regardless, for the purposes of the instant ECIR, the alleged offences have been purportedly committed by the Petitioner during the period between 2014-15, and even the impugned ECIR was registered prior to the amendment

coming into effect, during which time the offences under the PMLA were non-cognizable in terms of the Prevention of Money-Laundering Amendment Act 20 of 2005.

9.26 Without prejudice to the above, it is submitted that an offence which is not cognizable cannot be made cognizable retrospectively unless the section is amended with retrospective effect. In the instant case, the 2019 amendment to Section 45 that added the Explanation has not been given retrospective effect. In fact the Explanation is only with effect from 01.08.2019. Hence, it is submitted that the offence of money laundering remained a non-cognizable offence until 01.08.2019 and, if at all, it became cognizable and non bailable only after 01.08.2019. Hence, any arrest made without a warrant before 01.08.2019 was illegal.

9.27 Assuming without admitting that the offence of money laundering under the PMLA is a cognizable offence, it is submitted that even then the Respondent ED was obliged to register an FIR under Section 154 Cr.P.C. and consequently, all the provisions of Chapter XII of the Cr.P.C. will apply to offences under PMLA.

9.28 Assuming but not admitting that the offence under PMLA is cognizable, the Petitioner submits that the Respondent ED

would have no jurisdiction to cause an investigation under PMLA on the basis of the said ECIR without first registering it, sending a copy to the court of competent jurisdiction, and furnishing a copy to the Petitioner. Any contravention of these basic requirements will be illegal and violate the rights of the Petitioner under Articles 14, 19 and 21 of the Constitution of India.

9.29 It is submitted, irrespective of whether the offences under PMLA are cognizable or non-cognizable, the procedure contained in the said Chapter XII of Cr.P.C. is the procedure established by law. The Respondent ED is investigating the offence of money laundering under PMLA without following the procedure established by law, and hence the investigation is illegal.

9.30 Even otherwise, it appears that the instant case under PMLA was commenced and is continued by the officers of the ED without:

(i) Recording any information relating to the commission of a cognizable offence under u/s 154 of the Cr.P.C.

(ii) Forwarding any report/ FIR ./ ECIR of the cognizable offence to the competent Magistrate u/s 157 of the Cr.P.C.

(iii) Producing such case diary before the Magistrate, if the Petitioner was arrested and produced before the Magistrate (u/s 167 Cr.P.C).

9.31 It is submitted that as a sequitur to the above, irrespective of whether the offence under PMLA is cognizable or non-cognizable, the officers of the Respondent ED have not adhered to any corresponding mandatory procedural safeguards contained in the Cr.P.C. Strict compliance in letter and spirit of the procedural safeguards where the consequence derogates the rights and liberties is necessary. *See Vijaysing C. Jadeja v. State of Gujarat,* (2011) 1 SCC 609, *State of Rajasthan v. Parmanand,* (2014) 5 ASCC 345, *Noor Aga v. State of Punjab & Anr.,* (2008) 16 SCC 417. If a statute provides for a thing to be done in a particular manner, it can only be done in that manner, *See* ***Hussein Ghadially v. State of Gujarat,*** ((2014) 8 SCC 425.

9.32 The provisions of Chapter III of PMLA dealing with attachment, adjudication and confiscation are unreasonable and void [***Sections 5 to 11A***]. Chapter III allows the authorities under PMLA to attach a property, adjudicate the same and reach a conclusion that the property is involved in money laundering and take possession of the property. Only the act of confiscation of the property is postponed until the

conclusion of the trial of the offence of money laundering [*Section 8(5)*]. As far as the owner of the property is concerned, the acts of attachment, adjudication and taking possession are acts that visit the owner of the property with serious and adverse consequences. Since the acts of attachment, adjudication and taking possession are based solely on the belief of the officer/ authority concerned that the property is "involved in money laundering" and the source is tainted because it is derived from a predicate offence, even when the predicate offence is under investigation and no charge sheet has been filed, it is submitted that the whole of Chapter III of PMLA is violative of Articles 14, 19, 21 and 300A of the Constitution of India and liable to be declared as unconstitutional and void.

