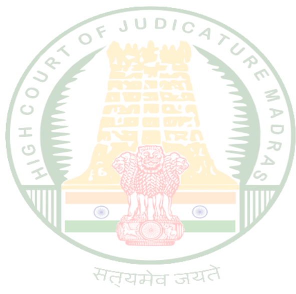
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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2023
PRONOUNCED ON : 27.11.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.1956 of 2023
and Crl.O.P.No.26258 of 2023
and Crl.M.P.No.18246 in Crl.R.C.No.1956 of 2023
and Crl.M.P.No.18249 of 2023 in Crl.O.P.No.26258 of 2023

Crl.R.C.No.1956 of 2023
C.Anandane .. Petitioner / A1

v.

Directorate of Enforcement,
Government of India rep. by
Assistant Director, PMLA .. Respondent/complainant

Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure, 1973, to call for the records and set aside the order dated 10.08.2023 in Crl.M.P.No.3172 of 2022 in Spl.C.C.No.2 of 2022 on the file of the learned Principal Sessions Judge-cum-Special Judge (Under PMLA) at Puducherry, consequently discharge the petitioner herein.

For Petitioner : Mr.Anirudh Krishnan
For Respondent : Mr.N.Ramesh

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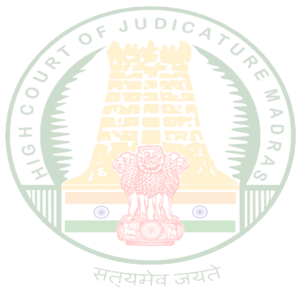
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Special Public Prosecutor (ED)

Crl.O.P.26258 of 2023

C.Anandane .. Petitioner / A1

v.

Assistant Director, (PMLA)
Directorate of Enforcement,
Government of India,
Chennai – 600 006. .. Respondent/complainant

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, 1973, to call for the records and set aside the order of issuance of summon dated 11.04.2022 issued as against the petitioner in Spl.S.C.No.2 of 2022 on the file of the learned Principal Sessions Judge-cum-Special Judge (Under PMLA) at Puducherry.

For Petitioner : Mr.Anirudh Krishnan
For Respondent : Mr.N.Ramesh
Special Public Prosecutor (ED)

COMMON ORDER

(Order of the Court was delivered by SUNDER MOHAN,J.)

Both the captioned petitions arise out of the same proceedings filed by the petitioner and hence, they are taken up together and a common order is passed.

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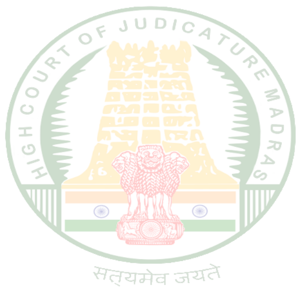

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2. Crl.R.C.No.1956 of 2023, has been filed challenging the order dated 10.08.2023, dismissing the discharge petition filed by the petitioner before learned Principal Sessions Judge-cum-Special Judge (Under PMLA) at Puducherry in Crl.M.P.No.3172 of 2022 in Spl.C.C.No.2 of 2022.

3. Crl.O.P.No.26258 of 2023, has been filed challenging the order of summons dated 11.04.2022 issued against the petitioner in Spl.C.C.No.2 of 2022 on the file of the learned Principal Sessions Judge-cum-Special Judge (Under PMLA) at Puducherry.

4. The petitioner is facing trial before the learned Principal Sessions Judge-cum-Special Judge (Under PMLA) at Puducherry under Sections 3 and 4 of the Prevention of Money Laundering Act (hereinafter referred to as 'PMLA').

5. (i) The allegation in the complaint against the petitioner, as extracted in the order passed by the learned trial Judge, is that the petitioner

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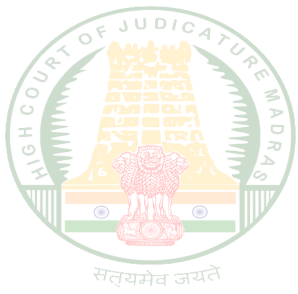
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was working as a Superintending Engineer in PWD (Pondicherry); that he was charged for the offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act (hereinafter referred to as 'PC Act'), for possessing disproportionate assets to the tune of Rs.3,75,30,221.11p during the check period from 01.01.1997 to 07.01.2006; that he was tried in Spl.C.C.No.1 of 2008 for the said offence and found guilty of possessing disproportionate assets to the tune of Rs.1,74,36,839/-; that since the petitioner by committing the said crime had amassed wealth to the tune of Rs.1,74,36,839/- and projected and claimed the same as untainted property, he is liable to be prosecuted for the offence under Section 3 of PMLA.

