RANA AYYUB

v.

DIRECTORATE OF ENFORCEMENT THROUGH ITS ASSISTANT DIRECTOR

(Writ Petition (Criminal) No. 12 of 2023)

FEBRUARY 07, 2023

[V. RAMASUBRAMANIAN* AND J.B. PARDIWALA, JJ.]

Prevention of Money-Laundering Act, 2002 – s. 3, 4, 44 and 45 – Penal Code, 1860 – ss. 4.3, 406, 418, 420 – Information Technology (Amendment) Act, 2008 – s. 66D – Black Money Act – s. 4 – Foreign Exchange Management Act, 1999 – s. 37 – Income Tax Act, 1961 – ss. 133(6) – Petitioner during the pandemic did the crowdfunding campaign using an online crowdfunding platform "Ketto" – Mumbai Zonal Office of the Enforcement Directorate (ED) initiated inquiry under FEMA – Also, a complaint was lodged by a person (private complainant) in Ghaziabad for the offences u/ss. 403, 406, 418, 420 of IPC, s. 66D of IT Act and s. 4 of the Black Money Act – In the meantime the Mumbai Zonal Office of the ED issued notice to the petitioner seeking response relating to certain documents and the petitioner in response to that complied with the notice – Thereafter, the Delhi Zonal Office of the ED lodged a complaint before the Special Judge at Ghaziabad citing that the complaint filed by the private complainant – After that the provisional order of attachment of the bank account of the petitioner located at Navi Mumbai was passed by the ED – Thereafter, the Special Judge, Ghaziabad took cognizance of the complaint lodged by the ED (the respondent) and summoned the petitioner for appearance – Aggrieved by the order of summoning the petitioner has approached the Supreme Court pleading that the Special Judge Ghaziabad has no territorial jurisdiction over the alleged offence – Held: Acquisition of the proceeds of crime has taken place in the virtual world, the places from where online transfers of money took place, are known only to the petitioner or their Bankers – The question of territorial jurisdiction in the instant case requires an enquiry into a question of fact as to the place where the alleged proceeds of crime were (i) concealed; or (ii) possessed; or (iii) acquired; or (iv)

* Author

used – This question of fact will depend upon the evidence that unfolds before the Trial Court – The issue of territorial jurisdiction cannot be decided in a writ petition, especially when there is a serious factual dispute about the place/places of commission of the offence – Petitioner given liberty to raise the issue of territorial jurisdiction before the Trial Court.

Prevention of Money-Laundering Act, 2002 – s. 44 – Jurisdiction of Special Court to try scheduled offences – Held: A combined reading of Section 44 of the PMLA and the provisions of Sections 177 to 184 of the Cr.P.C. will make it clear that in view of the specific mandate of clauses (a) and (c) of subsection (1) of Section 44, it is the Special Court constituted under the PMLA that would have jurisdiction to try even the scheduled offence – Even if the scheduled offence is taken cognizance of by any other Court, that Court shall commit the same, on an application by the concerned authority, to the Special Court which has taken cognizance of the offence of money-laundering.

Dismissing the Writ Petition, the Court

HELD:

1. **What is dealt with by Section 44(1)(a) of Prevention of Money-Laundering Act, 2002 is a situation where there is no complication. Section 44(1)(a) lays down the most fundamental rule relating to territorial jurisdiction, by providing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence has been committed. It is relevant to note that Section 44(1)(a) uses the expression *"offence"* in three places in contradistinction to the expression *"scheduled offence"* used only once. This usage is not without significance. In all three places where the word *"offence"* alone is used, it connotes the offence of money-laundering. The place where the expression *"scheduled offence"* is used, it connotes the predicate offence. By prescribing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which "the offence" has been committed, Section 44(1)(a)**

makes it crystal clear that it is the Special Court constituted under Section 43(1), which will be empowered to try even the scheduled offence connected to the same. [Para 23]

