

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 3<sup>RD</sup> DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

**WRIT PETITION NO.20092 OF 2021(GM-RES)**

**BETWEEN:**

1. SRI. ANISH MOHAMMED RAWTHER,  
S/O LATE SYED MOHAMMED RAWTHER,  
AGED ABOUT 40 YEARS,  
RESIDING AT NO.1001, T7A WING,  
GODREJ WOODSMAN ESTATE,  
HEBBAL, KEMPAPURA,  
BANGALORE - 560 102.
2. MRS. S M SHAREENA,  
W/O SHAKEER MERAN,  
AGED ABOUT 34 YEARS,  
RESIDING AT NO.390, 23<sup>RD</sup> CROSS,  
7<sup>TH</sup> SECTOR, HSR LAYOUT,  
NEW MANGANA PALYA,  
BANGALORE - 560 102.
3. MRS. FATHIMA NAZIA RAWTHER,  
W/O ANISH MOHAMMED RAWTHER,  
AGED ABOUT 36 YEARS,  
RESIDING AT NO.1001, T7A WING,  
GODREJ WOODSMAN ESTATE,  
HEBBAL, KEMPAPURA,  
BANGALORE - 560 102.
4. SMT. SHEENA SYED,  
AGED ABOUT 37 YEARS,  
W/O MOHAMMED IRFAN,  
NO.38, 3<sup>RD</sup> MAIN, 3<sup>RD</sup> CROSS,  
DOLLARS COLONY, RMB II STAGE,  
BANGALORE - 560 094.
5. SMT.T.S. HAZEENA,  
W/O LATE SYED MOHAMMED RAWTHER,  
AGED ABOUT 62 YEARS,  
RESIDING AT NO.1001, T7A WING,  
GODREJ WOODSMAN ESTATE,  
HEBBAL, KEMPAPURA,  
BANGALORE - 560 102.

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6. M/S RAWTHER PLANTATION MERCHANTS PVT. LTD.,  
NO.17, I FLOOR, 4<sup>TH</sup> MAIN, "A" BLOCK,  
G S PALYA, TUMKUR ROAD,  
BANGALORE – 560 022.  
REP BY ITS MANAGING DIRECTOR,  
ANISH MOHAMMED RAWTHER.

...PETITIONERS

(BY SRI. KIRAN S JAVALI, SENIOR COUNSEL FOR  
SRI. CHANDRASHEKARA, ADVOCATE)

AND:

THE DEPUTY DIRECTOR,  
ENFORCEMENT DIRECTORATE,  
3<sup>RD</sup> FLOOR, "B" BLOCK,  
BMTB BUILDING, SHANTHINAGAR,  
TTMC, K H ROAD,  
BANGALORE – 560 027.  
BY SRI. RAHUL SINHA.

... RESPONDENT

(BY SRI. PRASANNA KUMAR P, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE PROVISIONAL ATTACHMENT ORDER NO.10/2021 DATED 28.09.2021(ANNEXURE-A) AS HAVING BEEN ISSUED BY AN OFFICER WHO WAS NOT AUTHORIZED TO EXERCISE POWER OF DEPUTY DIRECTOR OF ENFORCEMENT OR INVESTIGATE UNDER PML ACT,2002 AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

Petitioners are knocking at the doors of Writ Court for laying a challenge to the proceedings taken up under the provisions of Prevention of Money Laundering Act, 2002 ('Act' for short) and to the Provisional Attachment Order dated 28.9.2021 made by the respondent at Annexure-A; after service of notice, the respondent having

entered appearance through his Senior Panel Counsel, opposes the Writ Petition making submission in justification of the impugned order.

2. **Brief facts:**

(a) The Anti Corruption Bureau, Srinagar, Jammu & Kashmir, registered Crime No.17/2019 on 6.8.2019 against the petitioners for the offences punishable u/ss 5(1)(d) r/w section 5(2) of Jammu & Kashmir Prevention of Corruption Act, 2006 r/w section 120B of the Ranbir Penal Code, 1989 (hereafter '1989 Code'); the essential allegation is that during the period between 2002 and 2017, a company by name M/s S.A.Rawther Spices Pvt. Ltd, had obtained financial assistance, in all amounting to Rs.308.13 crore from the J&K Bank, Bangalore; the loan account became NPA during September 2017 and the net amount that remained un-repaid was quantified at Rs.285.81 crore plus unapplied interest of Rs.66.91 crore.

