**Dalmia Cement (Bharat) Limited and Another Vs. The State of Andhra Pradesh, Rep. by its Principal Secretary, Revenue Department, Secretariat and Others**

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**Court** : Andhra Pradesh

**Decided On :** Feb-29-2016

**Judge** : Vilas V. Afzulpurkar

**Appeal No.** : Writ Petition Nos. 36838 of 2014 & 31143 of 2015

**Appellant** : Dalmia Cement (Bharat) Limited and Another

**Respondent** : The State of Andhra Pradesh, Rep. by its Principal Secretary, Revenue Department, Secretariat and Others

**Judgement** :

Common Order:

1. Both the writ petitions are filed by same petitioners against the same respondents. While in WP.No.36838 of 2014, the summons issued by the first respondent to the second petitioner is questioned, in WP.No.31143 of 2015, the further steps initiated by the first respondent pursuant to the summons served on the second petitioner are questioned.

2. The material averments in the affidavit of the petitioners in nutshell are as follows:

**WP.No.36838 of 2014:**

(a) The first petitioner is a company registered under the Companies Act and the second petitioner is its Managing Director. Petitioners state that the Central Bureau of Investigation (CBI) filed a charge sheet before the Special Court for CBI Cases, City Criminal Court, Nampally against various accused and petitioners 1 and 2 are shown as accused 3 to 12 respectively. The Special Court has already taken cognizance of the offences against all the accused on 13.05.2013. Petitioners deny the charge sheet framed against them by CBI.

(b) Based on the allegations in the said charge sheet, the first respondent registered a case on 30.08.2011 as ECIR/09/HZO/2011 for scheduled offences under the Prevention of Money-Laundering Act, 2002 (for short PMLA') in which the first petitioner is shown as accused at Sl.No.26, alleging that the same, prima facie, discloses an offence under Section 3 of the PMLA. Copy of the said ECIR is filed as annexure P2.

(c) Based on the said ECIR, the first respondent served summons dated 20.10.2014 on the second petitioner requiring him to appear in person for making statement and for production of documents. The second petitioner, accordingly, is stated to have informed the first respondent, on legal advice, under reply dated 31.10.2014 that he was accused in CBI case and does not wish to give any statement by claiming protection under Article 20(3) of the Constitution of India. However, without responding to the said reply, the first respondent issued another summons dated 03.11.2014 to the second respondent once again calling him to appear to give statement and produce documents. The second petitioner sent a further reply dated

14.11.2014 requesting to consider earlier reply dated 31.10.2014. However, again, without responding to the reply of the second petitioner, further summons was issued on 19.11.2014 to appear in person and produce documents, which is challenged in this writ petition and the grounds raised in support of this writ petition, are, briefly, as follows:

1) The ECIR registered by the first respondent is based upon the CBI case. However, the facts involved and the allegations in both the cases are same and offences alleged are substantially same, which are also scheduled offences under PMLA. Petitioners, being accused in the CBI case, the statement of second petitioner and the production of documents by him, as insisted upon by the first respondent under the impugned summons, would compel the second petitioner to give incriminating statement and documents under compulsion, thereby violate the protection available to him under the Constitution of India as well as under Criminal Procedure Code.

2) It is stated that the impugned summons is issued in exercise of powers under Section 50 of PMLA and Section 63 of PMLA provides for punishment for giving false information or for failure to give information etc. Further Section 22 of PMLA raises a presumption that records of property produced by a person is presumed to be belonging to such person and the contents of the record are true etc. Hence, reliance is placed upon Article 20(3) of the Constitution of India, which provides that no person accused of any offence shall be compelled to be a witness against himself. Thus, the petitioners state that as they are accused in the CBI case and by virtue of the impugned summons, the first respondent is forcing and compelling the second petitioner to appear and give statement and that disobedience of the same is also a punishable offence. Hence, the second petitioner has a reasonable apprehension that any question asked by the first respondent during interrogation will incriminate the petitioners and that will have a material bearing on the CBI case as well as on the ECIR.

3) It is further contended that Section 50 of PMLA, which empowers the first respondent to summon any person to give evidence and produce documents, does not include an accused person involved in any scheduled offence, as otherwise, it would be ultravries Article 20(3) of the Constitution of India. Hence, petitioners seek a Mandamus, as sought for.

3. This writ petition was listed for admission on 02.12.2014 and on request of the learned standing counsel for respondents, the following proceeding was recorded:

Learned Standing Counsel requests time till 08.12.2014 to file counter. He further informs that he would advise his client to defer summoning of 2nd petitioner to any date other than 03.12.2014. At his request, post on 08.12.2014 in the motion list. ?

Subsequently, the writ petition was heard in part on 16.12.2014 and subsequent thereto, the writ petition was listed before different benches including this Court on various dates. I had heard the learned senior counsel for the petitioners on 05.02.2016.

**WP.No.31143 of 2015:**

4. As stated above, the petitioner in the aforesaid writ petition filed this writ petition on the ground that though the summons last issued was questioned in WP.No.36838 of 2014, during pendency thereof, the first respondent issued another summons dated 24.06.2015. On the alleged ground of defiance of the summons, the first respondent exercised power under Section 63(4) of PMLA and initiated penal proceedings. Hence, questioning the said action of the first respondent in taking further steps including initiation of penal proceeding for alleged non-compliance of the summons issued, the present writ petition is filed seeking a Mandamus, as prayed for.