9.33 Section 17 of PMLA relating to search and seizure and Section 18 relating to search of person had a valuable safeguard that no search or seizure could be done unless the proviso to Section 17(1) and the proviso of Section 18(1), as the case may be, was satisfied. However, the two proviso were deleted by the Finance [No. 2] Act of 2019 w.e.f. 01.08.2019. Consequently, it is submitted, the two sections confer an arbitrary and unfettered power upon the authorities under PMLA to conduct searches and seizures even before the agency investigating the predicate offence has reached a *prima*

facie conclusion that the predicate offence has been committed. As held in *State v Rehman*, AIR 1960 SC 201, search is arbitrary in nature and thus s. 165(1) is mandatory and must be followed. A search in violation of procedure may be held illegal and subject to compensation under public law. *See Dnyaneshwar v. State of Maharashtra*, 2019 SCC Online Bom 4949. Search and seizure, as well as search of persons, is an invasion of the fundamental rights of a Citizen of India under Articles 14, 19, 21 and 300A of the Constitution of India. Hence Section 17 and Section 18 of PMLA are liable to be declared unconstitutional and void.

9.34 The proviso to Section 17 and 18 of the PMLA contained valuable safeguards and pre-conditions before either a place or a person can be searched. The safeguards/ preconditions included sending a report to a Magistrate under Section 157 of the Code of Criminal Procedure or filing a complaint before a Magistrate or Court or the submission of a similar report to an officer not below the rank of Additional Secretary to the Government of India. By virtue of the 2019 amendment *vide* the Finance (No. 2) Act 2019, these safeguards/ preconditions have been removed. The net result is that a place or a person can be searched without a report to the Magistrate or a complaint to the Magistrate or a report to a high ranking officer like Additional Secretary to Government. It is

submitted that the omission of the crucial proviso renders Section 17 as well as Section 18 arbitrary, unreasonable, excessive, and a gross invasion of the fundamental rights of persons. It is therefore submitted that Section 17 and Section 18, as amended, are violative of Articles 14, 19 and 21 of the Constitution of India and hence unconstitutional.

9.35 Section 19 of PMLA is unconstitutional and void for the reason that it enables the authorities under PMLA to arrest a person even before the agency investigating the predicate offence has arrested the said person or any other person. Arrest has serious and adverse consequences upon the person's life, liberty, reputation and honour, and is an invasion of the person's fundamental rights under Articles 14, 19 and 21 of the Constitution. In so far as Section 19 of PMLA enables the arrest of a person before the agency investigating the predicate offence has reached the *prima facie* conclusion that the predicate offence has been committed and as a result there may be proceeds of crime, it is submitted Section 19 of PMLA violates Articles 14, 19 and 21 of the Constitution of India.

9.36 It is submitted that the power of arrest under Section 19 of PMLA cannot be construed or exercised as if it were an unbridled power without any restrictions or safeguards. It can

only be exercised after a complaint is made under Section 45 of PMLA and cognizance of the same is taken by the competent court.

9.37 It is submitted that no arrest can be effected under Section 19 of the PMLA without permission of a Magistrate in as much as Section 19 cannot be looked at in isolation and has to be interpreted in the overall context of the provisions of PMLA keeping in mind that the offence under PMLA is non-cognizable and depends upon the commission of a predicate offence.

9.38 Further, it is submitted that Section 19 of the PMLA which empowers certain officers of the Enforcement Directorate to arrest, has no safeguards which are in addition to Section 41 of the Cr.P.C. which is specifically limited to cognizable offences. Therefore, it is imperative that there is some regime which safeguards constitutional protections guaranteed to the citizens being investigated under the PMLA. It is submitted that in the absence of such guidelines/ safeguards, Section 19 of the PMLA is contrary to Articles 14 and 21 of the Constitution.

9.39 It is submitted that powers of arrest under Section 19 of the PMLA would amount to excessive delegation of powers and

conferment of uncanalised and unguided powers on the executive rendering the provision violative of Article 14 of the Constitution.

9.40 It is submitted that a combined reading of Section 3, Section 4 read with Section 2(1)(u), Section 2(1)(x) and Section 2(1)(y) of PMLA, 2002, establishes that any act which is not relatable to a scheduled offence would not attract the provisions of PMLA.

9.41 An investigation by the Respondent ED under the PMLA is entirely premised on a valid FIR registered by a criminal investigation agency (in this case the EOW, Raipur) in respect of a predicate offence, which is a 'scheduled offence' under PMLA. The first condition is a predicate/ scheduled offence. The second condition is proceeds of crime arising out of the commission of the predicate/ scheduled offence. The third condition is that the proceeds of crime have been laundered. which have been laundered are Rs. 1 Crore or more. It is only when these three conditions are satisfied that the Respondent ED would have the jurisdiction to investigate whether the proceeds of crime have been laundered. Absent a predicate/ scheduled offence and absent proceeds of crime of Rs. 1 Crore or more, the Respondent ED would have no jurisdiction to register an ECIR or to conduct an investigation under PMLA.

