IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on 13.05.2021

\+ **W. P. (CRL.) 1923/2020**

UPENDRA RAI ..... Petitioner

Versus

CENTRAL BUREAU OF INVESTIGATION & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Arjun Dewan, Mr Arjun Mukherjee and Mr Shahryar Khan, Advocates.

For the Respondents: Mr Nikhil Goel, SPP for CBI.
Mr SV Raju, ASG and Mr Amit Mahajan, CGSC with Ms Sarica Raju, Mr A. Venkatesh, Mr Guntur Pramod Kumar and Mr Kritagya Kumar Kait, Advocates for R-2.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Petitioner has filed the present petition impugning an order dated 05.10.2020 (hereinafter 'the impugned order') passed by the Special Judge (PC Act), Rouse Avenue District Courts in CC No. 42/2019. By the impugned order, the learned Special Judge has directed transfer of the trial of CC No. 42/2019 arising out of RC No.

217/2018/A/0004/CBI, to the Special Court (PMLA) at the Patiala House Courts Complex.

2. The Petitioner contends that since the Special Court (PMLA) is not empowered to try cases for offences under the Prevention of Corruption Act, 1988 (hereinafter the 'PC Act'), the impugned order transferring the case to such a court, which does not have the jurisdiction to decide it, is patently erroneous and is liable to be set aside.

3. The controversy in the present case arises in the following factual context.

4. Respondent No. 1 (hereafter 'CBI') registered two FIRs against the Petitioner herein. The first bearing RC No. 217/2018/A/0003 dated 01.05.2018 under Sections 420/120B of the Indian Penal Code, 1860 (hereafter 'IPC') and Section 13(2) read with Section 13(1)(d) of the PC Act. The second bearing RC No. 217/2018/A/0004 dated 05.05.2018 registered under Sections 348/120 of the IPC and Section 8 of the PC Act. On the basis of these FIRs, Respondent No. 2 (hereinafter the 'ED') registered a common Enforcement Case Information Report bearing no. 03/HIU/2018 dated 09.05.2018.

5. On 31.07.2018, CBI filed the Final Report under Section 173 of the Criminal Procedure Code, 1973 (hereafter 'Cr.PC'), in respect of RC No. 217/2018/A/0003. Subsequently, proceedings under Sections 13(2) and 13(1)(d) of the PC Act against the Petitioner were dropped for want of sanction for prosecution by the Competent Authority. The

case was, thereafter, transferred to the learned Chief Metropolitan Magistrate (CMM), Rouse Avenue Courts as the offences punishable under the PC Act were dropped. Thereafter, the ED filed a Prosecution Complaint dated 06.08.2018 under Section 45 of the Prevention of Money Laundering Act, 2002 (hereinafter the 'PMLA') before the Special Court (PMLA), Patiala House Courts. The ED also filed a Supplementary Complaint dated 26.10.2018. The learned Special Court (PMLA) has taken cognizance of the said complaints.

6. On 04.02.2019, the ED filed an application under Section 44(1)(c) of the PMLA before the CMM, Rouse Avenue Courts seeking a transfer of the proceedings emanating out of FIR bearing RC No. 217/2018/A/0003 dated 01.05.2018, from the said court to the court of the ASJ/Special Court, PMLA. The said application was allowed by an order dated 16.08.2019. The Petitioner challenged the said order by way of a Revision Petition before the Special Judge, PC Act, Rouse Avenue Courts. The said petition was dismissed by an order dated 01.02.2020.

7. CBI completed the investigation in FIR bearing RC No. 217/2018/A/0004 dated 05.05.2018 under Sections 348/120 of the IPC and Section 8 of the PC Act (hereafter 'FIR in question') and filed a chargesheet on 06.08.2018. Thereafter, CBI filed a supplementary chargesheet on 27.07.2020.

8. On 14.09.2020, the ED filed an application under Section 44(1)(c) of the PMLA before the learned Special Judge, PC Act,

Rouse Avenue Courts seeking transfer of CC No. 42/2019 (arising from the FIR in question) to the Special Court, PMLA, Patiala House Courts. The said application was allowed by the impugned order dated 05.10.2020.

9. Mr. Arjun Dewan, learned counsel for the Petitioner, contends that the impugned order dated 05.10.2020 ought to be set aside since a Special Court constituted under the PMLA is not a notified Special Judge under the PC Act and thus, is not competent to try offences under the PC Act.

