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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

<u>CRIMINAL REVISION No. 3394 of 2023</u>

BETWEEN:-

DIRECTORATE OF ENFORCEMENT THROUGH ASSISTANT DIRECTOR BHOPAL ZONAL OFFICE, BSNL BHAWAN BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI HIMANSHU JOSHI, DY. SOLICITOR GENERAL)

AND

1. **DR. VINOD BHANDARI 181, TEXTILE CLERK COLONY PARDESIPURA, INDORE (MADHYA PRADESH)**
2. **DR. MAHAK BHANDARI 181, TEXTILE CLERK COLONY PARDESIPURA, INDORE (MADHYA PRADESH)**
3. **DR. MANJUSHREE BHANDARI 181, TEXTILE CLERK COLONY PARDESIPURA, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MANU MAHESHWARI, ADVOCATE)

Reserved on : 02.11.2023

Pronounced on : 07.11.2023

This criminal revision having been heard and reserved for order, coming on for pronouncement this day, ***Hon'ble Shri Justice Prem Narayan Singh*** *passed the following:*

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ORDER

1. The petitioner has preferred this revision being crestfallen by the order dated 13.06.2023 passed by Special Judge (PMLA), Indore in S.C./1924/2018, whereby the learned Special Court allowed the applications of applicants' for releasing of property in lieu of fixed deposit.

2. Succinctly, the facts of the case are that the Adjudicating Officer of Enforcement Department has attached the property of applicants amounting to the value of Rs.8,93,50,085/- which is owned by the applicants. The applicant Dr. Manjushree Bhandari has filed an appeal against the order of Adjudicating Officer in Appellate Tribunal. In this regard, a Writ Petition No. 17581/2020 was also filed before the Division Bench of this Court. This writ petition was disposed of as withdrawn with liberty to pursue such remedies as available in law. Under these circumstances, the applicants had filed their applications for returning the properties mentioned in their applications in lieu of fixed deposit.

3. Learned Special Court (PMLA), Indore after considering the contents of applications and analyzing the provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA, 2002') ordained for releasing the properties in lieu of fixed deposit of Rs.7.02 crores. Being aggrieved by this impugned order, the present petitioner has been filed by the learned counsel for the Directorate of Enforcement Department.

4. In brief, the contentions of petition and arguments of

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counsels for the petitioner are that the case was registered vide ECIR/INSZO/2/2014 by the Directorate of Enforcement for the offence committed under Sections 120-B, 419, 420, 467 and 471 of IPC which are being scheduled offences under the PMLA, 2002. It is alleged that Investigation confirms that Dr. Vinod Bhandari invested the illegal money earned through malpractices in PMT-2012 & Pre PG Exam-2012, in various immovable properties, which were acquired in his name and in the name of his wife, Dr. Manjushree Bhandari. Dr. Vinod Bhandari utilized these 'proceeds of crime' for acquiring the properties amounting to Rs.8,93,50,085/- which were attached vide Provisional Attachment Order No. 04/2015-16, dated 31.03.2016 and subsequently original complaint No. 590/2016 was filed before the learned Adjudicating Authority, PMLA. The learned Adjudicating Authority, PMLA, New Delhi vide its well-reasoned order dated 19.08.2016 confirmed the said Provisional Attachment Order and as per order, the attachment shall continue during the pendency of proceedings relating to offence of PMLA, 2002. The learned Special Court ignored the provisions of PMLA, 2002 in order to release the properties in lieu of fixed deposit.

5. The provisions of Code of Criminal Procedure, 1973 are not applicable to this case. In this regard, Sections 65 and 71 of the PMLA, 2002 are applied. Since, the provisions of attachment and confiscation or contained in the act, no order can be passed by the Special Court, in this regard. Section 71 clearly predicates that the provision of this Act shall have effect notwithstanding

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anything inconsistent therewith contained in any other law for the time being in force. It is demurred that in view of Section 5 of PMLA, 2002, the substitute application at the first instance required to be filed before the authorized office. Thus, the Special Court was not the appropriate forum at this stage. As such learned Special Court has passed the order in violation of the provisions of Section 8 of PMLA, 2002 read with Section 5(5) of the Prevention of Money Laundering (Taking Possession of Attached or frozen properties confirmed by the adjudicating authority), Rules, 2013 where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat etc. and is under joint ownership. Hence, the order of Special Court is not sustainable in the eyes of law and facts and thus, the same is liable to be set aside.