9.42 Any investigation of money laundering by the Respondent ED can be commenced only when the criminal investigation agency (in this case, the EOW Raipur) has reached a conclusion, at least *prima facie,* that a criminal offence has been committed and there are proceeds of crime of Rs. 1 Crore or more arising out of the said criminal (scheduled) offence. The EOW Raipur has filed a supplementary chargesheet arraigning the Petitioner as an accused but the Ld. Trial Court has not yet framed charges against the Petitioner herein. The underlying documents of the chargesheet have not been officially copied by the Respondents. They have not applied their mind to the evidence, but only summarized the erroneous conclusions in the chargesheet. It is possible that the Ld. Trial Court may reject the supplementary chargesheet and discharge the Petitioner. In any event and without prejudice to the above, it is submitted that *vide* Order dated 24.09.2019 of the Hon'ble High Court of Chhattisgarh in CRR No. 730/2019, the proceedings in the predicate offence before the Ld. Trial Court have been stayed *qua* all accused, including the Petitioner herein. Hence, it is submitted that an investigation under PMLA even before charges are framed by the Trial Court would be totally arbitrary, unreasonable, perverse and violative of the fundamental rights of the Petitioner.

9.43 The 2019 amendment *vide* the Finance (No. 2) Act 2019 added an Explanation to Section 44 of the original Act (i.e. the PMLA) by virtue of Explanation sub clause (i). The attempt, is to delink the offence of money laundering from the scheduled offence. Explanation sub clause (i) states that the jurisdiction of the special court shall not be dependent upon any orders passed in respect of the scheduled offence. It is submitted that the Explanation sub clause (i) is directly contrary to Section 3 of the original Act (i.e. the PMLA) read with Section 2(u) and Section 2(y). It is submitted that the fundamental premise of the offence of money laundering contained in the PMLA is that there must be a scheduled offence; there must be criminal activity relating to the scheduled offence; and as a result of criminal activity a person must derive or obtain proceeds of crime. The only conclusion that can be drawn from the definition of the offence of money laundering is that absent a scheduled offence, there can be no offence of money laundering. Hence, if the trial court adjudicating the scheduled offence comes to the conclusion that the scheduled offence was not committed or that the prosecution has not been able to prove the commission of the scheduled offence, there can be under no circumstances any proceeds of crime and there can be no offence of money laundering. On the contrary, Explanation sub clause (i) added by the 2019

amendment *vide* the Finance (No. 2) Act 2019 attempts to delink the scheduled offence and the offence of money laundering. Such an amendment destroys the very fundamental premise of the offence of money laundering and the amendment, added by way of Explanation, is directly in conflict with Section 3 read with Section 2(u) and read with Section 2(y) of the PMLA. Hence, the Explanation added by the 2019 amendment *vide* the Finance (No. 2) Act 2019 to Section 44 is arbitrary, unreasonable, illegal and unconstitutional.

9.44 Because Section 24 of the PMLA which creates a presumption in favour of the Respondent ED and against the Accused is opposed to the settled principles of criminal law i.e. the accused is innocent until proven guilty and the onus is always upon the prosecution to prove its case beyond reasonable doubt. The said Section 24 is also violative of Articles 14 and 21 of the Constitution.

9.45 Because Section 24 of the PMLA creates a blanket presumption against the person facing any proceedings relating to proceeds of crime under the PMLA without there being any pre-requisite or pre-condition for raising such presumption, as is the case in presumptions under other penal statutes such as Section 113-A and 113-B of the Indian

Evidence Act, 1872 and Section 20 of the PC Act. It is submitted that in all the above presumptions, the prosecution must discharge the initial burden of proof before the burden of proof can be shifted to the accused. That is to say, there is a mandatory pre-requisite which has to be shown by the prosecution before which a presumption can be raised against the accused. However, under Section 24 of the PMLA as it stands today, there is no mandatory pre-requisite, which allows the Respondent ED to raise an immediate presumption to the detriment of the Petitioner herein.