10. Mr. Dewan submits that the Scheduled Case against the Petitioner contains allegations of offences punishable under the PC Act and that the same are not triable by the Special Court (PMLA). He states that the language of Section 4 of the PC Act mandates that only those Judges appointed under Section 3 of the PC Act are competent to try offences entailed in the PC Act. In this regard, he relies on the decision of the Supreme Court in ***P. Nallamal and Ors. v. State Represented by Inspector of Police: (1999) 6 SCC 559***, wherein the Court held that Section 4 of the PC Act confers exclusive jurisdiction to the Special Judges appointed under Section 3 of the PC Act and that the term 'only' used in Sub-Section (1) of Section 4 of the PC Act confers exclusivity in terms of jurisdiction upon the Judges so appointed. Next, he referred to the decision of the High Court of Kerala in ***Inspector of Police, CBI v. Assistant Director & Ors.: Crl. M. C. No. 2178 of 2019, decided on 08.11.2019***. In its decision, the High Court held that if a case involving the PC Act is committed to a

Special Court constituted under the PMLA, such court will have no jurisdiction to try the case so committed.

11. He also contended that Section 4 of the PC Act overrides Section 44 of the PMLA and that Section 71 of the PMLA has no application to the present case. It is his case that the *non-obstante* provision contained in Section 4(1) of the PC Act ousts the application of any other law. And thus, the Special Courts established under PMLA have no jurisdiction to try any case charging the accused of committing an offence punishable under the PC Act. Next, he submitted that Section 44(1)(c) of the PMLA is not mandatory. He submitted that the use of the term 'shall' in the language of Section 44(1)(c) of the PMLA ought to be read as 'may': discretionary rather than mandatory. He relied upon the decision of the Supreme Court in ***State of Haryana and Ors. v. Raghubir Dayal: (1995) 1 SCC 133***, in support of this contention.

12. Mr. SV Raju, learned Additional Solicitor General appearing for the ED countered the aforesaid submissions. First, he contended that Section 44(1)(c) of the PMLA overrides Section 4 of the PC Act. He submitted that since both statutes contain *non-obstante* clauses, it is settled law that the later statute must prevail [see: ***Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. And Ors.: (2001) 3 SCC 71***]. He contended that even otherwise, the transfer of the case from the Special Judge (PC Act) to the Special Judge (PMLA) would not cause prejudice to the Petitioner since both the Judges are Judges of Sessions.

Reasons and Conclusion

13. As is apparent from the above, the principal question that falls for consideration before this Court is whether the Special Courts constituted under Section 43 of the PMLA have jurisdiction to try an offence punishable under the PC Act.

14. Sub-Section (1) of Section 4 of the PC Act contains a *non-obstante* clause, which expressly provides that notwithstanding anything contained in the Cr.PC or any other law in force, the offences as specified under Section 3(1) of the PC Act shall be tried by a Special Judge. Sub-Section (1) and Sub-Section (2) of Section 4 of the PC Act are set out below:-

> "4. Cases triable by special Judges.—
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> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.
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> (2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government."

15. The import of the word 'only' in Sub-Section (1) of Section 4 of the PC Act is that no other court would have jurisdiction to try

offences as specified under Section 3(1) of the PC Act. In ***P. Nallamal and Ors. v. State Represented by Inspector of Police*** (*supra*), the Supreme Court had authoritatively held that a Special Judge as appointed under Section 3(1) of the PC Act would have exclusive jurisdiction to try offences under the PC Act. The relevant extract of the said decision is set out below:-

> "8. Before dealing with the contention advanced by the appellants we may point out that Section 4 of the P.C. Act confers exclusive jurisdiction to Special Judges appointed under the P.C. Act to try the offences specified in Section 3(1) of the P.C. Act …..
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> 9. The placement of the monosyllable "only" in the sub- section is such that the very object of the sub-section can be discerned as to emphasize the exclusivity of the jurisdiction of the Special Judges to try all offences enveloped in Section 3(1)….."

16. In view of the *non-obstante* provision in Sub-section (1) of Section 4 of the PC Act, it would override any other inconsistent provision under the Cr.PC or any other law in force.

17. Section 3 of PC Act enables the Central Government or the State Government to appoint Special Judges to try any offence punishable under the PC Act. Sub-Section (2) of Section 3 of the PC Act prescribes the qualifications for such Special Judges and expressly provides that no person can be appointed as a Special Judge, unless he has been a Sessions Judge or an Additional Sessions/or an Assistant

Sessions Judge under the Cr.PC. Section 3 of the PC Act is set out below:-

> "3. Power to appoint special Judges.—
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> (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:—
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> (a) any offence punishable under this Act; and
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> (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).
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> (2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974)."