5. This writ petition came up before me on 23.09.2015 wherein I had granted stay of prosecution of the petitioners pending further orders, as per the order extracted below:

In view of the fact that W.P.No.36838 of 2014 filed by the petitioners is already pending before this Court and was in fact heard in part, the prosecution of the petitioners as proposed under the impugned summons shall remain stayed, pending further orders.

Learned Standing Counsel for respondents takes notice and seeks time to file counter within two weeks.

I find from the record that W.P.No.36838 of 2014 was in fact heard in part as per the orders of this Court, dated 16.12.2014, by the Hon'ble Sri Justice P. Naveen Rao and the present Writ Petition is interlinked to the issue involved in that Writ Petition.

It is therefore appropriate for the Registry to take necessary orders from the Hon'ble the Acting Chief Justice for listing this Writ Petition along with W.P.No.36838 of 2014 before appropriate Bench. ?

I have heard the learned Additional Solicitor General on 16.02.2016 and the reply arguments on 17.02.2016 and thereafter, the orders were reserved.

6. The first respondent has filed a separate counter affidavit in both the writ petitions. The material pleadings of the respondents in WP.No.36838 of 2014 are as follows:

a) On the basis of the charge sheet filed by CBI containing allegations against the first petitioner, the Director of Enforcement has taken the case for investigation and registered the Enforcement Case Information Report (ECIR) on 30.08.2011 under PMLA with regard to scheduled offences.

b) It is stated that the scope of investigation of the respondents is restricted to the probe into the aspects of proceeds of crime and subsequent money-laundering only. It is specifically stated that the role of the respondents is to investigate the aspects of proceeds of crime derived from the commission of scheduled offence and the subsequent money-laundering and not to investigate predicate offences.

(c) It is stated that the first respondent is empowered under Section 50 of PMLA to issue summons to any person whose attendance is considered necessary to give evidence or to produce records during the course of investigation or proceeding under PMLA. The allegations of the petitioners on the basis of Article 20(3) of the Constitution of India is illogical and baseless, as the respondents have only taken up investigation to trace the proceeds of the crime and the trail of the money laundered, as there are sufficient reasons to believe that money-laundering has been resorted to in this particular case based on the FIR registered by CBI. It is stated that ECIR is registered with the Director of Enforcement, as the respondents had reason to believe that offence of money-laundering has been committed.

(d) It is stated that in terms of Section 50 of PMLA, the proceedings initiated by the first respondent are judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and petitioners are obliged to appear. It is stated that petitioners are assuming several things at the threshold and trying to evade the investigation. It is stated that the first respondent is a premiere investigating agency, which probes into aspects of proceeds of crime and money-laundering and there is no necessity for the respondents to use force or coercive methods on any person. It is contended that Section 50 of PMLA empowers that first respondent to issue summons and petitioners are obliged to cooperate with the investigation. Lastly, it is contended that the extraordinary jurisdiction of this Court cannot be invoked to nullify the summons issued for the purpose of investigation and Article 20(3) of the Constitution of India is not attracted.

7. The counter affidavit in WP.No.31143 of 2015 traverses the same allegations, as above and further states that in WP.No.36838 of 2014 no direction was given against taking further steps till eternity, as is evident from the order of the Court dated 02.12.2014 (extracted above). It is stated that the said writ petition was, no doubt, heard in part with a direction to list on 23.12.2014 but the Court did not give any direction to the respondents not to take any further steps and in view of that, fresh summons was issued to the petitioners on 09.02.2015. As the petitioners have not appeared in response to the summons issued and opportunity given on six different occasions, a petition under Section 63(4) of PMLA was filed by the first respondent before the I

Additional Metropolitan Magistrate, Nampally. Hence, it is stated that the present writ petition seeking declaration not to take any further proceedings in pursuance of the summons is misconceived.

8. Mr. P. Chidambaram, learned senior counsel for the petitioners, submitted that ECIR was registered on 30.08.2011 under Section 3 of PMLA against several persons and first petitioner is shown at Sl.No.26. Learned senior counsel contended that registration of ECIR is equal to registration of an FIR under Cr.P.C and the first respondent stands in the capacity of an accused at Sl.No.26. Thereafter, the summons were issued by the first respondent under Section 50 of PMLA commencing from 20.10.2014, by then petitioners were already arrayed as accused 3 and 12 respectively in the charge sheet filed by CBI. The allegations in the charge sheet being the basis for registration of ECIR by the first respondent, compelling the petitioners under the summons, would further compel them to make statement and produce incriminating documents with a threat of prosecution for giving false statement or false information. Learned senior counsel submits that such testimonial compulsion against the second petitioner would, undoubtedly, amount to incriminating him not only in the CBI case but also in the ECIR registered.

9. Learned senior counsel submits that the second petitioner obtained legal advice and submitted detailed reply to the first respondent expressing inability of the second petitioner to incriminate himself. However, without responding to the said reply, summons were repeatedly sent and ultimately, leaving the petitioners no option but to question the impugned summons issued.

10. Placing strong reliance upon Sections 50 and 63 read with Section 22 of PMLA, learned senior counsel submits that the second petitioner is in a situation where if he gives a statement and produces documents that will amount to incriminating himself and causing serious prejudice to him in the CBI case as well as in ECIR. Learned senior counsel, therefore, submits that compelling attendance of second petitioner by virtue of the impugned summons is violative of Article 20(3) of the Constitution of India as well as provisions of Section 91 of Cr.P.C. Learned senior counsel also pointed out that Section 24 of PMLA places burden of proof on the accused rather than on the prosecution, unlike any criminal case tried before ordinary criminal courts.