2. If the Court which has taken cognizance of the scheduled offence is different from the Special Court which has taken cognizance of the offence of money-laundering, then the authority authorised to file a complaint under PMLA should make an application to the Court which has taken cognizance of the scheduled offence. On the application so filed, the Court which has taken cognizance of the scheduled offence, should commit the case relating to the scheduled offence to the Special Court which has taken cognizance of the complaint of money-laundering. Therefore, it is clear that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not vice versa. [Paras 24, 25]

3. Since the Act contemplates the trial of the scheduled offence and the trial of the offence of money-laundering to take place only before the Special Court constituted under Section 43(1), a doubt is prone to arise as to whether all the offences are to be tried together. This doubt is sought to be removed by Explanation (i) to Section 44(1). Explanation (i) clarifies that the trial of both sets of offences by the same Court shall not be construed as joint trial. [Para 26]

4. A careful dissection of clauses (a) and (c) of sub-section (1) of Section 44 shows that they confer primacy upon the Special Court constituted under Section 43(1) of the PMLA. These two clauses contain two Rules, *namely,* (i) that the offence punishable under the PMLA as well as a scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence of money-laundering has been committed; and (ii) that if cognizance has been taken by one Court, in respect of the scheduled offence and cognizance has been taken in respect of the offence of money-laundering by the Special Court, the Court

trying the scheduled offence shall commit it to the Special Court trying the offence of money-laundering. [Para 27]

5. **The whole picture is thus complete with a combined reading of Section 44 of the PMLA and the provisions of Sections 177 to 184 of the Cr.P.C. Once this combined scheme is understood, it will be clear that in view of the specific mandate of clauses (a) and (c) of subsection (1) of Section 44, it is the Special Court constituted under the PMLA that would have jurisdiction to try even the scheduled offence. Even if the scheduled offence is taken cognizance of by any other Court, that Court shall commit the same, on an application by the concerned authority, to the Special Court which has taken cognizance of the offence of money-laundering. [Paras 35 and 36]**

6. **The involvement of a person in any one or more of certain processes or activities connected with the proceeds of crime, constitutes the offence of money-laundering. These processes or activities include, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; or (vi) claiming as untainted property. In other words, a person may (i) acquire proceeds of crime in one place, (ii) keep the same in his possession in another place, (iii) conceal the same in a third place, and (iv) use the same in a fourth place. The area in which each one of these places is located, will be the area in which the offence of money-laundering has been committed. To put it differently, the area in which the place of acquisition of the proceeds of crime is located or the place of keeping it in possession is located or the place in which it is concealed is located or the place in which it is used is located, will be the area in which the offence has been committed. [Paras 38, 39]**

7. **The question of territorial jurisdiction in this case requires an enquiry into a question of fact as to the place where the alleged proceeds of crime were (i) concealed; or (ii) possessed; or (iii) acquired; or (iv) used. This question of fact will actually depend upon the evidence that unfolds before the Trial Court. [Para 45]**

Kaushik Chatterjee v. State of Haryana & Ors. **(2020) (10) SCC 92 – relied on.**

Vijay Madanlal Choudhary & Ors. v. Union of India & Ors. **2022 SCC Online SC 929 – referred to.**

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Criminal) No.12 of 2023.

(Under Article 32 of The Constitution of India)

Ms. Vrinda Grover, Soutik Banerjee, Aakarsh Kamra, Ms. Devika Tulsiani, Ms. Mannat Tipnis, Advs. for the Petitioner.

Tushar Mehta, Solicitor General, Mukesh Kumar Maroria, Zoheb Hussain, Kanu Agarwal, K. Parmeshwar, Padmesh Mishra, Advs. for the Respondent.

The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN, J.

1. Challenging a summoning order issued by the Court of the Special Judge, Anti-Corruption, CBI Court No.1, Ghaziabad, on a complaint lodged by the respondent under Section 45 read with Section 44 of the Prevention of Money-laundering Act, 2002[1], the petitioner has come up with the above writ petition under Article 32 of the Constitution of India.

2. We have heard Ms. Vrinda Grover, learned Counsel for the petitioner and Mr. Tushar Mehta, learned Solicitor General of India for the respondent.