18. Section 43 of the PMLA empowers the Central Government to designate one or more Courts of Session as Special Court or Special Courts for such area or areas to try offences punishable under Section 4 of the PMLA. Sub-Section (2) of Section 43 of the PMLA also expressly provides that while trying an offence under the PMLA, a Special Court shall also try an offence, other than the offence, as referred to in Sub-Section (1) with which an accused may under Cr.PC be charged at the same trial. Section 43 of the PMLA is set out below:-

"43. Special Courts.—

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

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

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

19. Section 44 of the PMLA sets out the offences triable by Special Courts constituted under Section 43 of the PMLA. Sub-Section (1) of Section 44 of the PMLA also contains a *non-obstante* clause to overcome any repugnancy with the provisions of Cr.PC. Section 44 of the PMLA is set out below:-

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

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

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

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

Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such compliant, the said authority shall submit a closure report before the Special Court; or

(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.

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

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43."

20. In addition to the *non-obstante* provision as contained in Section 44(1) of the PMLA, the PMLA also contains a *non-obstante* clause under Section 71. The said Section is set out below:

"71. Act to have overriding effect.-
The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

21. A *non-obstante* clause is a commonly used known legislative device to give an overriding effect to certain provisions, to overcome any inconsistency with any other provision in the same act or any other enactment. (See: ***Union of India and Anr. v. G.M. Kokil And Ors.: 1984 Supp SCC 196***).

22. In the case of ***Aswini Kumar Ghosh and Anr. v. Arabinda Bose and Anr.: AIR 1952 SC 369***, a question arose as to the true construction of Section 2 of the Supreme Court Advocates (Practice in High Court) Act, 1951, which contained a *non-obstante* clause in the following form: "Notwithstanding anything contained in the Indian bar Council, 1926, or in any other law regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to practice in that High Court". The Calcutta High Court in considering Section 2 of the Act held that an Advocate of the Supreme Court was not entitled to act on the original side of that High Court. This conclusion was reached by limiting the enacting part of the section by the *non-obstante* clause. The Supreme Court overruled the said view. The following observations made by Patanjali Shastri, C.J. are instructive:

> "23. … This is not, in our judgment a correct approach, to the construction of Section 2. It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in

relevant existing laws which is inconsistent with the new enactment.

26. Nor can we read the non obstante clause as specifically repealing only the particular provisions which the learned Judges below have been at pains to pick out from the Bar Councils Act and the original side Rules of the Calcutta and Bombay High Courts. If, as we have pointed out, the enacting part of Section 2 covers all advocates of the Supreme Court, the non obstante clause can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment, although the draftsman appears to have had primarily in his mind a particular type of law as conflicting with the new Act. The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it. *Posteriores leges priores contrarias abrogant* (*Broome's Legal Maxims*, 10th Edn., p. 347).

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23. Mr. Dewan had contended that since Sub-section (1) of Section 4 of the PC Act contains a *non-obstante* clause and mandates that only Judges appointed under Section 3 of the PC Act would be competent to try the offences under the PC Act, the said provision would override the provisions of Section 44(1)(a) of the PMLA. He contended that the opening words of Section 44(1) of the PMLA provides that the provision of Section 44(1) of PMLA would have the effect notwithstanding any provisions contained in the Cr.PC. As opposed to Section 44(1) of the PMLA , the *non-obstante* provisions under Section 4(1) of the PC Act are much wider and provide that the

offences as specified under Sub-Section (1) of Section 3 of the PC Act would be tried only by Special Judges notwithstanding anything contained in the Cr.PC or "*any other law for the time being in force*".

24. This Court is unable to accept that the provisions of Section 44(1)(a) of the PMLA must be read in a restrictive manner to override the provisions of the Cr.PC in case of any repugnancy, but to yield to the extent it is inconsistent with any other law for the time being in force. This is so, because the *non-obstante* provision in the opening sentence of Sub-section (1) of Section 44 of the PMLA cannot control the meaning of the principal clause. The *non-obstante* clause under Section 44(1) of the PMLA cannot be construed to mean that the provisions of Section 44(1) of the PMLA do not override provisions of any other enactment. The scope of the *non-obstante* provision under Section 44(1) of the PMLA is limited to expressly provide that the provisions of Section 44(1) of the PMLA would override any provision that may be inconsistent with the provisions of the Cr.PC. Thus, in case of any conflict or repugnancy between the provisions of the Cr.PC and provisions of various clauses under Section 44(1) of the PMLA, the provisions of the PMLA would be given effect to and the repugnancy would be resolved in favour of giving full effect to the provisions of Section 44(1) of the PMLA. However, the *non-obstante* provisions under Section 44(1) of the PMLA do not control the plain meaning of various clauses under Section 44(1) of the PMLA. Therefore, when it comes to the question of any repugnancy between the provisions of various clauses of Section 44(1) of the PMLA with