11. In order to substantiate his contentions, learned senior counsel places strong reliance upon a Constitution Bench judgment of the Supreme Court in **STATE OF GUJARAT v. SHYAMLAL MOHANLAL CHOKSI** (AIR 1965 SC 1251) wherein the Supreme Court held that language under Section 94 Cr.P.C of 1898 (equivalent to Section 91 Cr.P.C of 1973) does not include accused persons and that it would be an odd procedure for the court to issue summons to an accused person to attend and produce a document and would equally apply to a police officer, who issues a writing order to the accused in his custody to attend and produce a document. Learned senior counsel submits that the same analogy, while construing Section 50 of PMLA, would be applicable to the petitioners. Learned senior counsel also placed reliance upon the following decisions:

**MAHENDRAKUMAR KANHYALAL JAIN v. MAHAVIR URBAN COOPERATIVE CREDIT SOCIETY LTD.** (2013 (6) Mh.L.J.) wherein the aforesaid decision **SHYAMLAL MOHANLAL CHOKSI** (1 supra) was followed. The decision in **M/S. TATA CONSTRUCION PROJECT LTD. V STATE OF JHARKHAND** (2008 SCC Online JHAR 707) is also relied upon to the same effect and the decision of the Madras High Court in **M. KALANITHI MARAN v. STATE** (2003 SCC Online MAD 936) as well as decision of the Gauhati High Court in **TOFAZZUL ISLAM BORBHUYAN v. MATIUR RAHMAN MAZUMDAR** (2003 (10 GLT 102)are relied upon.

12. Further elaborating on the meaning of the word accused', learned senior counsel relied upon a Larger Bench judgment of the Supreme Court in **M.P. SHARMA v. SATISH CHANDRA, DISTRICT MAGISTRATE** (AIR 1954 SC 300) for the proposition that the protection under the Constitution under Article 20(3) is available to a person, who is accused of an offence and protection against compulsion to be a witness, as it amounts to giving evidence against himself.

Elaborating further learned senior counsel has drawn attention to the aforesaid decision where it holds in para 10 as under:

**10**. The phrase used in Art. 20(3) is to be a witness and not to appear as a witness ?. It follows that the protection afforded to an accused in so far as it is related to the phrase to be a witness is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating o the commission of an offence has been leveled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case. ?

Based on the above, it is contended that formal accusation relating to commission of an offence is sufficient to attract the protection available to the petitioners.

13. Another Larger Bench judgment of the Supreme Court in **STATE OF BOMBAY v. KATHI KALU OGHAD** (AIR 1961 SC 1808) is also relied upon for the proposition that guarantee against testimonial compulsion includes not only oral testimony given in a Court or out of Court but also statement in writing, which incriminate a maker figuring as a accused person. The relevant portion of para 9 of the said judgment is as under:

**9**. This Court did not accept the contention that the guarantee against testimonial compulsion is to be confined to oral testimony at the witness-stand when standing trial for an offence. The guarantee was, thus, held to include not only oral testimony given in Court or out of Court, but also to statements in writing which incriminated the maker when figuring as an accused person. After having heard elaborate arguments for and against the views thus expressed by this Court, after full deliberation, we do not find any good reasons for departing from those views. But the Courts went on to observe that to be a witness means to furnish evidence and includes not only oral testimony or statement in writing of the accused but also production of a thing or of evidence by other modes ?

14. Learned senior counsel also relied upon a decision of the Supreme Court in **SELVI v. STATE OF KARNATAKA** (AIR 2010 SC 1974) and particularly, paras 91, 107, 109, 112, 123, 216, 221 and 224 are quoted to support the proposition that the respondents cannot resort to testimonial compulsion against the petitioners.

15. Learned senior counsel also relied upon a decision of the European Court of Human Rights in **SAUNDERS v. UNITED KINGDOM** (1997) B.C.C. 872). Learned senior counsel also elaborated on right of silence and of a right not to incriminate himself, which was also discussed in the aforesaid decision at paras 68 and 69 as follows:

**68**. The court recalls that, although not specifically mentioned in art. 6 of the Convention, the right to silence and the right not to incriminate oneself, are generally recognized international standards which lie at the heart of the notion a fair procedure under art. 6. Their rationale lies, inter alia, in the protection of the accused against improper compulsion by the authorities thereby contributing to the avoidance of miscarriages of justice and to the fulfillment of the aims of art.6 (see the above-mention John Murray judgment and the above-mention Funke judgment). The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In this sense the right is closely linked to the presumption of innocence contained in art. 6(2) of the Convention.

**69**. The right not to incriminate oneself is primarily concerned, however, with respecting the will of an accused person to remain silent. As commonly understood in the legal systems of the contracting parties to the Convention and elsewhere, it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as, inter alia, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing ?

16. A decision of the U.S. Supreme Court in **ARMANDO SCHMERBER v. STAET OF CALIFORNIA** (384 U.S. 757) is also relied upon wherein it was held as follows:

We, therefore, must now decide whether the withdrawal of the blood and admission in evidence of the analysis involved in this case violated petitioner's privilege. We hold that the privilege protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature, and that the withdrawal of blood and use of the analysis in question in this case did not involve compulsion to these ends

As the passage in Miranda implicitly recognizes, however, the privilege has never been given the full scope which the value it helps to protect suggest, History and a long line of authorities in lower courts have consistently limited its protection to situations in which the State seeks to submerge those values by obtaining the evidence against an accused through the cruel, simple expedient of compelling it from his own mouth

In sum, the privilege is fulfilled only when the person is guaranteed the right to remain silent unless he chooses to speak in the unfettered exercise of his own will.