(ii) The petitioner filed the discharge petition before the trial Court in Crl.M.P.No.3172 of 2022 stating that the offence under Section 13(1)(e) of PC Act, became a scheduled offence only in the year 2009 and therefore, even if he had accumulated wealth by the commission of the said offence before 2009, it cannot be treated as proceeds of crime, to invoke Section 3 of the PMLA.

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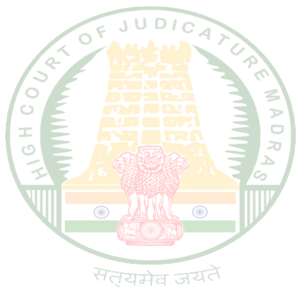
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(iii) The trial Court dismissed the discharge petition by observing that the Hon'ble Supreme Court in ***Vijay Madan Lal Choudary and others vs. Union of India***, reported in **2022 SCCOnline SC 929**, held that the offence under the PMLA is a distinct offence and it concerns only with the proceeds of crime which had been derived as a result of the criminal activity in relation to a scheduled offence. Therefore, the possession of proceeds of a crime is still an offence and therefore, is not hit by Article 20(1) of the Constitution of India.

6. (i) Mr.Anirudh Krishnan, the learned counsel for the petitioner fairly submitted that in view of the decision of the Hon'ble Supreme Court in ***Vijay Madan Lal Choudhary's case (cited supra)***, he may not be able to persuade this Court to accept the point that since the offence committed by him became a scheduled offence later, he cannot be prosecuted under PMLA. However, he would submit that since a review petition is pending before the Hon'ble Supreme Court, to review the judgment in ***Vijay Madan***

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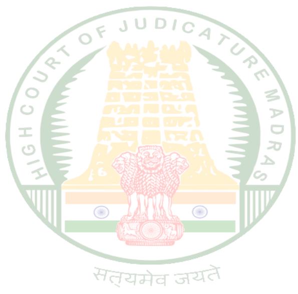
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Lal Choudhary's case (cited supra), and in view of the judgment of the Hon'ble Supreme Court in ***Union of India vs. Ganpati Dealcom Pvt. Ltd., [Civil Appeal No.5783 of 2022 dated 23.08.2022],*** which according to him had taken a contrary view, this Court may grant a certificate for appeal to the Hon'ble Supreme Court under Article 134 (A)(b) of the Constitution of India.

(ii) The learned counsel would submit that the possession of disproportionate assets and the involvement in activity relating to the proceeds of crime by its very nature, are the same and prosecuting the petitioner twice for the very same offence would amount to double jeopardy. The learned counsel further submitted that the offence under Section 3 of the PMLA makes a possession of proceeds of crime, as an offence. The essential ingredient of Section 13 (1)(e) of the PC Act is possession of disproportionate assets and inability to account for the same. Therefore,

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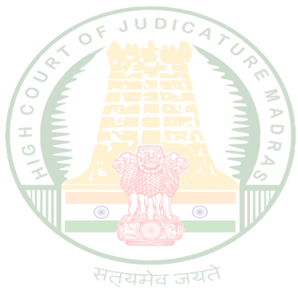
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according to the learned counsel, the offence under PMLA is subsumed within the PC Act.

(iii) In respect of Crl.O.P.No.26258 of 2023, the learned counsel for the petitioner submitted that the summons issued against him under Section 204 Cr.P.C., is liable to be quashed on two main grounds.

(a) the respondent had not filed any complaint before the learned trial Judge, as could be seen from the endorsement in the copy application made by him before the trial Court in which, the Registry of the trial Court has stated that the complainant has not filed any complaint. However, the learned counsel submitted that the petitioner came to know subsequently that a complaint has been filed and therefore, he is not pressing this point.