any law, other than the Cr.PC, the same would have to be construed without referring to the *non-obstante* provisions under Section 44(1) of the PMLA. The *non-obstante* clause in the opening sentence of Section 44(1) of the PMLA has to be read in as an affirmative clause, which requires the provisions of Section 44(1) of the PMLA to be given effect to, despite the same being inconsistent with the provisions of the Cr.PC. It cannot be read in as a negative provision, which limits the applicability of the various clauses of Section 44(1) of the PMLA to the extent that the same are not inconsistent with any other law, except the Cr.PC. When it comes to the question of considering any inconsistency between the provisions of Section 44(1) of the PMLA and statutes other than the Cr.PC, the *non-obstante* provision under Section 44(1) of the PMLA would be of no relevance. This is so, because it provides that the provisions of Section 44(1) of the PMLA would be applicable notwithstanding any provisions of the Cr.PC and addresses the issue of inconsistency between the provisions of Section 44(1) of the PMLA and Cr.PC., but goes no further.

25. The question whether Special Courts under the PMLA have the jurisdiction to try a scheduled offence under the PC Act is required to be examined with reference to the plain language of the provisions of Section 44(1) of the PMLA as well as Section 71 of the PMLA. As noted above, Section 71 of the PMLA also contains a *non-obstante* provision that expressly provides that the provisions of the PMLA shall be given effect to notwithstanding any inconsistency in any other law in force. It is necessary to examine the scope of Sections 43 and

44 of the PMLA to ascertain whether there is any irreconcilable repugnancy between the said provisions and the provisions of the PC Act.

26. Sub-Section (1) of Section 43 of the PMLA empowers the Central Government to designate one or more Courts of Session as Special Courts or Special Courts for such area or areas, as may be specified, for trying offences under Section 4 of the PMLA.

27. Sub-section (2) of Section 43 of the PMLA expressly provides that while trying an offence under the PMLA, a Special Court shall also try an offence, other than the offence of money laundering, with which the accused may, under the Cr.PC, be charged at the same trial. Section 220 of the Cr.PC provides for cases where multiple offences may be tried at one trial. Sub-Section (1) of Section 220 of the Cr.PC, *inter-alia*, provides that if series of acts are so connected together as to form the same transaction and more than one offence has been committed by the accused, he may be charged with and tried for each offence at one trial. In such cases, where the offence of money laundering and the predicate offence arise from the same transaction, the Special Court under the PMLA would have the jurisdiction to try the same.

28. Clause (a) of Section 44(1) of the PMLA expressly provides that the scheduled offence and an offence punishable under Section 4 of the PMLA shall be triable by the Special Court constituted for the area in which the offence has been committed. Section 2(y) of the

PMLA defines the expression 'scheduled offences'. The said definition includes offences as specified in Part A of the Schedule to the PMLA. Paragraph 8 of Part A of the Schedule to the PMLA lists out offences punishable under certain provisions of the PC Act, including offences under Section 8 of the PC Act. Thus, indisputably, the offence for which the Petitioner is being tried pursuant to the FIR in question is a scheduled offence. Thus, in terms of Clause (a) of Section 44(1) of the PMLA, the said offence is triable by a Special Court.

29. It was contended on behalf of the Petitioner that Clause (a) of Section 44(1) of the PMLA must be read in conjunction with Sub-section (2) of Section 43 of the PMLA and it only specifies that the Special Court constituted for the area in which the offence of money laundering has been committed, would have the jurisdiction to try the offences. Section 43 of the PMLA provides that the Special Court, while trying an offence under the PMLA, would also try the scheduled offence for which the accused may, under the Cr.PC, be charged with at the same trial. It was contended that, therefore, Clause (a) of Section 44(1) would be applicable only if the offence could be tried with at the same trial.

30. The above contention does not take into account explanation (i) to Sub-section (1) of Section 44 of the PMLA, which was introduced by the Finance (No. 2) Act, 2019 with effect from 01.08.2019. The said explanation expressly provides that the jurisdiction of the Special Court while dealing with an offence under the PMLA shall not be

dependent on any orders passed in respect of the scheduled offence and "*the trial of both sets of offences by the same court shall not be construed as joint trial*". It is, thus, apparent that the Special Court is also empowered to try the predicate offence and it is not necessary that the said offence be tried along with the offence punishable under Section 4 of the PMLA in the same trial as contemplated under Section 43(2) of the PMLA. This leads to the inevitable conclusion that the scope of Section 44(1)(a) cannot be restricted to the trial of only such predicate offences that can be tried along with the offence punishable under Section 4 of the PMLA, in the same trial.

31. It is relevant to note that Clause (a) of Section 44(1) of the PMLA was amended by virtue of the Prevention of Money Laundering (Amendment), Act 2013. Prior to the said amendment, the said Clause read as under:

> "an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable only by the Special Court constituted for the area in which the offence has been committed:
>
> Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or"
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> [underlined for emphasis]

The word "only" was deleted with effect from 15.02.2013. The said amendment is relevant as it indicates that the jurisdiction of the other courts to try the predicate offence is not excluded but the Special Court designated under the PMLA would also have the jurisdiction to

try the predicate offence. In this view, Clause (a) of Section 44(1) of the PMLA, is only an enabling provision that enables the Special Court to try the scheduled offences in the given cases.