6. Learned counsel appearing on behalf of respondents opposes the arguments and contentions in petition by submitting that since the order of learned Special Court is interlocutory order, the bar under Section 397(2) of Cr.P.C. come into play and therefore, this revision petition deserves to be dismissed only on the basis of non-maintainability. In addition to that, learned counsel for the respondents has also contended on merits of the case and submitted that the order of learned Special Court has been passed within the jurisdiction and in accordance with provision of PMLA, 2002. Learned counsel for the respondents, relying upon various citations of Hon'ble Supreme Court and other High Courts, expostulated that since the order is correct in view of the law and facts of the case, this revision petition being

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devoid of merits, deserves to be dismissed and requested for dismissal of the revision petition.

7. In view of the aforesaid contentions and rival submissions, the point for determination is as under :-

(i) whether this revision petition is liable to be dismissed on the basis of non-maintainability as the impugned order is an interlocutory order ?

(ii) If not, as to whether, the impugned order passed by the learned Special Court is suffering from infirmity, illegality and impropriety ?

8. On the issue regarding interlocutory order, Shri Himanshu Joshi, learned counsel for the Directorate of Enforcement Department submitted that the order passed by the Special Court is final in nature, as the property substituted will never be retained, if case decides in favour of the Directorate of Enforcement. As the assets attached is proceeds of crime under the Scheme of PMLA, 2002, it cannot be substituted. The order under challenge finally decides the rights of the prosecution. It is also contended that the impugned order passed by the learned Special Court is clearly against the provisions of PMLA, 2002. Hence, the same cannot be considered as interlocutory order.

9. On the contrary, Shri Manu Maheshwari, learned counsel for the respondents, controverting the aforesaid contentions, remonstrated that since the order was passed in interim form, it cannot be treated as final order. On this aspect, learned counsel

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for the respondents has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of ***Parmeshwari Devi Vs. State & Anr., (1977) 1 SCC 169***, wherein, it is held that the question as to whether the order is final order or interlocutory, must be judged from the point of view of the persons seeking revision. In this case, the learned metropolitan Magistrate summoned the petitioner under Section 94 of the Code of Criminal Procedure, 1973 to attend the Court and make statements on oath that he is not in the possession of the documents summoned. The order was challenged by the petitioner and the revision of this order has been dismissed by the Additional Sessions Judge and the High Court and thus, she has approached to Hon'ble Apex Court. Since the order of Magistrate was not according to law and adversely affecting the petitioner, the appeal was allowed by Hon'ble Apex Court. Now, coming to the case at hand the petitioner is challenging the order of the learned Special Court alleging that the order passed in contravention of PMLA, 2002. Hence, even in view of aforesaid law laid down by Hon'ble Apex Court, this impugned order cannot be assumed as interlocutory order.

10. Learned counsel for the respondents has also relied upon the judgment ***Aruni Sahgal Vs. State of M.P.***, ***(Criminal Revision No. 2179/2020, High Court of M.P., Seat at Jabalpur).*** In this case, the application under Section 457 of Cr.P.C. for releasing the Scooty and Redmi Mobile Phone, which were said to be used in committing offence punishable under Sections 8, 21, 22, 25 and 29 of the NDPS Act and Section 5/13 of the Drug

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Control Act, was dismissed by the trial Court. The revision against that order was dismissed on the basis of non-maintainability. In that case, no allegations regarding violation of respective Acts and passing order without jurisdiction was made while in this case, the petitioner has challenged the order on the basis of violation of the Act. Hence, no benefit can be afforded to the respondents by the aforesaid citation.