(b) the learned counsel further strenuously argued that the Special Court had not conducted the mandatory inquiry under Section 202 (2) Cr.P.C., before issuing the summons and relied upon the judgment of the Hon'ble Supreme Court in ***Anil Kumar and others Vs. M.K.Aiyappa and***

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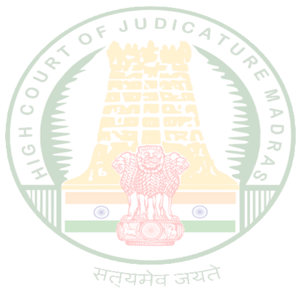
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another, reported in **2013 (10) SCC 705**, besides the judgment in ***Rosy and another vs. State of Kerala,*** reported in **2000 (2) SCC 230**.

7. Heard Mr.N.Ramesh, learned Special Public Prosecutor, who took notice on behalf of the respondent-Enforcement Directorate

Criminal Revision Case:

8. As stated earlier, the point raised by the petitioner has been answered by the Hon'ble Supreme Court in ***Vijay Madan Lal Choudhary's case (cited supra)*** case, in the following terms:

> "269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

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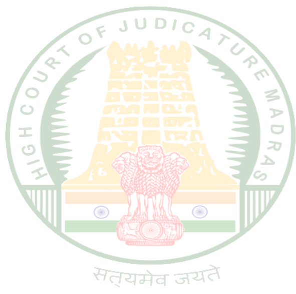
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270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No.2)Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."

Therefore, the question whether the petitioner has indulged in dealing with the proceeds of the crime (scheduled offence) is factual and is a matter for

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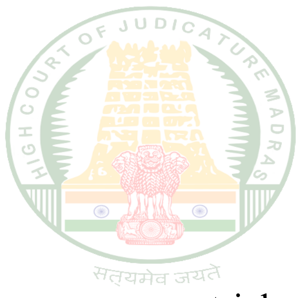
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trial.

9. (i) The second submission of the learned counsel for the petitioner was that prosecuting the petitioner for an offence under Section 3 of the PMLA would amount to double jeopardy. As regards the said point, we are unable to agree with the submissions made by the learned counsel. The offence under Section 13(1)(e) PC Act, which is possession of disproportionate assets, can arise even if a public servant spends the entire money derived illegally while holding office as a public servant. However, the ingredients of the offence under Section 3 of the PMLA are different. Section 3 of the PMLA reads as follows:

> 3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.

(ii) The ingredients of Section 3 of PMLA would indicate that the offence under Section 3 of PMLA has nothing to do with the criminal activity / commission of a scheduled offence. If a person indulges or

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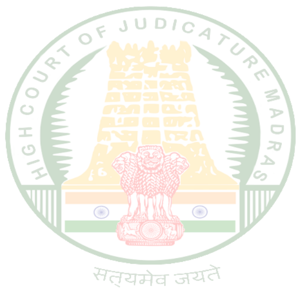
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continues to indulge in dealing with proceeds of crime, he is liable to be prosecuted under the PMLA. Even in the case of holding disproportionate assets punishable under Section 13(1)(e) of the PC Act, if the offender continues to possess or conceal the proceeds of crime, after the check period, the offence of money laundering is made out. Therefore, the two offences are distinct and different and it cannot be said that the offence under PMLA is subsumed within the PC Act. Hence, the submission of the learned counsel for the petitioner that prosecuting the person accused of an offence under Section 13(1)(e) of the PC Act and for an offence under Section 3 of PMLA would amount to double jeopardy, is untenable.

10. As regards the request made by the learned counsel for the petitioner for issuance of a certificate for an appeal to the Hon'ble Supreme Court, we are of the considered opinion that such a request cannot be issued in the instant case. The point raised by the petitioner is covered by a decision of the Hon'ble Supreme Court in ***Vijay Madan Lal Choudhary's case (cited supra)***, which is extracted above. Merely because a review

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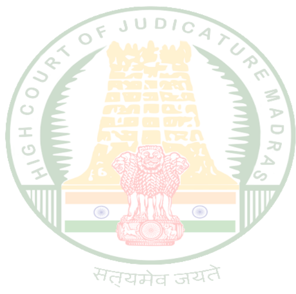
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application is pending before the Hon'ble Supreme Court, we cannot issue a certificate for appeal to the Hon'ble Supreme Court.