32. If one examines the language of Clause (c) of Sub-section (1) of Section 44 of the PMLA in light of the explanation to Sub-section (1) of Section 44 of the PMLA, it is apparent that it is not necessary that only trial of such predicate offences, which can be tried along with the offence under the PMLA, may be transferred to the Special Court. Clause (c) of Section 44(1) of the PMLA also clarifies that once a case relating to a scheduled offence is transferred to the Special Court, the Court would proceed with the said case from the same stage at which it is committed. Plainly, there may be cases where the trial of a predicate offence and the trial for an offence under the PMLA are at different stages. In such cases, it is obvious that the trial for the scheduled predicate offence and the trial for the offence punishable under Section 4 of the PMLA would proceed separately and not as a single trial.

33. Clause (c) of Sub-section (1) of Section 44 of the PMLA is also unambiguous and requires the court that has taken cognizance of the scheduled offence to commit the case to the Special Court, which has taken cognizance of the complaint of the offence of money-laundering on an application by the authority, authorised to file a complaint under the PMLA.

34. Since, the language of Clauses (a) and (c) of Sub-section (1) of Section 44 of the PMLA are unambiguous, the only aspect that needs to be examined is whether the applicability of the said Clauses is required to be restricted in view of the provisions of Section 4 (1) of the PC Act.

35. In ***KSL & Industries Ltd. v. Arihant Threads Ltd. and Ors: (2008) 9 SCC 763***, the Supreme Court held as under:

> "89. From the above discussion, in my judgment, the law is fairly well settled. A provision beginning with non obstante clause (notwithstanding anything inconsistent contained therein in any other law for the time being in force) must be enforced and implemented by giving effect to the provisions of the Act and by limiting the provisions of other laws. But, it cannot be gainsaid that sometimes one may come across two or more enactments containing similar non obstante clause operating in the same or similar direction. Obviously, in such cases, the court must attempt to find out the intention of the legislature by examining the nature of controversy, object of the Act, proceedings initiated, relief sought and several other relevant considerations.
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> 90**.** From the case law referred to above, it is clear that courts have applied several workable tests. They, inter alia, include to keep in view whether the Act is "general" or "special", whether the Act is a subsequent legislation, whether there is reference to the former law and the non obstante clause therein. The above tests are merely illustrative and by no means they should be considered as exhaustive. It is for the court when it is called upon to resolve such conflict by harmoniously interpreting the provisions of both the competing statutes and by giving effect to one over the other."

36. It is also relevant to refer to the decision of the Supreme Court in ***Jay Engineering Works Ltd. v. Industry Facilitation Council and Anr.: (2006) 8 SCC 677***. The relevant observations made by the Court in this decision are as under:

> "28. Both the Acts contain non obstante clauses. Ordinary rule of construction is that where there are two non obstante clauses, the latter shall prevail. But it is equally well settled that ultimate conclusion thereupon would depend upon the limited context of the statute. (See *Allahabad Bank, (2000) 4 SCC 4*06, para 34.)
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> 29. In *Maruti Udyog Ltd. v. Ram Lal, (2005) 2 SCC 638*, it was observed: (SCC p. 653, para 39)
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> > "39. The interpretation of Section 25-J of the 1947 Act as propounded by Mr Das also cannot also be accepted inasmuch as in terms thereof only the provisions of the said chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including the Standing Orders made under the Industrial Employment (Standing Orders) Act, but it will have no application in a case where something different is envisaged in terms of the statutory scheme. A beneficial statute, as is well known, may receive liberal construction but the same cannot be extended beyond the statutory scheme."
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> 30. In *Sarwan Singh v. Kasturi Lal, (1977) 1 SCC 750*, this Court opined: (SCC p. 760, para 20)
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> > "When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive

> problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration."
>
> 31. The endeavour of the court would, however, always be to adopt a rule of harmonious construction."

37. Both, the PC Act as well as PMLA, are in one sense special enactments. The PC Act was enacted to consolidate and amend the law related to prevention of corruption and for all matters connected therewith. It specifies the offences as well as the penalties that can be imposed. The PC Act also contains special provisions with regard to investigation of cases under the PC Act as well as contains provisions regarding the procedure to be followed. In terms of Section 22 of the PC Act, the Cr.PC would be applicable subject to the modifications as specified therein.

38. Section 28 of the PC Act expressly provides that the provisions of the PC Act are in addition to, and not in derogation of, any other law for the time being in force, and nothing contained in the said Act would exempt any public servant from any proceedings which might, apart from this Act, be instituted against him under any other enactment.