11. Learned counsel for the respondents is also placing reliance upon the judgment of ***Shyam Tiwari Vs. State of M.P., 2021 SC OnLine MP 2671.*** The case relates to the offences punishable under Sections 420, 120-B and 409 of IPC and Section 13(1) of the Prevention of Corruption Act, the trial Court has declared the prosecution witness hostile and photocopy of audit report was taken as evidence. The Division Bench of this Court rejected the revision as not maintainable in the light of the bar under Section 397(2) of the Cr.P.C. The facts of this case, are absolutely different to the case at hand. Hence, no benefit can be given to the respondents at this stage.

12. Learned counsel for the respondents further placed reliance upon the judgment of ***Manish Vs. State of Madhya Pradesh, 2023 SC OnLine MP 909***, in this case, learned trial Court has directed that first of all examination-in-chief of the prosecution witness-complainants Manish, Rajat and Shantilal will be recorded and thereafter, the accused will avail the opportunity of cross-examination of the aforesaid witnesses. Since, the order was ascertained interlocutory, neither the criminal revision nor the M.Cr.C. under Section 482 of Cr.P.C. is found maintainable.

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Further, learned counsel relying upon the case of ***Bhaskar Industries Ltd. Vs. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401***, in which, it is held that the order which culminates the proceeding would be regarded as a final order, even it is passed during the interim stage. Virtually, in the case at hand, order was also passed at interim stage, but it finally adjudicates the possession over the property, therefore, it would be treated as final order.

13. Counsel for the respondents also placing reliance upon the judgment of ***K. Basha Vs. State, MANU/TN/0211/2012***, the Magistrate has returned the application placed before him under Section 451 and 457 of Cr.P.C. on the basis of that the property was not produced before him. Virtually, the facts of this case, are also different to the facts of the case at hand.

14. In this context, learned counsel for the respondents also placed reliance upon another case ***Central Bank of India Vs. Directorate of Enforcement and 2 others*** passed ***on 06.09.2016 in Criminal Revision No. 947/2014.*** Certainly, this case is related to Directorate of Enforcement and in this case, the applicant filed an application under Section 453 of Cr.P.C. that the petitioner is entitled to the possession of cash amount of Rs.2,55,82,159/- and learned Sessions Judge dismissed the petition. Hon'ble Single Bench of this Court, after considering the provision of Section 65 of Cr.P.C. allowed the revision and ordained that the Special Judge can exercise the power of disposal of the property. The aforesaid citation is itself an example that the order of dismissal on the application filed under Section 451 and 457 of Cr.P.C.

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cannot be regarded as interlocutory order and revision is maintainable against those orders.

15. On this aspect, learned counsel for petitioner has also placed reliance upon the judgment of Hon'ble Apex Court rendered in ***Girish Kumar Sunej Vs. C.B.I.*** passed ***on 13.07.2017 in Criminal Appeal No. 1137/2017***. On the basis of this, the petitioner contended that if the order under challenge culminates the criminal proceedings as a whole **or** finally decides the rights and liabilities of the parties is not interlocutory in spite of the facts that it was passed during any interlocutory stage.

16. Having gone through the aforesaid principles laid down by Hon'ble Apex Court and also High Court, it emerges that if the order is finally deciding the rights and liabilities of the parties, even, in an interim stage, it will be treated as final order and revision against that order lies. In this case, the petitioner has also challenged the order on the basis of violation of PMLA, 2002 and also passing the order without jurisdiction. On this aspect, I want to quote the view of Hon'ble Constitutional Bench of Apex Court taken in ***Mohanlal Maganlal Thakre Vs. State of Gujarat, AIR 1968 SC 733.*** In the para 6 of the judgment, Hon'ble Apex Court endorsing another judgment held as under :-