9.46 Because Section 24 of the PMLA as is being interpreted allows the Respondent ED to not even make out a *prime facie* case against any person and thereby raises an immediate presumption. It is submitted that this position of law is extremely unreasonable, onerous and prejudicial, apart from being in violation of Articles 14, 20, 21 and 300A of the Constitution.

9.47 Because the presumption under Section 24 of PMLA is that the Court shall/ may (as the case may be) presume that the proceeds of crime are involved in money-laundering and the burden of proof is upon the accused to show otherwise. The said presumption is only regarding the alleged proceeds of crime being involved in money-laundering. There is no

presumption that every property alleged to be "proceeds of crime" becomes so merely because of the allegations of the Respondent ED or satisfaction of the Respondent ED. In other words, for the presumption u/s 24 of the PMLA to be raised, the Respondent ED ought to first show that there exists proceeds of crime, which have to be determined according to the definition of proceeds of crime u/s 2(1)(u) of PMLA. Further, even for the Respondent ED to issue a show-cause notice, there ought to first be satisfaction of Respondent ED that there exist proceeds of crime. However, Section 24 of the PMLA as it exists today is being interpreted in a manner that there is no requirement to first show, even *prima facie*, that there exist proceeds of crime before raising the presumption against the accused. As such, Section 24 of the PMLA ought to be either struck down completely or read down in a manner that it is incumbent upon the Respondent ED to discharge an initial burden and show that there exist proceeds of crime before the presumption is raised against an accused person.

9.48 Because Section 24 of the PMLA is being interpreted in a manner that curtails the right of an accused to argue that in a given case, the Respondent ED has not even *prima facie* shown the existence of proceeds of crime.

9.49 Because as per Section 24(a), as amended by the Prevention of Money Laundering (Amendment) Act, 2012, it is clear that the presumption can only be invoked against a person who is "charged" with the offence of money laundering under Section 3. Thus, it is submitted that the said presumption under Section 24 can only be invoked after the framing of charges in the trial pertaining to the offence under Section 3 of the PMLA, and not prior to that. However, it is submitted that even at the stage post framing of charge, the said provision is unconstitutional for the reasons provided above.

9.50 Because the legislative intent behind the amendment in 2012 to Section 24 PMLA is made clear from the Speech of the then Finance Minister, who had introduced the Prevention of Money Laundering (Amendment) Bill, 2012 in the Rajya Sabha on 17.12.2012 @ Pg.435-436, which is extracted below:

*"Then, the question was asked that **by using the word 'charged', whether we are shifting the burden of proof even at the stage of the report under 173(8). The answer is: obviously, no.** Under 173(8), what is filed is a report after investigation. The word 'charge' occurs for the first time in the Criminal Procedure Code under section 211, "Every charge under this Code shall State the offence with which the accused is charged.". So, we borrow the language of 211 and say, replace the word 'accused' and say 'when*

a person is charged with an offence, that is when the court frames a charge against him under section 211'. Only at that stage, the burden shifts to him. So, I think, that makes it very clear."

However, as stated above, even at the stage post framing of charge, the said provision is unconstitutional for the reasons provided above.

9.51 Because it is well settled in law that the speech of the Minister introducing the bill is a tool of interpreting the legislative intention behind a bill. Reliance is placed on:

- ***K.P. Varghese v. Income Tax Officer, Enakulum,*** reported in (1981) 4 SCC 173 @ Para 8.
- ***Union of India v. Martin Lotteries Agencies Limited,*** reported in (2009) 12 SCC 209 @ Para 38.

9.52 The PMLA was amended by the Finance (No. 2) Act 2019. One of the amendments added an Explanation to Section 2(u). The Petitioner submits that the Explanation does not add anything to the definition of "proceeds of crime" in Section 2(u). In fact, the Explanation only repeats the language of Section 2(u). Hence, the Petitioner submits that the definition of "proceeds of crime" in the original Act (i.e. PMLA) remains intact and such proceeds must necessarily be derived or obtained as a result of criminal activity relating to a scheduled offence. Consequently, if the prosecution fails to prove the scheduled

offence, there can be no criminal activity relating to a scheduled offence; there can be no result of criminal activity; and there can be no proceeds of crime.