39. PMLA was enacted to prevent money laundering and to provide for confiscation of property derived from or involved in money laundering and for other matters connected therewith or incidental thereto. It was enacted to implement the Political Declaration and

Global Program of Action, which was adopted by the United Nations General Assembly at its 17th Special Session in February, 1990. Section 3 of the PMLA describes the offence of money laundering and Section 4 of the PMLA provides for the punishment for the said offence. The said enactment contains extensive provisions regarding the authorities entitled to prosecute any offender for the offence of money laundering as well as provisions for confiscation of proceeds of crime.

40. The principle that a special act overrides a general act is not applicable in the present case. PC Act and PMLA are both special statutes in their own fields. Both relate to different offences and none of the two enactments can be considered as general or special in relation to the other. Thus, the question whether the provisions of Section 44(1)(a) and Section 44(1)(c) of the PMLA have to be given effect to despite being repugnant to Section 4(1) of the PC Act must be considered keeping in view other principles.

41. One of the well accepted principles for addressing repugnancy between two statutes is that the later enactment overrides an earlier enactment. This is also subject to examination of the purpose and objective of the enactments.

42. In ***Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.*** (*supra*), the Supreme Court referred to the decision of the Special Court in ***Bhoruka Steel Ltd. v. Fairgrowth Financial Services Ltd.:***

(1997) 89 Company Cases 547, and upheld the aforesaid principle. The relevant extract of the said decision is set out below:

> "10. We may notice that the Special Court had in another case dealt with a similar contention. In *Bhoruka Steel Ltd.* v. *Fairgrowth Financial Services Ltd.* [(1997) 89 Comp Cas 547 (Special Court)] it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the 1985 Act. Rejecting this contention, the Special Court had come to the conclusion that the Special Court Act being a later enactment would prevail. The headnote which brings out succinctly the ratio of the said decision is as follows:
>
> > "Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply.
> >
> > The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, provides in Section 13, that its provisions are to prevail over any other Act. Being a later enactment, it would prevail over the Sick Industrial Companies (Special Provisions) Act, 1985. Had the Legislature wanted to exclude the provisions of the Sick Companies Act from the ambit of the said Act, the Legislature would have specifically so provided. The fact that the Legislature did not specifically so provide necessarily means that the Legislature intended that

the provisions of the said Act were to prevail even over the provisions of the Sick Companies Act.

It is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed then the latter must be adopted. If an interpretation is given that the Sick Industrial Companies (Special Provisions) Act, 1985, is to prevail then there would be a clear conflict. However, there would be no conflict if it is held that the 1992 Act is to prevail. On such an interpretation the objects of both would be fulfilled and there would be no conflict. It is clear that the Legislature intended that public monies should be recovered first even from sick companies. Provided the sick company was in a position to first pay back the public money, there would be no difficulty in reconstruction. The Board for Industrial and Financial Reconstruction whilst considering a scheme for reconstruction has to keep in mind the fact that it is to be paid off or directed by the Special Court. The Special Court can, if it is convinced, grant time or instalments."

43. In ***Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of India: (1993) 2 SCC 144***, the Supreme Court considered the question regarding inconsistency between two special laws – the Finance Corporation Act, 1951 and the Sick Industrial Companies (Special Provisions) Act, 1985. The Supreme Court noted that both the said Statutes contained *non-obstante* clauses but "*1985 Act being a subsequent enactment, the non-obstante clause therein would ordinarily prevail over the non-obstante clause found in Section*

46B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 Act is a special one".

44. The principle that in case of any repugnancy, the later enactment shall prevail over the subsequent one rests on the proposition that the legislature is presumed to be aware of the earlier enactment and if the later enactment is inconsistent with the earlier, it must be accepted that the legislative intent is to override the earlier enactment. However, this principle would hold good only if the two enactments cannot be read harmoniously. The assumption that the legislative intent is to accord primacy to the later enactment is also required to be examined in the context of the objective of the enactments or the essential purpose of the statutory provisions that are found to be repugnant.

45. In the case of ***Bank of India v. Ketan Parekh: (2008) 8 SCC 148***, the Supreme examined the question of repugnancy between the provisions of The Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 and The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and observed as under:

> "28. In the present case, both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non obstante clause. Section 34 of the Act of 1993 starts with non obstante clause, likewise Section 9-A (sic 13) of the Act of 1992. But incidentally, in this case Section 9-A came subsequently i.e. it came on 25-1-1994. Therefore, it is a subsequent legislation which will have the overriding effect over the Act of 1993. But cases might arise where both the enactments have the

> non obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25-1-1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993."