> The decision in Ramesh v. Patni SCR 198 (2) would seem to throw light on these questions. There the Claims Officer under the Madhya Pradesh Abolition of Proprietory Rights Act, 1950 (1) [1964]7S.C.R.734. It is held in an application by the appellants that a debt due by them to the respondents was a secured debt though the respondents had obtained a decree therefore. He, accordingly, called upon the respondents to file

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> their statement of claim as required by the Act. The respondents filed the statement, but the officer held that it was out of time and discharged the debt. In appeal the Commissioner held that though the Claims Officer had jurisdiction, he could not discharge the debt as action under Section 22(1) of the, Act had not been taken. The appellants thereupon filed Art. 226 petition alleging that the Commissioner had no jurisdiction to entertain or try the appeal. The High Court dismissed the petition summarily. The contention was that the High Court's order was not a final order be-cause it did not decide the controversy between the parties and did not of its own force affect the rights of the parties or put an end to the controversy. This court observed: (1) that the word 'proceeding' in Art. 133 was a word of a very wide import, (2) that the contention that the order was not final because it did not conclude the dispute between the parties would have had force if it was passed in the exercise of the appellate or revisional jurisdiction of the High Court, as an order of the High Court if passed in an appeal or revision would not be final if the suit or proceeding from which there was such an appeal or revision remained still alive after the High Court's order, (3) but a petition under Art. 226 was a proceeding independent of the original controversy between the parties; the question therein would be whether a proceeding before a Tribunal or an authority or a court should be quashed on the ground of want of jurisdiction or on other well recognised grounds and that the decision in such a petition, whether interfering or declining to interfere, was a final decision so far as the petition was concerned and the finality of such an order could not be judged by co-relating it with the original controversy between the parties. **The court, however, observed that all such orders would not always be final and that in each case it would have to be ascertained what had the High Court decided and what was the effect of the order. If, for instance, the jurisdiction of the inferior tribunal was challenged and the High Court either upheld it or did not, its order would be final.**

17. In view of the aforesaid verdict, it is crystal clear that if the jurisdiction is challenged, the order will be considered as final.

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On this aspect, the law laid down in the judgment of ***Praveen Kumar Vs. State of Himachal Pradesh, 1989 CRLJ 2537,*** is also pertinent to mention here. The relevant para 8 of the judgment is mentioned below :-

> 8. An application under Section 451 Cr. P.C. has to be decided by the Court after hearing the parties seeking the release of the property in question. The parties are allowed to adduce evidence and it is only after hearing them that the Court passes the order thereby giving the custody of the property to one of them who may be adjudged by the Court to be best entitled for the same. To say that such an order is revisable by the Court on the termination of the proceedings or in between is no reason to call the order interlocutory order. Till such an order is made, it is final between the parties and the Magistrate cannot arbitrarily or without proper justification change the same during the course of the proceedings. The argument of the petitioner that such an order becomes final on the termination of the proceedings cannot be accepted because even that order is subject to determination by a Civil court. **Therefore, in the light of the decision of the Supreme Court in Madhu Limaye's case (1978 Cri LJ 165) (supra), it can be held that this kind of order is final between the parties deciding their entitlement to the property in question finally at that stage. Therefore, such an order is necessarily subject to revision by the Court and revision against the same is competent before a Court of Session.** The view which I have taken has a support from 1981 Cri LJ 1529 (Andh Pra) Bharat Heavy Electricals Ltd. v. State and 1974 Cri LJ 231 (Ishar Singh v. The State of Punjab) The argument of Sh. S. S. Kanwar on this count, therefore, fails and is rejected.

18. On this aspect, the aforesaid view was endorsed in the commentary of **Criminal Procedure Code, 1973 written by Acharya Dr. Durgadas Baso**. The following paragraphs in IV Addition 2010 Page 2057, is worth referring here :-

> 15. **Revision**-Even though the order under

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> Section 451 may be of a temporary duration, it cannot be said to be 'interlocutory'; at any rate it would be open to revision where it is without jurisdiction.