9.53 The Amending Act (i.e. the Finance (No. 2) Act 2019) amended Section 3 of the original Act (i.e. PMLA) and added an Explanation. In the main part of Section 3, the words used are "proceeds of crime including its concealment, possession, acquisition or use <u>and</u> projecting or claiming it as untainted property". However, in the Explanation that was added, the language of the main part is repeated in sub clause (i) but the word '<u>and</u>' occurring in the main part has been replaced by the word '<u>or</u>'. The words of the Explanation read namely:

(a) Concealment; or

(b) Possession; or

(c) Acquisition; or

(d) Use; <u>or</u>

(e) Projecting as untainted property; or

(f) Claiming it as untainted property, in any manner whatsoever.

It is submitted that the Explanation is arbitrary and goes beyond the main part of Section 2(u). An Explanation to a section can only attempts to explain any ambiguity in the section. If there was no ambiguity, the Explanation is meaningless. In any event, the Explanation cannot travel beyond the scope of the main part of the section that it purports

to explain. The Legislature cannot seek to change the meaning of a section by adding an Explanation which is directly contrary to the language of the main section. In the present case, Parliament has not amended the main part and the word '**AND**' is still present in the main part. In the Explanation the word '**AND**' is substituted by the word '**OR**'. It is therefore, manifest that the Explanation is directly contrary to the main part of Section 3. If there is a direct conflict between the main part and an Explanation added subsequently, the proper construction would be that the main part will prevail over the Explanation. It is therefore submitted that even after the 2019 amendment *vide* the Finance (No. 2) Act 2019, two conditions must be satisfied to attract the offence of money laundering. The first condition is involvement in any activity connected with the proceeds of crime including its concealment, possession, acquisition or use. The second condition is the person must project or claim the proceeds of crime as untainted property. The two conditions are conjunctive and unless the two conditions are present, the offence of money laundering is not made out against the accused person. It is submitted that the Explanation added in 2019 does not in any way alter the position of law stated above. Further, the explanation is violative of the Constitution of India as an accused would be tried for the same ingredients for a crime which may is a predicate offence, such as possession of money taken as a bribe.

9.54 The 2019 amendment *vide* the Finance (No. 2) Act 2019 also added sub clause (ii) to the Explanation. By virtue of this addition, the attempt is to make money laundering a continuing offence. It is submitted that by virtue of Section 2(y) read with Section 2(u), the offence of money laundering is complete when any property is derived or obtained as a result of criminal activity relating to a scheduled offence. Once the offence is complete and the accused person either conceals or possesses or acquires or uses the proceeds of crime '**AND**' projects or claims the proceeds of crime as untainted property, he is guilty of the offence. There is no such thing as continuing activity once the offence is complete. It is submitted that sub clause (ii) added in the Explanation to Section 3 by the 2019 amendment *vide* the Finance (No. 2) Act 2019 is meaningless, redundant and cannot be used to enlarge the definition of the offence of money laundering. Nor can the Explanation sub clause (ii) be used to expand or alter the definition of money laundering in the main part of Section 3.

9.55 That, a bare perusal of the definitions of 'scheduled offence', 'proceeds of crime' and the offence of money laundering make this amply clear. From the aforesaid definitions, it is clearly discernable that in the absence of a scheduled offence, there can be no proceeds of crime and in the absence of proceeds of crime, there can be no offence of money laundering. In this regard, reliance is also placed on the ***Speech of the then***

Finance Minister, in introducing the bill in the Lok Sabha, where the legislative intent behind the PMLA (as originally enacted) has been made clear. It was stated:

> *"**SHRI YASHWANT SINHA:** Now, I come to the Preventon of Money Laundering Bill What is the basic structure? The basic structure is that certain types of offences must be committed and there must be pecuniary gain arising out of these offences and there should be an attempt at laundering those receipts, then this Act will come into force. Now, what are the offences which have been included? All these offences are defined. I would say, for instance, 'murder'. I would like to inform Shri Bansal that murder is there because he mentioned that.*
>
> *[...]*
>
> *The point I am making is that we have picked up certain offences which are heinous, as I said in the beginning, which are of very serious nature. We are bringing this legislation on money laundering so that receipts from those crimes and properties acquired as a result thereof, are dealth with this under this Act. At the present moment, we have no legislation which will deal exclusively with this particular subject, So we are bringing this bill.*
>
> *[...]*
>
> *Therefore, **it is important to relate the provisions of thie Bill to the Schedule which we have mentioned. If we***

delink it from the Schedule, then all and every offence can be brought within its ambit, but that is not the intention of the legislation. The intention is to confine it to certain serious, heinous offences and that is why, we have decided to enumerate the offences under various Acts in this Schedule."