46. In ***S. Vanitha v. Deputy Commissioner, Bengaluru Urban District and Others: 2020 SCC OnLine SC 1023***, the Supreme Court was concerned with the question of inconsistency between the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Protection of Women from Domestic Violence Act, 2005. The court referred to the earlier decision in ***Bank of India vs Ketan Parekh*** (*supra*) and held as under:

> "Principles of statutory interpretation dictate that in the event of two special acts containing *non obstante* clauses, the later law shall typically prevail. In the present case, as we have seen, the Senior Citizen's Act 2007 contains a non obstante clause. However, in the event of a conflict between special acts, the dominant purpose of both statutes would have to be analyzed to ascertain which one should prevail over the other. The primary effort of the interpreter must be to harmonize, not excise."

47. The purpose and objective of including provisions to ensure that the Special Courts under the PMLA also have the jurisdiction to try scheduled offences is obvious when one examines the nature of the offence of money laundering. The said offence is described in Section 3 of the PMLA, which provides that whoever directly or indirectly attempts to indulge or knowingly assists or is otherwise party in any process or *"activity connected with proceeds of crime"* including its concealment, possession, acquisition or use and projecting or claiming it as an untainted property, shall be guilty of committing an offence of money laundering.

48. The expression 'proceeds of crime' is defined in Clause (u) of Section 2(1) of the PMLA to mean "*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*". It is, thus, clear that the offence of money laundering is predicated on the existence of proceeds of crime, which in turn is connected with any property that is derived from any criminal activity relating to a scheduled offence. Thus, the existence of a scheduled offence is the foundation of any possible allegation of commission of the offence of money laundering. Although an offence of money laundering under Section 3 of the PMLA is an independent offence, its existence is predicated on (a) existence of criminal activity relating to a scheduled offence and (b) some property derived or obtained from such activity. No person can be convicted of an offence of money laundering

punishable under Section 4 of the PMLA, if the existence of a scheduled offence is not established.

49. It is not necessary that persons accused of committing an offence of money laundering be also accused of committing the predicate scheduled offence. Nonetheless, the said accused cannot be convicted of committing an offence of money laundering unless the existence of a scheduled offence is established. In cases where the allegation of commission of an offence of money laundering against a person is founded on the allegation that he had committed a scheduled offence; it would follow that he cannot be convicted of an offence of money laundering, unless it is established that he is guilty of committing the predicate scheduled offence. The link between the offence of money laundering and the predicate scheduled offence is inextricable. In such circumstances, it stands to reason that in a given case, it would be expedient if the same Court tries the scheduled offence as well as the offence for money laundering in the interest of consistency and to avoid any possible conflict of opinion.

50. It is apparent that the object of including Clauses (a) and (c) of Section 44(1) of the PMLA – read with the explanation as introduced by the Finance (No. 2) Act, 2019 – is to enable the same court to try both the offences of money laundering as well as the predicate scheduled offence. It is at once clear that if the said objective is to be served then the provisions of Section 44(1)(a) and 44(1)(c) of the PMLA would necessarily override the provisions of Section 4(1) of the PC Act.

51. The PC Act – as is expressly indicated by Section 28 of the PC Act – is enacted in addition to and not in derogation of any other law. The object of enacting the said law is to consolidate and amend the law relating to prevention of corruption and for matters connected therewith. The Parliament in its wisdom had considered it appropriate that cases under the said Act be tried by Special Judges, who are or have been a Sessions Judges or Additional Sessions Judges or Assistant Sessions Judges under the Cr.PC. Concededly, the Special Judges designated under the PMLA would also necessarily have to meet the said qualification. Thus, the Special Judges designated in terms of the PMLA are not, *per se*, ineligible or unqualified for being appointed as a Special Judge under the PC Act. The other provisions of the PC Act, which relate to investigation and the procedure for trying an offence under the PC Act, would have to be followed.

52. There is, thus, no reason whatsoever to believe that the legislative object of enacting the PC Act as a special act would not be served if the trial is conducted by a Special Judge appointed under the PMLA. Considering the objective, the language of the two statutes and the fact that the PMLA is a later statute; the provisions of Section 44(1) of the PMLA must be accepted as an exception to the provisions of Section 4(1) of the PC Act.

53. Mr. Dewan had relied heavily on the decision of the High Court of Kerala in ***Inspector of Police, CBI v. Assistant Director and Ors.*** *(supra)*. In that case, the court noted that it was not obligatory for an authorized officer under the PMLA to invariably make an application

under Section 44(1)(c) of the PMLA. The Court reasoned that the Parliament could not have been oblivious of the fact that at least in some cases, predicate offences may be triable by Special Courts authorised for specific purposes and the Special Court under the PMLA may not be competent to try such offences. The Court referred to the *non-obstante* clause under Section 44(1) of the PMLA and held that "*since the non-obstante clause in Section 44(1) applies only to the procedural matters, that provision cannot support the contention that Section 44(1) overrides the substantive law in relation to Statutes covering the predicate offence*". Insofar as the *non-obstante* provision contained in Section 71 of PMLA is concerned, the Court held that "*Section 71 itself clarifies that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. Evidently, the Money Laundering Act has primacy in the field of operation to which the Act extends and within that domain, it will have overriding effect over any other inconsistent provisions in other Statute. This is the natural and limited extent of scope of Section 71 and not an omnibus overriding effect over all other Statutes*".