19. On this aspect, the view of Hon'ble High Court in the case of ***Pankaj Mehta Vs. State of Madhya Pradesh, 1989 MPLJ 290*** is also poignant to point out, Hon'ble Bench relying upon ***Mohanlal (Supra),*** elucidated that the order passed by Magistrate allowing an application of the accused for interim custody of the property, is not an interlocutory order and revision lies against it.

20. On going through the aforesaid analysis in entirety, it is explicitly evident that the order passed by the Courts regarding handing over the custody of property would be considered as final order since they are finally adjudging the possession of the property. However, when the order is challenged on the basis of violation of law, without applying proper procedure and passed without jurisdiction, the revision certainly lies. Accordingly, the contentions of respondents regarding non-maintainability of this revision deserves to be and is dismissed.

21. Now, coming to the merits of the case as to whether the order passed by the Special Court is correct. In view of the law and facts of the case, Shri Manu Maheshwari, learned counsel for respondents in support of the impugned order placed his reliance upon ***Esskay Properties and Investments Private Limited and Anr.***, ***(Special Leave to Appeal No. 9335/2022 decided on 16.09.2022).*** In this case, Hon'ble the Apex Court passed the order of provisional attachment in lieu of fixed deposit of Rs. 3 crores. This order was passed by Hon'ble Apex when the

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petitioner approached the High Court challenging the order of attachment as the Appellate Authority was not available whereas, in the case at hand, the orde+r was passed by the learned Special Judge not by Appellate Authority. Likewise, he has also placed reliance upon the judgment ***Veerbhadrappa G.E. Vs. State of Karnataka & Ors, (Writ Petition (s)(criminal) No(s) 124/2023 decided on 21.07.2023).*** In this regard, para 5 of the order is worth referring here :-

> 5. Enforcement Directorate also passed an order dated 29.06.2018 for provisional attachment of various properties including properties involving third party interest as disproportionate assets alleged in the CBI Case. Appeal filed by the petitioners against confirmation of attachment of disproportionate assets by the Enforcement Directorate is pending before the PMLA Tribunal. The pleadings further go to show that one of the properties under attachment situate in Karnataka under PMLA is subject matter of a decree drawn in favour of the respondent No. 3 herein, who is in possession of the attached property, pursuant to MOU dated 15.05.2013 for development rights entitlements and interest in that property against valuable consideration.

22. The aforesaid observation frescoes that the order for provisional attachment was passed by Directorate of Enforcement, but it was not passed by the Special Judge. Certainly, Hon'ble Apex Court, in order to secure the justice, directed that in case the petitioner furnishing the fixed deposit, the provisional attachment shall be lifted. However, the impugned order was passed by Special Judge, hence, no benefit can be afforded to the respondents by the aforesaid verdict.

23. Now, considering the legality of the order, having gone

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through the whole order, it seems that the order was mainly based on second proviso of Section 8(8) of PMLA, 2002, which is reproduced below :-

> "Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed."

24. Now, the word 'claimant' is required to be defined. On this aspect first proviso of Section 8(8) of PMLA, 2002, is also worth considering, which is as under :-

> Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:

25. In view of the aforesaid proviso, the question arises that who is a '**claimant**' and what is '**such manner as may be prescribed**'. On this aspect, the Prevention of Money-Laundering (Restoration of Property) Rules, 2016 (hereinafter referred to as 'PMLA Rule, 2016') is required to be perused. In this rule, the claimant is defined as under :-

> 2(b) "**claimant**" means a person who has acted in good faith and has suffered a quantifiable loss as a result of he offence of Money-Laundering despite having taken all reasonable precautions, and is not involved in the offence of money-laundering;

26. It is nowhere mentioned that the applicants can be treated as claimants defined in the rules. One applicant is Dr. Vinod Bhandari, who is accused in the concerned criminal case and

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others applicants are his relatives. Then, at this stage, it cannot be presumed that they have acted in good faith and have suffered a quantifiable loss as a result of the offence of Money-laundering despite having taken all reasonable precautions. Since, Dr. Vinod Bhandari himself is an accused, he cannot be treated as 'claimant'. In view of the aforesaid definition enshrined under Rule 2(b) of PMLA Rule 2016. The respondents at this stage also cannot satisfy the first proviso of Section 8(8) of PMLA, 2002.