3. It is the case of the petitioner that during the pandemic, she initiated crowdfunding campaign through an online crowdfunding platform named "*Ketto*" and ran three campaigns from April 2020 to September 2021. In connection with the same, the Mumbai Zonal Office of the Enforcement Directorate initiated an enquiry against the petitioner under the Foreign Exchange Management Act, 1999[2] through an Office Order dated 3.8.2021.

4. It appears that thereafter a complaint was lodged on 7.9.2021 by one Vikas Sankritayan, claiming to be the founder of Hindu IT Cell, in FIR

1 For short, "PMLA" or the "Act", as the case may be.
2 For short, "FEMA"

No. 2049/2021 with Indirapuram Police Station, Ghaziabad for alleged offences under Sections 403, 406, 418 and 420 IPC read with Section 66D of the Information Technology (Amendment) Act, 2008 and Section 4 of the Black Money Act.

5. In the meantime, the petitioner received an order under Section 37 of the FEMA read with Section 133(6) of the Income- tax Act, 1961 from the Mumbai Zonal Office of the Enforcement Directorate seeking certain documents, in addition to the documents submitted by the petitioner in response to the previous Office Order dated 3.8.2021 issued by the very same Mumbai Zonal Office.

6. After the petitioner submitted a detailed response to the Mumbai Zonal Office of the Enforcement Directorate, the Delhi Zone-II Office of the Directorate of Enforcement registered a complaint in ECIR No. DLZO-II/58/2021 on 11.11.2021, in the Court of the Special Judge at Ghaziabad. It was stated in the said complaint that the FIR registered on 7.9.2021 on the file of the Indirapuram Police Station, Ghaziabad formed the basis for the complaint of the Enforcement Directorate.

7. After the registration of the aforesaid complaint by the Enforcement Directorate, the petitioner was summoned to the Delhi Zone-II Office and her statement under Section 50 of the PMLA was recorded on 15.12.2021.

8. Thereafter, a provisional order of attachment of the bank account of the petitioner in HDFC Bank, Koperkhairane Branch, Navi Mumbai, Maharashtra, was passed by the Directorate of Enforcement on 4.2.2022. Pursuant to the order of provisional attachment, the Adjudicating Authority issued a show cause notice dated 8.3.2022.

9. While things stood thus, a Look out Circular was issued against the petitioner, but the same was set aside by the High Court of Delhi in a writ petition filed by the petitioner. In a second writ petition filed by the petitioner, the High Court of Delhi restrained the Directorate of Enforcement from taking further steps under Section 8 of the PMLA on the short ground that the validity period of 180 days, of the order of provisional attachment, came to an end statutorily on 4.8.2022.

10. Thereafter, the Court of the Special Judge, Anti-Corruption, CBI Court No.1, Ghaziabad, passed an order on 29.11.2022 taking cognizance of

the complaint lodged by the respondent and summoning the petitioner for appearance on 13.12.2022. Upon coming to know of the said Summoning Order, the petitioner has come up with the above writ petition. It is claimed by the petitioner in paragraph 5(v) of the writ petition that "No summons have yet been received…" by her and that she had annexed a screenshot of the e-court website reflecting the case details. However, a print out of the copy of the Summoning Order is filed along with the writ petition.

11. At the outset, it is made clear by Ms. Vrinda Grover, learned Counsel for the petitioner that the challenge to the impugned Summoning Order is limited to the question of territorial jurisdiction alone and that the impugned Summoning Order is not being challenged on any ground other than the lack of territorial jurisdiction.

12. In brief, the contention of the learned Counsel for the petitioner is that under Section 44(1) of the PMLA, an offence punishable under the Act, shall be triable only by the Special Court constituted for the area in which the offence has been committed. This is notwithstanding anything contained in the Code of Criminal Procedure, 1973[3]. Apart from the *non-obstante* clause with which Section 44(1) begins, Section 71 of the Act also gives overriding effect to PMLA. Therefore, it is contended by the learned Counsel for the petitioner that the Special Court in Maharashtra alone could have taken cognizance of the complaint.