It is clear that the protection of the privilege reaches an accused's communications, whatever form they might take, and the compulsion of responses which are also communications, for example, compliance with a subpoena to produce one's papers. Boyd v. United States, 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746. On the other hand, both federal and state courts have usually held that it offers no protection against compulsion to submit to fingerprinting, photographing, or measurement, to write or to speak for identification, to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture. The distinction which has emerged, often expressed in different ways, is that the privilege is a bar against compelling communications or testimony ?, but that compulsion which makes a suspect or accused the source of real or physical evidence does not violate it.

17. Learned senior counsel also relied upon 180th Report of the Law Commission of India on Article 20(3) of the Constitution of India and the right to silence citing Article 11.1 of the Universal Declaration of Human Rights, 1948. The Law Commission discussed the right to silence, as quoted below:

The right to silence has various facets. One is that the burden is on the State or rather the prosecution to prove that the accused is guilty. Another is that an accused is presumed to be innocent till he is proved to be guilty. A third is the right of the accused against self incrimination, namely, the right to be silent and that he cannot be compelled to incriminate himself. There are also exceptions to the rule. An accused can be compelled to submit to investigation by allowing his photographs taken, voice recorded, his blood sample tested, his hair or other bodily material used for DNA testing etc.

The right to silence has been considered by the Supreme Court of India in a three-Judge Bench in Nandini Satpati vs. P.L. Dani 1978 (2) SCC 424 where the Supreme Court followed the earlier English Law and the judgment of the American Supreme Court in Miranda. Krishna Iyer J observed that the accused was entitled to keep his mouth shut and not answer any questions if the questions were likely to expose him to guilt. This protection was available before the trial and during the trial. The learned Judge observed as follows:

whether we consider the Talmudic Law or the Magna Carta, the Fifth Amendment, the provisions of other constitutions or Article 20(3), the driving force behind the refusal to permit forced self incrimination is the system of torture by investigators and courts from medieval times to modern days. Law is response to life and the English rule of the accused's privilege of silence may easily be traced as a sharp reaction to the Court of Star Chamber when self-incrimination was not regarded as wrongful. Indeed then the central feature of the criminal proceedings, as Holdsworth noted, was the examination of the accused. ?

Summary:

A survey of the current law in various countries reveals that in USA, Canada and India in view of the constitutional provisions against self incrimination the Courts have required the prosecution to prove guilt

beyond reasonable doubt and there has been no encroachment whether at the stage of interrogation or trial, into the right to silence vested in the suspect or accused ?

The Law Commission, ultimately, was of the opinion that no change in the law relating to right to silence of accused is necessary and if made, they will be ultravries Article 20(3) and Article 21 of the Constitution of India.

18. Mr. G. Rajagopalan, learned Additional Solicitor General of India, ppearing for the respondents, submits at the outset that so far as respondents are concerned, petitioners are not accused but are only suspects of commission of offence under Section 3 of PMLA and therefore, all the contentions of the petitioners, as if they are accused, are misconceived. Learned Additional Solicitor General submits that PMLA comprises of three distinct parts viz. investigation, adjudication and ultimate prosecution. Learned Additional Solicitor General submits that proceedings as to investigation and adjudication are with reference to tracing out and tracking the proceeds of crime being alienated or transferred so as to defeat the process of law and submits that till the appropriate complaint under Section 3 of PMLA read with Section 200 Cr.P.C is filed by the Enforcement Directorate, the petitioners cannot be termed as accused so far as PMLA is concerned. Consequently, therefore, the power of investigating authorities under Section 50(2) of PMLA being available against any person, petitioners are not entitled to impugne the summons as well as the proceedings initiated for non-compliance of the summons. Learned Additional Solicitor General submits that the petitioners, being not accused under PMLA, the question as to violation of Article 20 of the Constitution of India does not arise.

19. With the aforesaid basic submission, learned Additional Solicitor General proceeded to make further submission on the assumption that the petitioners are accused. Learned Additional Solicitor General relied upon the objects and purpose of enacting PMLA and placed strong reliance upon the definition of person under Section 2(s) as well as Section 71 of PMLA. Learned Additional Solicitor General submits that the definition of a person is an inclusive definition, which covers the second petitioner and Section 71 of PMLA has given overriding effect over anything inconsistent contained in any other law. Learned Additional Solicitor General placed strong reliance upon Section 108 of the Customs Act and the decisions rendered thereunder to submit that the provisions of PMLA and the Customs Act, as aforesaid, are similar and have already been interpreted by the Supreme Court.

20. Reliance is, accordingly, placed upon the decision of the Supreme Court in **VEERA IBRAHIM v. THE STATE OF MAHARASHTRA** (1976) 2 SCC 302) where the phrase accused of an offencewith reference to Section 108 of the Customs Act, 1962 was interpreted. Paras 6 and 9 of the judgment is relied upon where the Supreme Court quoted a passage from **R.C. MEHTA v. STATE OF WEST BENGAL** [AIR 9170 SC 940]. At this stage, it is appropriate to notice the said passage from the decision above referred, as under:

**7**. In R. C. Mehta v. State of West Bengal, this point came up for consideration in the context of a statement recorded by an officer of Customs in an enquiry under Section 171-A of the Sea Customs Act. One of the contentions raised was, that a person against whom such an enquiry is made is a `person accused of an offence', and on that account, he cannot be compelled to be a witness against himself and the statement obtained or evidence collected under the aforesaid provision by the officer of Customs is inadmissible. This contention was repelled.