11. (i) The other reason cited by the learned counsel while praying for the issuance of a certificate is that there is a contrary judgment of the Hon'ble Supreme Court in ***Ganpati Dealcom's case [cited supra].***

(ii) In ***Ganpati Dealcom's case [cited supra]***, the Hon'ble Supreme Court was dealing with the question as to whether a confiscation order can be passed for a property which was purchased before the passing of the Prohibition of Benami Property Transactions Act, 1988. The Hon'ble Supreme Court in the facts of that case, held that the property acquired was not through an offence as it was done before the passing of the Prohibition of Benami Property Transactions Act, 1988. The Hon'ble Supreme Court observed as follows:

> "17.3. Having arrived at the aforesaid conclusions that Sections 3 and 5 were unconstitutional under the 1988 Act, it would mean that the 2016 amendments were, in effect, creating new provisions and new offences.

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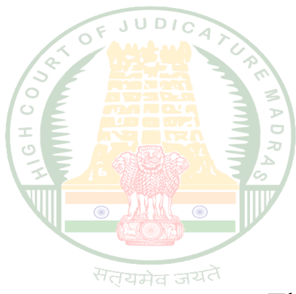
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Therefore, there was no question of retroactive application of the 2016 Act. As for the offence under Section 3(1) for those transactions that were entered into between 05.09.1988 to 25.10.2016, the law cannot retroactively invigorate a stillborn criminal offence, as established above.

…..

18.1.(a)...

…..

(e). Concerned authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act, viz., 25.10.2016. As a consequence of the above declaration, all such prosecutions or confiscation proceedings shall stand quashed."

The facts in that case cannot be compared with the facts in the instant case. Therefore, it cannot be said that there are conflicting views of the Hon'ble Supreme Court on this point.

12. Hence, both the reasons cited by the learned counsel for the petitioner for issuance of a certificate for appeal to the Hon'ble Supreme Court, are not sustainable. The instant case does not involve any unanswered substantial question of law and hence, we are not inclined to grant the certificate for appeal, as prayed for by the learned counsel for the petitioner.

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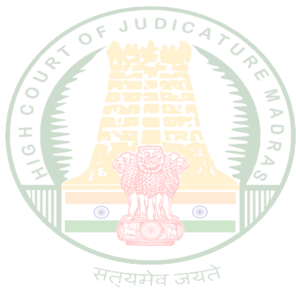
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Criminal Original Petition:

13. As regards the Criminal Original Petition, the primary contention of the learned counsel for the petitioner is that Section 202 (2) Cr.P.C was not followed because the Special Court is deemed to be a sessions Court. We are unable to countenance this argument. Section 44 of the PMLA provides for a separate procedure for any Special Court to deal with the offences under the PMLA Act. Section 44 (1) and (2) reads as follows:

> 44. Offences triable by Special Courts.—
>
> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
>
> (a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:
>
> Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or];
>
> (b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial;
>
> Provided that after conclusion of investigation, if no offence of

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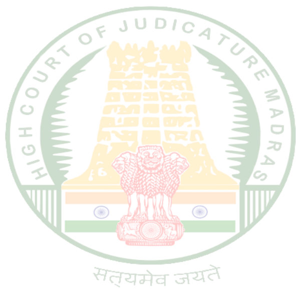
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money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or

(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

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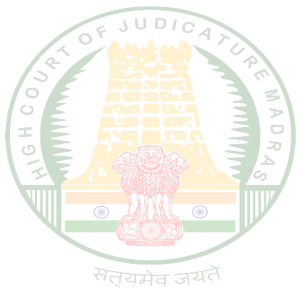
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> of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43."

14. The Special Court can take cognizance of the offence without the case being committed to it. Section 202 Cr.P.C deals with the procedure where the Magistrate takes cognizance and the procedure to be followed before it commits the case to the Sessions Court. The said procedure has no application for a complaint under the PMLA.

15. (i) The decisions relied upon by the learned counsel for the petitioner have no application to the facts of the case. In ***Anil Kumar's case [cited supra]*** the learned counsel relied upon the following observations:

> "15. The judgments referred to herein above clearly indicate that the word "cognizance" has a wider connotation and not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of

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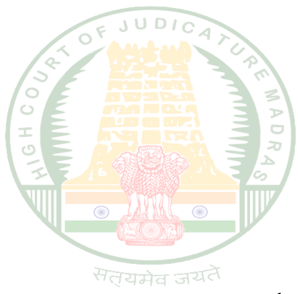
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> the offence on a complaint presented under Section 200 Cr.P.C. and the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage."