13. Heavy reliance is placed by the learned Counsel for the petitioner on the opinion of this Court in paragraphs 353 to 358 of the decision in ***Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.***[4]**.** It was held in the said decision that the trial of the offence of money-laundering should proceed before the Special Court constituted for the area in which the offence of money-laundering has been committed and that in case the scheduled offence is triable by the Special Court under a special enactment elsewhere, both the trials need to proceed independently, but in the area where the offence of money- laundering has been committed. Paragraphs 356 and 357 of the decision in ***Vijay Madanlal Choudhary*** (supra) read as follows:

3 For short, "Cr.P.C"
4 2022 SCC OnLine SC 929

"356. The amendment of 2013 in fact clarifies the dispensation to be followed in regard to trials concerning offence of money-laundering under this Act and the trial in relation to scheduled offence including before the Special Court trying such (scheduled) offence. By virtue of this clause, the trials regarding the offence of money-laundering need to proceed before the Special Court constituted for the area in which the offence of money-laundering has been committed. In case the scheduled offence is triable by Special Court under the special enactment elsewhere, the provision, as amended, makes it amply clear that both the trials after coming into effect of this Act need to proceed independently, but in the area where the offence of money-laundering has been committed.

357. In that, the offence of money-laundering ought to proceed for trial only before the Special Court designated to try money-laundering offences where the offence of money-laundering has been committed. This is a special enactment and being a later law, would prevail over any other law for the time being in force in terms of Section 71 of the 2002 Act."

14. On facts, it is the contention of the learned Counsel for the petitioner that no part of the alleged offence of money-laundering was committed within the jurisdiction of the Special Court, Ghaziabad and that the petitioner's bank account where the alleged proceeds of crime were deposited, is located in Navi Mumbai, Maharashtra. Even the proceedings for the provisional attachment of the bank account were initiated in New Delhi. Therefore, it is contended that the lodging of the complaint at Ghaziabad was an abuse of the process of the court and that the same having been done at the instance of the founder of the Hindu IT Cell, is completely vitiated. It is also contended that the Court of the Special Judge, ought to have returned the complaint to the respondent, in terms of Section 201 of the Code of Criminal Procedure and that the Order taking cognizance is vitiated also by non-application of mind.

15. In response, it is contended by Mr. Tushar Mehta, learned Solicitor General that under the scheme of the Act, the complaint of money-laundering should follow the complaint in respect of the scheduled offence. Since the complaint in respect of the scheduled offence was registered on 7.9.2021 in Indirapuram Police Station, Ghaziabad, the respondent necessarily had to lodge the Enforcement Case Information Report (ECIR) on 11.11.2021, on the file of the same court, within whose jurisdiction the scheduled offence became triable. In addition,

it is contended by the learned Solicitor General that the petitioner was alleged to have received money through an online crowdfunding platform and that there were several victims within the territorial jurisdiction of the Court of the Special Judge who had contributed money. In other words, it is the contention of the learned Solicitor General that a part of the cause of action had actually arisen within the jurisdiction of the Court of the Special Judge, Ghaziabad.

16. From the rival contentions, it appears that two questions arise for consideration before us. They are ***(i)*** whether the trial of the offence of money-laundering should follow the trial of the scheduled/predicate offence or *vice versa*; and ***(ii)*** whether the Court of the Special Judge, Anti-Corruption, CBI Court No.1, Ghaziabad, can be said to have exercised extra-territorial jurisdiction, even though the offence alleged, was not committed within the jurisdiction of the said Court.

17. In order to find an answer to question No.1, it is necessary for us to take note of a few provisions of the PMLA.

18. The word "*money-laundering*" is defined in Section 2(1)(p) of the Act to have the same meaning as assigned to it in Section 3. Section 3 of the Act makes a person guilty of the offence of money-laundering, if he ***(i)*** directly or indirectly attempts to indulge; or ***(ii)*** knowingly assists or; ***(iii)*** knowingly is a party; or ***(iv)*** is actually involved in any process or activity. Such process or activity should be connected to 'proceeds of crime' including its concealment or possession or acquisition or use. In addition, a person involved in such process or activity connected to proceeds of crime, should be projecting or claiming it as untainted property. The Explanation under Section 3 makes it clear that even if the involvement is in one or more of the following activities or processes, *namely*, ***(i)*** concealment; ***(ii)*** possession; ***(iii)*** acquisition; ***(iv)*** use; ***(v)*** projecting it as untainted property; or ***(vi)*** claiming it as untainted property, the offence of money- laundering will be made out.