Shah J., speaking for the Court, made these apposite observations:

"Under Section 171-A of the Sea Customs Act, a Customs officer has power in an enquiry in connection with the smuggling of goods to summon any person whose attendance he considers necessary, to give evidence or to produce a document or any other thing, and by clause (3) the person so summoned is bound to state the truth upon any subject respecting which he is examined or makes statements and to produce such documents and other things as may be required. The expression "any person" includes a person who is suspected or believed to be concerned in the smuggling of goods. But a person arrested by a Customs officer because he is found in possession of smuggled goods or on suspicion that he is concerned in smuggling is

not when called upon by the Customs officer to make a statement or to produce a document or thing, a person accused of an offence within the meaning of Article 20(3) of the Constitution. The steps taken by the Customs officer are for the purpose of holding an enquiry under the Sea Customs Act and for adjudging confiscation of goods dutiable or prohibited and imposing penalties. The Customs officer does not at that stage accuse the person suspected of infringing the provisions of the Sea Customs Act with the commission of any offence. His primary duty is to prevent smuggling and to recover duties of customs when collecting evidence in respect of smuggling against a person suspected of infringing the provisions of the Sea Customs Act he is not accusing the person of any offence punishable at a trial before a magistrate".

In view of the above passage, it was held in paras 6 and 9 as follows:

**6**. From an analysis of this clause, it is apparent that in order to claim the benefit of the guarantee against testimonial compulsion embodied in this clause, it must be shown, firstly, that the person who made the statement was "accused of any offence" secondly, that he made this statement under compulsion. The phrase "accused of any offence" has been the subject of several decisions of this Court so that by now it is well settled that only a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in his prosecution, would fall within its ambit.

**9**. The above-quoted observations are a complete answer to the contention of the appellant. In the light of these principles, it is clear that when the statement of the appellant was recorded by the Customs officer under Section 108, the appellant was not a person "accused of any offence" under the Customs Act, 1962. An accusation which would stamp him with the character of such a person was, levelled only when the complaint was filed against him, by the Assistant Collector of Customs complaining of the commission of offences under Section 135 (a) and Section 135 (b) of the Customs Act. ?

Learned Additional Solicitor General contends, therefore, that since Section 108 of the Customs Act is similar to Section 50(2) of PMLA, it cannot be said that the petitioners are accused merely because investigating is taken up against them and they are only suspects of an offence under Section 3 of PMLA.

21. Another decision of the Supreme Court in **POOLPANDI v. SUPERINTENDENT, CENTRAL EXCISE** (1992) 3 SCC 259) is relied upon where Sections 107 and 108 of the Customs Act were considered.

Para 6 of the decision, being relevant, is extracted hereunder:

**6**. Clause (3) of Article 20 declares that no person accused of any offence shall be compelled to be a witness against himself. It does not refer to the hypothetical person who may in the future be discovered to have been guilty of some offence.

In Ramesh Chandra Mehta case, the appellant was searched at the Calcutta Airport and diamonds and jewelleries of substantial value were found on his person as also currency notes in a suitcase with him, and in pursuance to a statement made by him more pearls and jewellery were recovered from different places. He was charged with offences under the Sea Customs Act. During the trial, reliance was placed on his confessional statements made before the Customs Authorities, which was objected to on the ground that the same were inadmissible in evidence inter alia in view of the provisions of Article 20(3). While rejecting the objection, the Supreme Court held that in order that the guarantee against testimonial compulsion incorporated in Article 20(3) may be claimed by a person, it has to be established that when he made the statement in question, he was a person accused of an offence. Pointing out to the similar provisions of the Sea Customs Act as in the present Act and referring to the power of a Customs Officer, in an inquiry in connection with the smuggling of goods, to summon any person whose attendance he considers necessary to give evidence or to produce a particular document, the Supreme Court observed thus:

"The expression "any person" includes a person who is suspected or believed to be concerned in the smuggling of goods. But a person arrested by a Customs Officer because he is found in possession of

smuggled goods or on suspicion that he is concerned in smuggling is not when called upon by the Customs Officer to make a statement or to produce a document or thing, a person accused of an offence within the meaning of Article 20(3) of the Constitution. The steps taken by the Customs Officer are for the purpose of holding an enquiry under the Sea Customs Act and for adjudging confiscation of goods dutiable or prohibited and imposing penalties.

The Customs Officer does not at that stage accuse the person suspected or infringing the provisions of the Sea Customs Act with the commission of any office. His primary duty is to prevent smuggling and to recover duties of customs when collecting evidence in respect of smuggling against a person suspected of infringing the provisions of the Sea Customs Act, he is not accusing the person of any offence punishable at a trial before a Magistrate."

The above conclusion was reached after consideration of several relevant decisions and deep deliberation on the issue, and cannot be ignored on the strength of certain observations in the judgment by three learned Judges in Nandini Satpathy case which is, as will be pointed out hereinafter, clearly distinguishable. ?