(b) In or around the same period, the company had also borrowed Rs.16.5 crore from HDFC Bank and Rs.25 crore from RBL Bank by providing the very same property by way of security, when the said properties were already mortgaged to the J&K Bank; the branch head of the said

bank had recommended for releasing three of the mortgaged properties and in connivance with other officials at Head Quarters of the said bank, by taking some other unworthy properties in lieu thereof and thereby, caused a huge loss of crores of rupees of public money; they had also diverted the funds to other entities with intent to defraud.

(c) The then Branch Manager in connivance with Managing Director of the Company managed to over evaluate the market price of the substitute properties fraudulently so that the properties were earlier mortgaged were released and that a huge sum of Rs.352.72 crore therefore remained unrealized; as a consequence, the J&K, ACB registered Crime No.17/2019 on 6.8.2019 for the offence of money laundering u/s. 3 of the Act, punishable u/s 4 thereof; this led to the Directorate of Enforcement recording an Enforcement Case Information Report vide No.ECIR/BGZO/02/2020 dated 2.1.2020 and thereby, initiated the investigation under the Act; the respondent having been *prima facie* convinced of illegal diversion of funds, misutilization of credit facilities, substitution of sub-standard security properties etc., formed an opinion that the acts alleged in the FIR that eventually registered

into registration of Crime No.17/2019 *inter alia* amounted to offences specified in Schedule-A to the Act, as defined u/s 2(1)(x), 2(1)(y), 2(ia) and 2(2) thereof; petitioners are complaining against all this by invoking writ jurisdiction constitutionally vested in this court.

3. Having heard the learned counsel for the parties and having perused the Petition Papers, this Court declines to grant indulgence in the matter for the following reasons:

**A. Objects & Reasons of PML Act:**

Petitioners at paras 3 & 4 of their petition although have raised as many as five questions of law, learned Sr. Advocate Mr.Kiran S. Javali appearing for them consciously confined his case only to one submission that: for proceedings to be initiated under the Act, the accused ought to have derived or obtained "proceeds of crime" in relation to a "scheduled offence" as per Sec.2(1)(u) of the Act; the term "scheduled offence" is defined u/s 2(1)(y); it refers to Schedule to the Act wherein it refers to offences specified in Part A, B and C of the Schedule; he argues that as the 1989 Code does not find a place in the Schedule to the Act, the institution of subject proceedings is without jurisdiction and opposed to the intent of the

Statute; this contention at the first blush appears to be simple; however, a deeper examination of the same shows the profundity lurking at its viscera; to answer this precise question, one needs to advert to the principal intent & policy content of the Act; the Statement of Objects & Reasons reads: "*It is being realized world over, that money laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty...*".

**B. UN Conventions on prevention of money laundering and India's legislative response:**

(i) The Parliament enacted and structured the PML Act to implement Political Declaration and Global Programme of Action adopted by the UN General Assembly at its 17th Special Session in 1990 and the Political Declaration adopted by Special Session of UN General Assembly in 1998 asking the member States to evolve policy framework and programmes to prevent money-laundering; it is pertinent to refer to the recommendations of UN-constituted Financial Action Task Force [FATF] which is designated as "*global money laundering and terrorist financing watchdog*"; of the 40 recommendations, the following are a bit relevant for our purpose:



Paras 4, 5, 6 & 7: "**Scope of the Criminal Offence of Money Laundering:** 4. Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalise money laundering as set forth in the Vienna Convention. ... Each country would determine which serious crimes would be designated as money laundering predicate offences. As provided in the Vienna Convention, the offence of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances... Para 7: Countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offence, or property of corresponding value... In addition to confiscation and criminal sanctions, countries also should consider monetary and civil penalties, and/or proceedings including civil proceedings, to void contracts entered into by parties."