19. Thus, Section 3 comprises of two essential limbs, *namely,* ***(i)*** involvement in any process or activity; and ***(ii)*** connection of such process or activity to the proceeds of crime. The expression "*proceeds of crime*" is defined in Section 2(1)(u) 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 such property or where such property

is taken or held outside the country, then the property equivalent in value held within the country or abroad.

20. PMLA provides for a two-pronged approach, one for dealing with the proceeds of crime and the other for dealing with the person guilty of the offence of money-laundering. While Chapter III and Chapter VI prescribe the procedure for dealing with the proceeds of crime, through a process of attachment, confirmation through adjudication and an appellate remedy to the Special Tribunal, Chapter VII deals with the prosecution of the money launderers by Special Courts.

21. Section 43(1) of the Act provides for the constitution of Special Courts, by the Central Government, in consultation with the Chief Justice of the High Court. Sub-section (2) of Section 43 empowers a Special Court constituted under Section 43(1), also to try an offence other than the offence punishable under Section 4 of the PMLA, with which the accused may be charged at the same trial under the Cr.P.C. In other words, a Special Court is constituted under Section 43(1) primarily for the purpose of trying an offence punishable under Section 4. But sub-section (2) of Section 43 confers an additional jurisdiction upon such a Special Court to try any other offence with which the accused may be charged at the same trial. Section 43 reads as follows:-

"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."

22. Section 44 deals with the question of territorial jurisdiction of the Special Court, constituted under Section 43(1). At the outset, Section 44(1) takes note of two different contingencies, *namely*, ***(i)*** cases where

the scheduled offence as well as the offence of money-laundering are committed within the territorial jurisdiction of the same Special Court constituted under Section 43(1); and ***(ii)*** cases where 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. Section 44(1) 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 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."

23. What is dealt with by Section 44(1)(a) is a situation where there is no complication. Section 44(1)(a) lays down the most fundamental rule relating to territorial jurisdiction, by providing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence has been committed. It is relevant to note that Section 44(1)(a) uses the expression "*offence*" in three places in contradistinction to the expression "*scheduled offence*" used only once. This usage is not without significance. In all three places where the word "*offence"* alone is used, it connotes the offence of money-laundering. The place where the expression "*scheduled offence*" is used, it connotes the predicate offence. By prescribing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which "*the offence*" has been committed, Section 44(1)(a) makes it crystal clear that it is the Special Court constituted under Section 43(1), which will be empowered to try even the scheduled offence connected to the same.

24. After mapping out/laying down such a general but fundamental rule, the Act then proceeds to deal with a more complicated situation in Section 44(1)(c). The question as to what happens if the Court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the offence of money-laundering, is what is sought to be answered by clause (c) of sub-section (1) of Section 44. If the Court which has taken cognizance of the scheduled offence is different from the Special Court which has taken cognizance of the offence of money-laundering, then the authority authorised to file a

complaint under PMLA should make an application to the Court which has taken cognizance of the scheduled offence. On the application so filed, the Court which has taken cognizance of the scheduled offence, should commit the case relating to the scheduled offence to the Special Court which has taken cognizance of the complaint of money- laundering.

25. Therefore, it is clear that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not *vice versa*.

26. Since the Act contemplates the trial of the scheduled offence and the trial of the offence of money-laundering to take place only before the Special Court constituted under Section 43(1), a doubt is prone to arise as to whether all the offences are to be tried together. This doubt is sought to be removed by Explanation (i) to Section 44(1). Explanation (i) clarifies that the trial of both sets of offences by the same Court shall not be construed as joint trial.

27. A careful dissection of clauses (a) and (c) of sub-section (1) of Section 44 shows that they confer primacy upon the Special Court constituted under Section 43(1) of the PMLA. These two clauses contain two Rules, *namely, **(i)*** that the offence punishable under the PMLA as well as a scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence of money-laundering has been committed; and ***(ii)*** that if cognizance has been taken by one Court, in respect of the scheduled offence and cognizance has been taken in respect of the offence of money-laundering by the Special Court, the Court trying the scheduled offence shall commit it to the Special Court trying the offence of money- laundering.