22. Another decision of the Supreme Court in **RAMANLAL BHOGILAL SHAH v. D.K. GUHA** (1973) 1 SCC 696) is also relied upon by the learned Additional Solicitor General and particularly, para 24 thereof, which discusses the meaning of accused under the Foreign Exchange (Regulations) Act, 1947 vis- -vis Article 20(3) of the Constitution of India. Para 24 is extracted hereunder:

**24**. Although we held that the petitioner is a person accused of an offence within the meaning of Article 20(3), the only protection that Article 20(3) gives to him is that he cannot be compelled to be a witness against himself. But this does not mean that he need not give information regarding matters which do not tend to incriminate him. This Court observed in State of Bombay v. Kathi Kalu Oghad [AIR 1961 SC 1808] as follows:

"In order that a testimony by an accused person may be said to have been self- incriminatory the compulsion of which comes within the, prohibition of the constitutional provision, it must be of such a character that by itself it should have the tendency of incriminating the accused, if not also of actually doing so. In. other words, it should be a statement which makes the case against the accused person at least probable, considered by itself."

23. Learned Additional Solicitor General relied upon Section 177 of IPC under which also the petitioners are bound to disclose information within his knowledge read with Section 27 of the Indian Evidence Act. Learned Additional Solicitor General also referred to **KATHI KALU OGHAD'S** case (7 supra) by inviting the attention of the Court to paras 34 and 35, which are extracted hereunder:

**34**. This view, it may be pointed out, does not in any way militate against the policy underlying the rule against "testimonial compulsion" we have already discussed above. There is little risk, if at all, in the investigator or the prosecutor being induced to lethargy or inaction because he can get such handwriting or impressions from an accused person. For, by themselves they are of little or of no assistance to bring home the guilt of an accused. Nor is there any chance of the accused to mislead the investigator into wrong channels by furnishing false evidence. For, it is beyond his power to alter the ridges or other characteristics of his hand, palm or finger or to alter the characteristics of his handwriting.

**35**. We agree therefore with the conclusion reached by the majority of the Bench that there is no infringement of Art. 20(3) of the Constitution by compelling an accused person to give his specimen handwriting or signature; or impressions of his fingers, palm or foot to the investigating officer or under orders of a court for the purpose of comparison under the provisions of S.73 of the Indian Evidence Act; though we have not been able to agree with the view of our learned brethren that to be a witness" in Art.20(3) should be 'equated with the imparting of personal knowledge or that an accused does not become a witness when he produces some document not in his own hand- writing even though it may tend to prove facts in issue or relevant facts against him. ?

24. Learned Additional Solicitor General submitted that mere issue of summons does not give raise to any cause of action and the power of judicial review of this Court does not deserve to be exercised at this stage. Learned Additional Solicitor General placed reliance upon a decision of the Supreme Court in **UNION OF INDIA v. PADAM NARAIN AGGARWAL** (2008) 13 SCC 305) which also dealt with Section 108 of the Customs Act. In the said decision, the Supreme Court followed the ratio of the decision in **RAMESH CHANDRA MEHTA v. STATE OF W.B.** [AIR 1970 SC 940] and **CCE v. DUNCAN AGRO INDUSTRIES LTD.** [(2007) 7 SCC 53] and the relevant paras 40, 41 and 46 are extracted hereunder:

**40**. As held by Constitution Bench of this Court in Ramesh Chandra Mehta v. State of W.B, a person called upon to make a statement before the Custom Authorities cannot be said to be an accused of an offence. It is, therefore, clear that if a person is called upon to make a statement under Section 108 of the Act and summon is issued for the said purpose, he is bound to comply with such direction. This view has been reiterated in several cases thereafter.

**41**. In CCE v. Duncan Agro Industries Ltd., this Court stated:

11. Section 108 of the Customs Act does not contemplate any magisterial intervention. The power under the said section is intended to be exercised by a gazetted officer of the Customs Department. Sub-section (3) enjoins on the person summoned by the officer to state the truth upon any subject respecting which he is examined. He is not excused from speaking the truth on the premise that such statement could be used against him. The said requirement is included in the provision for the purpose of enabling the gazette officer to elicit the truth from the person interrogated. There is no involvement of the magistrate at that stage. The entire idea behind the provision is that the gazetted officer questioning the person must gather all the truth concerning the episode. If the statement so extracted is untrue its utility for the officer gets lost". It is thus clear that statements recorded under Section 108 of the Act are distinct and different from statements recorded by Police Officers during the course of investigation under the Code.

**46**. For the foregoing reasons, the appeal filed by the Union of India is partly allowed and the directions issued and conditions imposed by the High Court on the Custom Authorities are hereby set aside.

25. Learned Additional Solicitor General also relied upon a decision of the Madras High Court in **G. RADHAKRISHNAN v. THE ASSISTANT DIRECTOR, DIRECTOR OF ENFORCEMENT** (2014 SCC Online Mad 3980).

26. The decision of this Court in **KOLAKALAPUDI BRAHMA REDDY v. UNION OF INDIA** (2014 (5) ALT 369)is also relied upon is relied upon wherein similar summons under PMLA was questioned and it was held in para 12 as under:

**12**. Furthermore, in this case, it is not a case of attachment of the property. Section 50(2) of the Act, vests power in the competent authority to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under the Act. ?

It is, however, to be noted that the contentions as raised in these writ petitions were not raised therein.