(ii) Under our constitutional scheme, the power to legislate in respect of matters concerning International Conventions & Conferences is exclusively vested with the Parliament vide Article 253 which reads as under:

*"253. Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."*

The gist of Article 51 of the Constitution is succinctly put by a late jurist of great repute, **Mr.H.M. Seervai** in his

“**Constitutional Law of India**” Volume 2, 4<sup>th</sup> Edition; in para 17.162 at page 2017, he writes:

“Article 51 directs that the State shall endeavour to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organized peoples with one another, and encourage the settlement of international disputes by arbitration. But in considering any conflict between municipal and international law, it is well settled that: *‘every statute is to be interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations or with established principles of international law; the judges may not pronounce, an Act ultra vires as contravening international law but may recoil, in cases of ambiguity, from a construction which would involve a breach of the ascertained and accepted rules of international law...’*”

**C. PML Act does not intend to create a “Money Laundering Haven” in any province of the country:**

(i) The argument of Mr.Javali that the Act does not, in so many words, refer to RPC, 1989, is true; in the realm of law, what is said is important and at times, what is left unsaid is even more important; the fact that nothing in the Act mentions about RPC, 1989 *per se* cannot drive one to hastily conclude that the offences thereunder are alien to the principal object and policy content of the Act; it has been a settled legal position that when there is vagueness or doubt statutes enacted for giving effect to the



International Conventions & Conferences should be construed in the light of and in conformity with them vide **State of WB Vs. Kesoram Industries Ltd, AIR 2005 SC 1646**; sub-section (2) of section 1 of the Act reads "*It extends to the whole of India.*"; thus, keeping the RPC offences away from the Act would offend the very parliamentary intent of extending this Act "to the whole of India", when many central legislations specifically excluded their application to the State of J&K because of its special status; however that is not the case with this Act; it would bewilder any legally trained mind that only one province in the country should be singularly reserved as a '**Money Laundering Haven**', eventually there being no policy framework for preventing in such a province, the sin of money laundering to which the world at large is committed by International Conventions, Conferences & Treaties.

(ii) There is some scope for arguing that Sec. 3 of RPC which has the following text also lends support to the above view of this court:

*"3. Punishment of offences committed beyond, but which by law may be tried within the State - Any person liable, by any law passed by the legislature of the State to be tried for an offence committed beyond the limits of the State shall be dealt with*

*according to the provisions of this Code for any act committed beyond the State in the same manner as if such act has been committed within the State."*

Section 4 of RPC makes its provisions applicable to any offence committed by any permanent resident of the said State even outside its territorial limits; thus the sweep of RPC corresponds to and is coextensive with that of the Act; the submission of Mr.Javali if accepted would carve out an unconscionable exception to the all pervasive parliamentary policy of preventing money laundering, wherever occurring within the country, consistent with India's international obligation, as legislated; this being the position, such an argument militates against the legislative logic and policy considerations of the Act.

**D. A legislation is not a slave of its Dictionary Clause:**

(i) The vehement submission canvassed on behalf of the petitioners that the expression 'corresponding law' is defined u/s 2(1)(ia) of the Act, to mean only a foreign law and therefore RPC being a domestic law does not fit into the same, cannot be disputed; in fact, the statutory definition of 'corresponding law' by its very text excludes domestic law i.e., RPC, 1989 of Jammu & Kashmir province; however, his further submission that since RPC

does not fit into this definition, it does not fall into the frame of the Act too, is difficult to countenance; whether the said State Legislation answers the statutory definition of 'corresponding law' is one thing, and whether it fits into the principal intent & policy content of the Act, is another; in deciding the latter, the former is not relevant; this apart, sub-section (2) of section 2 of the Act employs the expressions "Corresponding Law" or "the relevant provisions of the corresponding law", the text & context of this sub-section leaves no manner of doubt that RPC 1989 falls within the frame work of the Act; this sub-section has been there from the day one of the Act whereas section 2(1)(ia) defining the term "Corresponding Law" came to be introduced by way of Amendment vide Act 2 of 2013 with effect from 15/02/2013; it does not intend to alter the intent & content of sub-section (2) in any way.

(ii) It is pertinent to quote what **Crawford** in 'THE CONSTRUCTION OF STATUTES' 1940 Edn. at page 363 writes:

*"Although the legislative definition may be of great assistance in clearly revealing the legislative meaning, it may also create considerable confusion. The definitive language may itself require construction... It may be clearly contradictory with the language of the statute proper. The statute may indicate that the*

*legislative definition is inaccurate. It is, therefore, obvious that before the legislative definition can be relied upon, its applicability as well as its reliability should be ascertained... In the event that the definition found in the interpretation clause is at variance with the intention of the lawmakers as expressed in the plain language of the statute, that intention must prevail over the legislative definition. In other words, the intent of the legislature must control the legislative definition. But the interpretation clause and the statute proper must all be construed together as a part of the same statute... ”.*