(ii) In the above case, the Hon'ble Supreme Court was dealing with the question as to whether the Special Court constituted under the PC Act, is empowered to refer a complaint for investigation under Section 156(3) of Cr.P.C. In that context, the Hon'ble Supreme Court had held that since the Special Court is competent to take cognizance, it has power to refer the complaint for police investigation under Section 156(3) Cr.P.C and had also held that at that stage, there is no necessity to obtain sanction since, the Special Court had not taken cognizance. The Hon'ble Supreme Court had further observed that the Special Court had to follow the procedure under Sections 200 and 202 Cr.P.C., only if it decides to take cognizance of the offence on the complaint.

(iii) The observations made in the said judgment are in a different context and have nothing to do with the conduct of Section 202 (2) inquiry.

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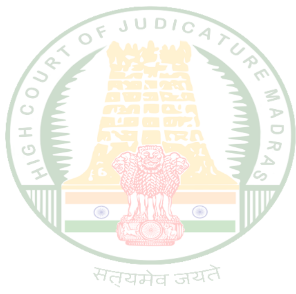
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We would also like to point out that under PMLA, the complaint is preferred by the authority authorised under the Act, which conducts an investigation before filing the complaint. Therefore, the complaint is usually supported by the statement of witnesses and the documents relied upon by them. Their complaint cannot be equated with any other private complaint, which is only information about a crime.

16. Be that as it may, the proviso to Section 202 (2) Cr.P.C., provides for the examination of the complainant and the witnesses by the Magistrate, if the offence complained of is exclusively triable by Sessions Court. Section 202 (2) Cr.P.C., reads as follows:

> "In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath."

17. The above provision would be applicable only if the Court taking cognizance and the Court trying the offence, are different, i.e., if the

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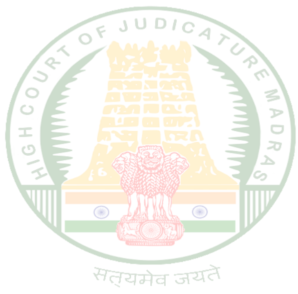
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cognizance is taken by the Magistrate and the offence is triable by the Sessions Court. However, Section 44 of PMLA is an exception to Section 190 of Cr.P.C., which provides for cognizance only by the Magistrate. Section 193 of Cr.P.C., provides that the Sessions Court can take cognizance of any case only if the Code or any other law permits it to do so. Section 193 of Cr.P.C., is as follows:

> "193. Cognizance of offences by Courts of Session. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

18. As we have seen earlier, Section 44 (1) (b) of the PMLA permits the Special Court, which has to be a Sessions Court, to take cognizance of the complaint filed by the authority authorised under the Act. Therefore, there is no question of any committal proceedings and hence, an inquiry under Section 202 (2) of Cr.P.C., does not arise.

19. The other judgment relied upon by the learned counsel for the

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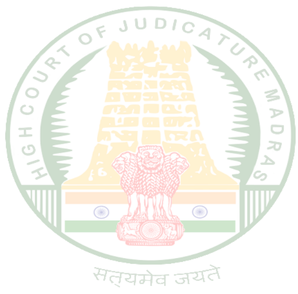
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petitioner in ***Rosy's case [cited supra]***, is not applicable, since the Hon'ble Supreme Court in that case was dealing with the offence under Kerala Akbari Act, which is triable by Sessions Court, where the Magistrate had taken cognizance.

20. Therefore, for the aforesaid reasons, we are of the view that both the Criminal Revision Case and the Criminal Original Petition are liable to be dismissed and accordingly, dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

(S.S.S.R.,J.) (S.M.,J.)
27.11.2023

Index : yes/no
Neutral citation : yes/no
ars

To

Assistant Director, (PMLA)
Directorate of Enforcement,
Government of India,
Chennai – 600 006.

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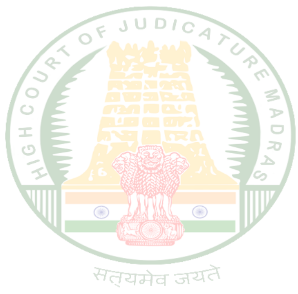

S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

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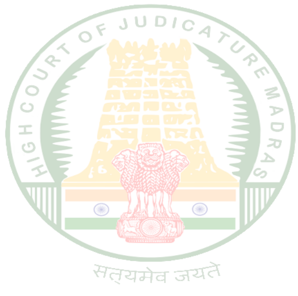
Pre-delivery common order in
Crl.R.C.No.1956 of 2023
and
Crl.O.P.No.26258 of 2023



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27.11.2023