27. The decision of the Madras High Court in **M. SHOBANA v. THE ASSISTANT DIRECTOR, DIRECTORATE OF ENFORCEMENT** (CDJ 2013 MHC 4134) is also relied upon wherein seeking quashing of the summons issued by the Enforcement Directorate, being the subject matter of the writ petition, it was held in paras 59 and 60 as follows:

**59**. To put it succinctly, the initiation of proceedings like issuance of summons etc. in Prevention of Money-Laundering Act are self-contained, in-built and independent procedure mainly to prevent the act of money-laundering and connected activities. Furthermore, the Respondent has issued only summons dated 10.04.2013 to the Petitioners and the issuance of summons cannot be categorized as an act of prosecuting

the Petitioners twice. As such, the plea of double jeopardytaken on behalf of the Petitioners is not acceded to by this court.

**60**. In the light of foregoing discussions and on appreciation of the entire gamut of the facts and circumstances relating to the subject matters in issue, this Court comes to an inevitable conclusion that the present Writ Petitions filed by the Writ Petitioners are not maintainable because of the simple reason that through the summons dated 10.04.2013 they were directed to appear before the Respondent/Assistant Director, Directorate of Enforcement, Chennai with records mentioned therein for the purpose of enquiry/investigation under the Prevention of Money-Laundering Act to ascertain the proceeds of crime, in the considered opinion of this Court.

The proceedings under the Prevention of Money-Laundering Act are deemed to be judicial proceedings within the meaning of Section 193 and under Section 228 of the Indian Penal Code. However, the charge sheet filed by the Police in C.C.No.88 of 2011 relates to investigation for predicate offences under Sections 419, 420 read with Section 34 I.P.C. for criminal offences. However, since the charged offences under Sections 419 and 420 I.P.C. are the Scheduled Offences under clause I of sub-section (y) of 2 of the Prevention of Money-Laundering Act 2002, the Respondent registered an Enforcement Case Information Report (ECIR) bearing No.CEZO/2/2013 dated 25.03.2013 to carry out investigation under the Prevention of Money-Laundering Act against the Petitioners. Moreover, the summons issued to the Petitioners is a preliminary one relating to the investigation under the Prevention of Money-Laundering Act by the authority concerned. The fact of the matter is that the Adjudicating Authority/machinery under the Prevention of Money-Laundering Act is designated to adjudge the breach of any statutory obligation and it is not a Court of Law or a Judicial Tribunal, in the considered opinion of this Court. Moreover, the Adjudicating Authority under the Prevention of Money-Laundering Act is not trying a criminal case. But only decides the effect of breach of obligations by the concerned. ?

28. In reply, Mr. S. Niranjan Reddy, learned counsel for the petitioners, relied upon the counter affidavit of the respondents in paras 8, 9, 11 and 17 to contend that, even according to the respondents, petitioners are accused under PMLA. Learned counsel relied upon a decision of the Supreme Court in **MARK NETTO v. STATE OF KERALA** (1979) 1 SCC 23) to contend that the provisions of Section 50 of PMLA deserves to be read down in the facts and circumstances of the case so as to restrict its operation and exclude the accused person. Reliance is also placed on another decision of the Supreme Court in **M. RATHINASWAMI v. STATE OF TAMIL NADU** (2009) 5 SCC 625) for the proposition that in order to save a statutory provision from the views of unconstitutionality, sometimes restricted or extended interpretation of the statute has to be given and the Court would prefer the former. Learned counsel reiterated that the provisions of Sections, 91, 161(2), 313(3) and 315(16) of Cr.P.C are, therefore, couched in a language, which is in conformity with the protection under Article 20(3) of the Constitution of India and submits that Section 50 of PMLA also deserves to be given a restrictive meaning by reading down the provision. Learned counsel submits that registration of ECIR is equivalent to an FIR under Cr.P.C and supports the prayers in the writ petitions.

**WP.No.36838 of 2014:**

29. In the light of the detailed submissions of the learned senior counsel on either side, the point for consideration is:

Whether the summons issued to the second petitioner under Section 50 (2) and (3) of PMLA is violative of the Constitutional protection and guarantee under Article 20(3) of the Constitution of India.

**POINT:**

30. Section 50 of PMLA may be noticed at this stage under:

**50. Powers of authorities regarding summons, production of documents and to give evidence, etc.** ”

(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely: ”

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a [reporting entity], and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not ”

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director. ?

31. The purport of Section 50 of PMLA and its reach can be appropriately appreciated by examining Section 108 of the Customs Act and Section 117 of the Sea Customs Act. It also cannot be lost sight of that fact that the validity of Section 50 of PMLA is not questioned in this writ petition.

32. In order to answer the above point, the provisions of Section 50(2) and (3) of PMLA, as extracted above, have to be understood in the context of objects and reasons for enacting PMLA and the legal position is required to be understood in the light of corresponding provisions in the analogous Acts.

33. The thrust of the submissions on behalf of the learned senior counsel for the petitioners is on the premise that the petitioners stand in the capacity of accused in the pending CBI case, as referred to above. Based on the selfsame case instituted by the CBU, the authorities under PMLA have registered an Enforcement Case Information Register (ECIR) where also the second petitioner figures at Sl.No.4 in Annexure C and at Sl.No.26 in Annexure B.

34. Learned senior counsel would, therefore, contend that in the counter affidavit filed by the first respondent in both the writ petitions, first petitioner is named in the ECIR filed before the Metropolitan Sessions Judge and second petitioner, being Managing Director of first petitioner, is also accused by virtue of Section 70 of PMLA. Reliance is placed upon the counter affidavit of the first respondent about the commission of offence

under Section 3 of PMLA by the petitioners and it is contended that the investigation in such case has to be conducted in terms of Section 65 of PMLA under Cr.P.C. Based on the above, further contention is raised that testimonial compulsion is impermissible not only under Cr.P.C but also under Article 20(3) of the Constitution of India. Elaborating further it is also contended that Section 50(2) of PMLA does not include an accused person.