28. It is only because of the Special Court constituted under Section 43(1) being conferred primacy that Section 44(1) begins with the words "*notwithstanding anything contained in the Code of Criminal Procedure*". Though the PMLA contains a *non-obstante* clause in relation to the Cr.P.C, both in Section 44(1) and in Section 45(1), there are two other provisions where the Code of Criminal Procedure is specifically declared to apply to the proceedings before a Special

Court. Section 46(1) specifically makes the provisions of the Cr.P.C applicable to proceedings before a Special Court. Similarly, Section 65 of the PMLA makes the provisions of Cr.P.C apply to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act.

29. Therefore, it is clear that the provisions of the Cr.P.C. are applicable to all proceedings under the Act including proceedings before the Special Court, except to the extent they are specifically excluded. Hence, Section 71 of the PMLA providing an overriding effect, has to be construed in tune with Section 46(1) and Section 65.

30. Having taken note of the relevant provisions of the PMLA, which have a bearing upon the jurisdiction of the Special Court, let us now turn our attention to some of the provisions of the Cr.P.C, which deal with the question of territorial jurisdiction.

31. As pointed out by this Court in ***Kaushik Chatterjee vs. State of Haryana & Ors.***[5]***,*** the question of territorial jurisdiction in criminal cases revolves around, ***(i)*** place of commission of the offence; or ***(ii)*** place where the consequence of an act, both of which constitute an offence, ensues; or ***(iii)*** place where the accused was found; or ***(iv)*** place where the victim was found; or ***(v)*** place where the property in respect of which the offence was committed, was found; or ***(vi)*** place where the property forming the subject-matter of an offence was required to be returned or accounted for, etc., according as the case may be.

32. As articulated in ***Kaushik Chatterjee*** (supra), the jurisdiction of a civil court is limited by territorial as well as pecuniary limits, but the jurisdiction of a criminal court is determined by ***(i)*** the offence; and/or **(ii)** the offender.

33. The discussion on the question of territorial jurisdiction in terms of the provisions of the Cr.P.C can be cut short by extracting the principles culled out in paragraphs 19 to 21 of the decision in *Kaushik Chatterjee*. They read as follows:

"**19.** Chapter XIII of the Code of Criminal Procedure, 1973 contains provisions relating to jurisdiction of criminal courts in inquiries and trials.

5 2020 (10) SCC 92

The Code maintains a distinction between (*i*) inquiry; (*ii*) investigation; and (*iii*) trial. The words "inquiry" and "investigation" are defined respectively, in clauses (*g*) and (*h*) of Section 2 of the Code.

20. The principles laid down in Sections 177 to 184 of the Code (contained in Chapter XIII) regarding the jurisdiction of criminal courts in inquiries and trials can be summarised in simple terms as follows:

20.1. Every offence should ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. This rule is found in Section 177. The expression "local jurisdiction" found in Section 177 is defined in Section 2(*j*) to mean "in relation to a court or Magistrate, means the local area within which the court or Magistrate may exercise all or any of its or his powers under the Code".

20.2. In case of uncertainty about the place in which, among the several local areas, an offence was committed, the Court having jurisdiction over any of such local areas may inquire into or try such an offence.

20.3. Where an offence is committed partly in one area and partly in another, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

20.4. In the case of a continuing offence which is committed in more local areas than one, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

20.5. Where an offence consists of several acts done in different local areas it may be inquired into or tried by a court having jurisdiction over any of such local areas. (Numbers 2 to 5 are traceable to Section 178)

20.6. Where something is an offence by reason of the act done, as well as the consequence that ensued, then the offence may be inquired into or tried by a court within whose local jurisdiction either the act was done or the consequence ensued. (Section 179)

20.7. In cases where an act is an offence, by reason of its relation to any other act which is also an offence, then the first mentioned offence may be inquired into or tried by a court within whose local jurisdiction either of the acts was done. (Section 180)

20.8. In certain cases such as dacoity, dacoity with murder, escaping from custody, etc., the offence may be inquired into and tried by a court

within whose local jurisdiction either the offence was committed or the accused person was found.