54. The court further noted that both the PMLA and the PC Act operate in their special fields and concluded that the scope of Section 44(1)(c) of the PMLA was limited and did not extend to offences under the PC Act, which were triable by Special Courts appointed under the said Act. And, the said provision could not be used to seek committal of a case relating to a scheduled offence to the Special

Court under PMLA, if the Special Court did not have jurisdiction to try the said case.

55. The court reasoned that Clause (a) of Sub-section (1) of Section 44 of the PMLA must be read in conjunction with Section 43(2) of the PMLA and was applicable only where the accused was required to be tried for an offence under money laundering as well as the predicate offence under the same trial. In such cases, it is possible that the scheduled offence may have been committed in a jurisdiction of one Special Court but the offence punishable under Section 4 of the PMLA may have been committed in the jurisdiction of another Special Court. The Court held that Clause (a) of Section 44(1) of the PMLA addressed such a situation and had expressly provided that the accused would be tried only by the Special Court constituted for the area in which the offence punishable under Section 4 of the PMLA had been committed.

56. This Court is, respectfully, unable to agree with the view taken in ***Inspector of Police, CBI v. Assistant Director and Ors.*** (*supra*). It does not appear that the explanation, as introduced by the Finance (No.2) Act, 2019, was brought to the notice of the Hon'ble Court. Once the Legislature has clarified that trial of both sets of offences – scheduled as well as offences punishable under Section 4 of the PMLA – by the same court shall not be construed as a joint trial, the interpretation that Section 44(1)(a) of the PMLA is applicable only in respect of scheduled offences that are to be tried at the same trial, may not be tenable.

57. It is not necessary that the concerned authority authorized to file a complaint under the PMLA, should file an application in every case where the predicate offence is being tried by a court other than the Special Court trying the offence under the PMLA. The concerned authority shall do so only in cases when such transfer is in the interest of speedy trial or otherwise it is expedient that the same court try both the offences. However, that does not lead to the conclusion that the concerned authority is precluded from moving an application under Section 44(1)(c) of the PMLA in cases relating to offences under the special acts including the PC Act. And, this Court is unable to subscribe to the said view of the Kerala High Court.

58. Having stated the above, it is also relevant to note that the Kerala High Court also held that the concerned authority is required to carefully apply its mind and move the application only in appropriate cases. The relevant observations made by the court in ***Inspector of Police, CBI v. Assistant Director and Ors.*** (*supra*) are set out below:

> **"**33. Hence, section 44(1)(c) should receive a reasonable interpretation which will augment the purpose of Act. Necessarily, it has to held that, section 44(1)(c) does not imply that, in every case contemplated under that sub-section, the competent authority shall make application for committal of case relating to scheduled offence to a special court under the Money Laundering Act. The authorized officer competent to lay the complaint is vested with a solemn discretion to carefully apply his mind and only in appropriate cases where the committal to special court will not defeat the prosecution and on the other hand,

> will enable a speedy disposal of case and achieve purpose of Statute should file an application…"

59. This Court concurs with the aforesaid view. The concerned authority under the PMLA, is not required to make an application in every case and the same can be made only where it is necessary in the interest of a speedy trial and is otherwise expedient to do so.

60. In view of the above, the contention that cases relating to scheduled offences punishable under the PC Act (as specified in Paragraph 8 of Part A of the Schedule to the PMLA) cannot be tried by the Special Courts designated under the PMLA, which are trying the interlinked offence punishable under Section 4 of the PMLA, for want of jurisdiction to do so, cannot be accepted.

61. There is no ambiguity in the language of Section 44(1)(c) of the PMLA. The concerned court, which is trying the scheduled offence, is required to transfer the same to the Special Court designated under the PMLA, on an application moved by the authority, authorised to make a complaint under the PMLA. This is provided that the said Special Court has taken cognizance of the offence punishable under the PMLA.

62. In the facts of the present case, it is not disputed that the other connected cases are being tried by the Special Court. By an order dated 08.08.2018, the Special Court (PMLA) Patiala House has taken cognizance of the complaint filed by the ED (Sessions Case No.259/2018).

63. This Court finds no infirmity with the impugned order. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

MAY 13, 2021
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