27. So far as the words 'such manner as may be prescribed' is concerned, the manner is also predicated under Section 3 and 3A of PMLA Rule, 2016, it would be condigned to quote these rules as under :-

> **3. Manner for restoration of confiscated property.** - (1) The Special Court, within forty-five days from the date of passing the order of confiscation under sub-section (5) section 8 of the Act in respect of property, shall cause to be published a notice in two daily newspapers, one in English language and one in vernacular language, having sufficient circulation in the locality where the property is situated calling upon the claimants, who claim to have a legitimate interest in such property or part thereof, to submit and establish their claims, if any, for obtaining restoration of such property or part thereof.
>
> (2) When the confiscated property is insufficient to meet the loss suffered by the claimants as a result of the offense of money-laundering, the Special Court, as it thinks fit, may pass an order of restoration of property on a pro-rata basis in accordance with the share of loss suffered by each claimant.
>
> (3) No claimant shall be entitled to claim restoration of confiscated property before the Special Court beyond thirty days from the date of publication of the notice referred to in sub-rule (1):

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Provided that the Special Court may entertain any claim not exceeding further thirty days, upon the satisfaction that the claimant was prevented by sufficient cause.

[3A. Manner of restoration of property during trial. - (1) The Special Court, after framing of the charge under section 4 of the Act, on the basis of an application moved for restoration of a property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18 of the Act prior to confiscation, if it thinks fit, may, for the purposes of the second proviso to sub-section (8) of section 8 of the Act, cause to be published a notice in two daily newspapers, one in English language and one in vernacular language, having sufficient circulation in the locality where such property is situated calling upon the claimants, who claim to have a legitimate interest in such property or part thereof, to submit and establish their claims, if any, for obtaining restoration of such property or part thereof.

(2) When the property referred to in sub-rule (1) is insufficient to meet the loss suffered by the claimant as a result of the offence of money-laundering, the Special Court, as it thinks fit, may pass an order of restoration of property directing the Central Government, if necessary, to auction such property and disburse on a pro-rata basis in accordance with the share of loss suffered by each claimant and may give custody thereof to such claimant on his executing a bond undertaking to produce such restored property before the Special Court as and when required for the purposes of sub-section (5) or sub-section (6) or sub-section (7) of section 8 of the Act.

(3) No claimant shall be entitled to claim restoration of the property referred in sub-rule (1) before the Special Court beyond thirty days from the date of publication of the notice referred to in that sub-rule:

Provided that the Special Court may entertain any claim not exceeding further thirty days, upon the satisfaction that the claimant was prevented by sufficient cause.
(4) No restoration order shall be passed by the Special Court under this rule, without giving an opportunity of being heard to the owner of the

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property referred to in sub-rule (1) or in the event of his death, the legal representatives of such person or official assignee or official receiver, as the case may be.]

28. The learned Special Judge, in impugned order, has not mentioned anything with regard to the said manner specified in the Rules 3 and Rule 3A of PMLA Rule, 2016. Likewise, learned Special Judge has not clarified as to how the applicant coming into purview of definitions of '**claimants**' mentioned in Rule 2(b) of PMLA Rule, 2016 and first proviso of Section 8(8) of the PMLA, 2002. Virtually, the impugned order is a sear violation of the respective provisions of PMLA, 2002 and PMLA Rule, 2016.

29. In the wake of the foregoing observation as well as cumulative analysis of material available on record, it can be safely held that the impugned order has been passed by the Special Judge without proper appreciation of the provisions of PMLA, 2002 and the PMLA Rule, 2016. As such, this order is suffering from gross infirmity and illegality. As a result thereof, this revision petition is allowed and accordingly, the impugned order passed by the learned Special Judge, PMLA Court is set aside.

(PREM NARAYAN SINGH)

JUDGE

Vindesh