Thus, it is not that the *dictionary clause* of a statute should invariably govern all its lock, stock & barrel, with no exception whatsoever; after all, *law is not the slave of dictionary*, and this applies to statutes which bear their own dictionary clauses too; *one cannot carry a legislation with mathematical nicety to logical extremes; its provisions are not arithmetical formulae having their essence in their form; their significance is vital and not formal; it is to be gathered not just by taking the words and dictionary, but by considering their origin and the line of their growth;* therefore a Parliamentary statute of the kind merits a *purposive construction*, lest the unscrupulous should escape from its net by seeking shelter in its *litera legis*; it is worthwhile to reproduce what the Apex Court observed in **Shankar Raju Vs. Union of India (2011) 2 SCC 132:**

*"... where the legislature clearly declares its intent in the scheme of a language of statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy without engrafting, adding or implying anything which is not congenial to or consistent with such express intention of the legislature..."*

(iii) Sub-section (2) of the Act from the day one employs the expression 'the corresponding law or the relevant provisions of the corresponding law'; this has not been altered by the 2013 Amendment to the Act which introduced the definition of 'corresponding law' to mean a foreign law; inasmuch as, several other relative provisions were introduced to the Act, whereby the scope of its application came to be widened in terms of subjects and extra territoriality; therefore, the definition of this term needs to be understood in the light of this legislative progression; if the interpretation which the petitioners want to place on this definition is accepted, it would be retrogression of the legislative scope & intent and therefore the same cannot be countenanced; it is relevant to refer to what the Apex Court said in **K. BALAKRISHNA RAO & ORS. V. HAJI ABDULLA SAIT & ORS., [1980] 1 SCC 321** held :

*"A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The*

*opening clause of section 2 of the principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires."*

(iv) The above view of this court finds a considerable support from the decision of Hon'ble High Court of Jammu & Kashmir in W.P.(C) No.2780/2019 between **AHSAN AHMAD MIRZA vs. ENFORCEMENT DIRECTORATE**, decided on 15.10.2019; a copy of this judgment in all fairness is produced by the petitioners themselves as Annexure-B to their petition; the Court having scanned the scheme of the Act, observes at para 20 as under:

*"20. It is beyond the cavil of any debate that the offence of criminal conspiracy punishable u/s.120-B RPC shall be deemed to be a scheduled offence corresponding to Section 120-B of IPC which figures on top of Part A of the Schedule appended to the PMLA. The argument of learned counsel for the petitioner that Section 120-RPC cannot be taken to be a scheduled offence is an argument in despair and, therefore cannot be accepted. I am in agreement with the argument of learned ASGI that the definition of corresponding law inserted by Act 2 of 2013 cannot be used in aid of interpreting the expression '**corresponding law**' or 'the relevant provisions of the corresponding law' as used in Sub-section 2 of Section 2 of PMLA which is existing in the statute from the date of its inception. The definition of 'corresponding law' introduced in the Act for the first time by Act 2 of 2013 was aimed at giving effect to the other amendments made in the Act dealing with the offences committed in a foreign*



*country which correspond to any of the scheduled offences”.*

**E. Recent legislative development and extension of IPC to the State of J & K:**

There is one more aspect, advertence to which would put the controversy to rest, once for all, as rightly pointed out by learned Sr. Panel Counsel for the ED: the Parliament has enacted the Jammu and Kashmir Reorganization Act, 2019 w.e.f. 9.8.2019; section 95 r/w Item 48, Table-1 in the Fifth Schedule to this Act omits the phrase “except the State of Jammu and Kashmir” from section 1 of Indian Penal Code, 1860; thus, the application of IPC is extended to the State of Jammu & Kashmir; the Enforcement Case Information Report vide No.ECIR/BGZO/02/2020 has been registered on 02.01.2020, as pleaded in the petition and appearing from the records; apparently this is post new enactment; therefore, the question raised and argued by the petitioners in the case at hands is answered by this legislative development; the Writ Petition has been structured *sans* advertence to this new development.

In the above circumstances, no other question having been argued, the Writ Petition is liable to be dismissed and accordingly it is.

Costs made easy.

This Court places on record its deep appreciation for the research & assistance rendered by Mr.Faiz Afsar Sait, Law Clerk-cum-Research Assistant.

**Sd/-  
JUDGE**

cbc/Snb