20.9. In the case of an offence of kidnapping or abduction, it may be inquired into or tried by a court within whose local jurisdiction the person was kidnapped or conveyed or concealed or detained.

20.10. The offences of theft, extortion or robbery may be inquired into or tried by a court within whose local jurisdiction, the offence was committed or the stolen property was possessed, received or retained.

20.11. An offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property was received or retained or was required to be returned or accounted for by the accused person.

20.12. An offence which includes the possession of stolen property, may be inquired into or tried by a court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person, having knowledge that it is stolen property. (Nos. 8 to 12 are found in Section 181)

20.13. An offence which includes cheating, if committed by means of letters or telecommunication messages, may be inquired into or tried by any court within whose local jurisdiction such letters or messages were sent or received.

20.14. An offence of cheating and dishonestly inducing delivery of the property may be inquired into or tried by a court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

20.15. Some offences relating to marriage such as Section 494 IPC (marrying again during the lifetime of husband or wife) and Section 495 IPC (committing the offence under Section 494 with concealment of former marriage) may be inquired into or tried by a court within whose local jurisdiction the offence was committed or the offender last resided with the spouse by the first marriage. (Nos. 13 to 15 are found in Section 182)

20.16. An offence committed in the course of a journey or voyage may be inquired into or tried by a court through or into whose local jurisdiction

that person or thing passed in the course of that journey or voyage. (Section 183).

20.17. Cases falling under Section 219 (*three offences of the same kind committed within a space of twelve months whether in respect of the same person or not*), cases falling under Section 220 (commission of more offences than one, in one series of acts committed together as to form the same transaction) and cases falling under Section 221, (where it is doubtful what offences have been committed), may be inquired into or tried by any court competent to inquire into or try any of the offences. (Section 184).

21. Apart from Sections 177 to 184, which lay down in elaborate detail, the rules relating to jurisdiction, Chapter XIII of the Code also contains a few other sections. Section 185 empowers the State Government to order any case or class of cases committed for trial in any district, to be tried in any Sessions Division. Section 186 empowers the High Court, in case where two or more courts have taken cognizance of the same offence and a question as to which of them should inquire into or try the offence has arisen, to decide the district where the inquiry or trial shall take place. Section 187 speaks of the powers of the Magistrate, in case where a person within his local jurisdiction, has committed an offence outside his jurisdiction, but the same cannot be inquired into or tried within such jurisdiction. Sections 188 and 189 deal with offences committed outside India."

34. It may be seen from the principles culled out from Sections 177 to 184 of the Cr.P.C that almost all contingencies that are likely to arise have been carefully thought out and laid down in these provisions.

35. The only contingency that could not have been provided in the above provisions of the Cr.P.C, is perhaps where the offence of money-laundering is committed. This is why Section 44(1) begins with a *non-obstante* clause. The whole picture is thus complete with a combined reading of Section 44 of the PMLA and the provisions of Sections 177 to 184 of the Cr.P.C.

36. Once this combined scheme is understood, it will be clear that in view of the specific mandate of clauses (a) and (c) of sub- section (1) of Section 44, it is the Special Court constituted under the PMLA that would have jurisdiction to try even the scheduled offence. Even if the

scheduled offence is taken cognizance of by any other Court, that Court shall commit the same, on an application by the concerned authority, to the Special Court which has taken cognizance of the offence of money-laundering. This answers the first question posed before us.

37. Coming to the second question arising for our consideration, clause (a) of sub-section (1) of Section 44 leaves no semblance of any doubt that the offence of money-laundering is triable only by the Special Court constituted for the area in which the offence of money-laundering has been committed. To find out the area in which the offence of money-laundering has been committed, we may have to go back to the definition in Section 3 of the PMLA.

38. As we have pointed out earlier, the involvement of a person in any one or more of certain processes or activities connected with the proceeds of crime, constitutes the offence of money- laundering. These processes or activities include, ***(i)*** concealment; ***(ii)*** possession; ***(iii)*** acquisition; ***(iv)*** use; ***(v)*** projecting as untainted property; or ***(vi)*** claiming as untainted property.