,

9.56 BECAUSE even otherwise, without prejudice, in so far as the merits of the allegation are concerned, it is submitted that there is no material against the Petitioner herein to show that he demanded or received any alleged bribe amounts. Pertinently, neither were the premises of the Petitioner herein searched/ raided by the EOW, Raipur (i.e. the agency investigating the alleged predicate offence) nor was any incriminating material whatsoever recovered from any premises of the Petitioner herein.

9.57 BECAUSE without prejudice to the above, it is submitted that the entire case against the Petitioner herein rests on the alleged contents of the alleged pen drive allegedly recovered from the premises of Sh. Girish Sharma. It is another matter that there was no pen drive recovered from Girish Sharma, and certainly none that forms material uncovered during the

investigation by the Respondent. It is submitted that the alleged contents of the alleged pen drive are in the form of loose and unsigned notes/ excel sheets, which, in the respectful submission of the Petitioner, are inadmissible in evidence. In this regard, reliance is placed on the ***Judgment dated 11.01.2017 of the Hon'ble Supreme Court in Common Cause (A Registered Society) & Ors. vs. Union of India & Ors., I.A. No. 3 and 4 of 2017 in W.P.(C) No. 505 of 2015 (i.e. the Sahara - Birla Payoffs Case)*** and ***CBI vs. V C Shukla, reported in (1998) 3 SCC 410.*** As such, the entire basis of the Impugned ECIR and the investigation in relation thereto is untenable and as such, it is submitted that the Impugned ECIR and all proceedings consequent thereto deserve to be quashed by this Hon'ble Court.

9.58 Any other/ additional ground that may be taken during the course of arguments.

9.59 The Petitioner herein has not filed any other Petition/ Application seeking same or similar reliefs contained herein before this Hon'ble Court or any other Court.

10 **PRAYER**

Wherefore, considering the facts and circumstances as aforementioned, it is humbly prayed that this Hon'ble Court may be pleased to:

10.1 Declare that the Prevention of Money Laundering Act, 2002, as amended, is violative of Articles 14, 19, 20, 21 and 300A of the Constitution of India and hence unconstitutional, ultra vires and void; and

10.2 without prejudice of prayer (a), declare that the Explanation added by the 2019 amendment *vide* the Finance (No. 2) Act 2019 to Section 2(u) of Chapter I of the Act, the Explanation added by the 2019 amendment *vide* the Finance (No. 2) Act 2019 to Section 3 of Chapter I of the Act, Sections 5 to 11A of Chapter III of the Act, Sections 17, 18, 19 and 24 of Chapter IV of the Act, the Explanation added by the 2019 amendment *vide* the Finance (No. 2) Act 2019 to Section 44 of Chapter VII of the Act, Section 45 of Chapter VII of the Act, and Section 50 of Chapter VIII of the Act, as amended, are unconstitutional, ultra vires and void; and

10.3 issue a Writ of certiorari quashing the ECIR/RPSZO/01/2019 dated 09.01.2019 and all consequential investigation and proceedings by the Respondents against the Petitioner under PMLA, including the Summons dated 05.03.2020 bearing no. F. No. ECIR/RPSZO/01/2019/1127 (S. No. 1101) and Summons dated 13.03.2020 bearing no. F. No. ECIR/RPSZO/01/2019/1173 (S. No. 1104);

10.4 Issue a Writ of Quo Warranto to the Respondent No. 2 directing the Respondent No. 2 to explain by what authority it is carrying out the investigation in the Impugned ECIR being ECIR/RPSZO/01/2019 dated 09.01.2019 and has issued the Summons dated 05.03.2020 and 13.03.2020 to the Petitioner herein; and

10.5 Alternatively (to Prayer C & D above), issue a Writ of certiorari quashing the order *vide* which the ECIR/RPSZO/01/2019 dated 09.01.2019 was transferred from Raipur to Delhi; and

10.6 Pass any such other writ or order(s) as it may deem fit and proper in the interest of justice.

Bilaspur
Date: 18.06.2020

Aayush Bhatia, Advocate
COUNSEL FOR THE PETITIONER

CERTIFICATE

It is certified that due care has been taken in the case to comply with the provision of Chhattisgarh High Court Rules.

Bilaspur
Date: 18.06.2020

Aayush Bhatia, Advocate
COUNSEL FOR THE PETITIONER