39. In other words, a person may ***(i)*** acquire proceeds of crime in one place, ***(ii)*** keep the same in his possession in another place, ***(iii)*** conceal the same in a third place, and ***(iv)*** use the same in a fourth place. The area in which each one of these places is located, will be the area in which the offence of money- laundering has been committed. To put it differently, the area in which the place of acquisition of the proceeds of crime is located or the place of keeping it in possession is located or the place in which it is concealed is located or the place in which it is used is located, will be the area in which the offence has been committed.

40. In addition, the definition of the words "*proceeds of crime*" focuses on "*deriving or obtaining a property*" as a result of criminal activity relating to a scheduled offence. Therefore, the area in which the property is derived or obtained or even held or concealed, will be the area in which the offence of money- laundering is committed.

41. Having seen the legal landscape on the question of jurisdiction, let us now come back to the facts of the case on hand. It is the case of the petitioner that what was attached by the Enforcement Directorate under Section 5 of the Act as proceeds of crime, was the bank account of the petitioner in Navi Mumbai, Maharashtra and that therefore the

offence of money- laundering, even according to the respondent has been committed in Maharashtra.

42. But the said contention overlooks the six different types of processes or activities mentioned in Explanation (i) under Section 3 of the Act, as connected with proceeds of crime, *namely*, concealment, possession, acquisition, or use, etc.

43. Even according to the petitioner, she ran three campaigns from April 2020 to September 2021 in an online crowdfunding platform named "*Ketto*". From the pleadings on record, we are not able to make out ***(i)*** the number of persons who provided funds; and ***(ii)*** the places where the donors were located.

44. The bank account of the petitioner in HDFC Bank, Koperkhairane Branch, Navi Mumbai, Maharashtra, is the ultimate destination, to which all funds reached. Therefore, Navi Mumbai, Maharashtra is the place where the proceeds of crime were taken possession of (*if they were actually proceeds of crime*). Therefore, Navi Mumbai, Maharashtra is a place where only one of the six different processes or activities listed in Section 3 has been carried out. The other activity namely acquisition of the proceeds of crime (if they really are) has taken place in the virtual mode with people from different parts of the country/world transferring money online. If acquisition has taken place in the real physical world, the difficulty with respect to the question of jurisdiction would have been lesser. Since acquisition has taken place in the virtual world, the places from where online transfers of money took place, are known only to the petitioner or perhaps their Bankers.

45. Therefore, the question of territorial jurisdiction in this case requires an enquiry into a question of fact as to the place where the alleged proceeds of crime were ***(i)*** concealed; or ***(ii)*** possessed; or ***(iii)*** acquired; or ***(iv)*** used. This question of fact will actually depend upon the evidence that unfolds before the Trial Court. It will be useful in this regard to extract Paragraph 38 of the decision in ***Kaushik Chatterjee*** which reads as follows: -

"38. But be that as it may, the upshot of the above discussion is:

38.1. That the issue of jurisdiction of a court to try an "offence" or "offender" as well as the issue of territorial jurisdiction, depend upon facts established through evidence.

38.2. That if the issue is one of territorial jurisdiction, the same has to be decided with respect to the various rules enunciated in Sections 177 to 184 of the Code.

38.3. That these questions may have to be raised before the court trying the offence and such court is bound to consider the same."

46. Therefore, we are of the view that the issue of territorial jurisdiction cannot be decided in a writ petition, especially when there is a serious factual dispute about the place/places of commission of the offence. Hence, this question should be raised by the petitioner before the Special Court, since an answer to the same would depend upon evidence as to the places where any one or more of the processes or activities mentioned in Section 3 were carried out. Therefore, giving liberty to the petitioner to raise the issue of territorial jurisdiction before the Trial Court, this writ petition is dismissed. There will be no order as to costs.

Headnotes prepared by: Ankit Gyan (*Assisted by:* Harshed Sunder and Mahendra Yadav, LCRAs)

Result of the case: Writ petition dismissed.