35. Several decisions of the Supreme Court are relied upon in support of the contentions, as above, which are already referred to in detail in the foregoing paras. Reference is, however, made to the proposition as envisaged by the said decisions, as under:

(a) That the protection under Article 20(3) of the Constitution of India is available at the stage of investigation viz. **M.P. SHARMA's** case (6 supra) (para 11); **KATHI KALU OGHAD's** case (7 supra) (para 22) and **SELVI's** case (8 supra) (para 109).

(b) The aforesaid protection applies to oral testimony as well as statement in writing and production of documents viz. **SHYAMLAL MOHANLAL CHOKSI's case** (1 supra) (paras 31 and 36).

36. It is also contended that Section 50 (2) of PMLA would not apply to and include accused persons on the basis of decision in **SHYAMLAL MOHANLAL CHOKSI's case** (1 supra) and that principle was reiterated in various decisions of the Supreme Court, which are referred to above. It is also contended that in response to any such summons under Section 50 of PMLA, petitioners have a right to maintain silence under Article 20(3) of the Constitution of India and not obliged to answer the questions or give information or documents. Strong reliance is placed upon various paras in the decision of the Supreme Court in **SELVI's** case (8 supra) and it is contended that right against self-incrimination is protected by the Constitution of India and the said principle is interpreted and elaborated by the Supreme Court in various decisions, referred to above, including **NANDINI SATPATHY v. P.L. DANI** (1978) 2 SCC 424).

37. Learned Additional Solicitor General, on the other hand, contended that petitioners are not accused at this stage and merely suspects. It is specifically contended that only when the Enforcement Directorate files a complaint under Section 3 of PMLA read with Section 200 Cr.P.C, the petitioners can be termed as accused so far as PMLA is concerned. It is contended that investigation, adjudication and criminal prosecution are separate stages and at present, the proceedings are only at the stage of investigation. The filing of charge sheet by the CBI before the Special Court is, therefore, different from the investigation under PMLA. A specific stand has been taken by the respondents in para 4.6 of the counter, which is appropriate to be noticed, as under:

**4.6** The scope of investigation which the respondent herein restricts itself is to probe into the aspect of proceeds of crime and the subsequent money laundering only. There is a clear distinction with respect to the scheduled offences and the offence under the money laundering. The investigation under the predicate offences is taken by the principal investigation agency which registered the case against any of the offenders. The role of the respondent is to investigate the aspect of proceeds of crime derived from the commission of scheduled offences and the subsequent money laundering and not to investigate the predicate offences. ?

38. In that context, learned Additional Solicitor General submits that the summons is issued to any person whose attendance is considered necessary to give evidence or produce any records during the course of investigation or proceedings under PMLA. Learned Additional Solicitor General would place strong reliance upon Section 108 of the Customs Act and decisions of the Supreme Court with reference thereto are as follows:

**VEERA IBRAHIM's** case (11 supra)**; POOLPANDI's** case (12 supra)**; RAMANLAL BHOGILAL SHAH's** case (13 supra) and **RAMESH CHANDRA MEHTA v. STATE OF WEST BENGAL** (AIR 1970 SC 940).

It is contended that the aforesaid provision is similar to Section 50(2) of PMLA and it cannot be held, at this

stage, that petitioners are accused under PMLA.

39. Undoubtedly, the protection under Cr.P.C as well as under Article 20(3) of the Constitution of India against testimonial compulsion is now well settled by several decisions of the Supreme Court, which are already referred to above and the law declared thereunder, undoubtedly, would assist the petitioners, if it is shown that petitioners are accused under PMLA. 40. The counter affidavit of the first respondent states in para 8 that CBI has filed a charge sheet with the name of the petitioners as accused in the predicate offences whereas ECIR No.09/HZO/2011 dated 30.08.2011 has been registered by the Directorate of Enforcement, as the respondents had reasons to believe that an offence of money-laundering has been committed.

41. A copy of the ECIR is also appended to WP.No.36838 of 2014 as Ex.P2, which may now be noticed. ECIR shows that it is registered with the Directorate of Enforcement, Hyderabad Zonal Office, which is signed by the Assistant Director III and counter signed by the Deputy Director. Annexure A givens brief facts, which refers to the case registered by CBI and the FIR filed by CBI, which contains details of the beneficiary, investors, investments made and benefits received from the Government under annexures. It, further, states that the aforesaid mentioned information/material, prima facie, discloses commission of an offence of money-laundering under Section 3 of PMLA punishable under Section 4 of PMLA, hence, ECIR. Annexure B and C under which the name of the petitioners appear, as noted above, thus, actually appears to be annexure to the charge sheet filed by CBI.

42. It would be noticed from the above that the ECIR is not filed before any jurisdictional Magistrate and is only an information report with the Directorate of Enforcement. The stage of filing of complaint for prosecution under PMLA is envisaged under Section 44(1)(b) of PMLA. Admittedly, that stage has not yet reached. Thus, though the charge sheet filed by the CBI is to the extent of predicate offences, so far as offence under Section 3 of PMLA is concerned, the matter is clearly at the investigation stage. Investigation is defined under Section 2(na) of PMLA, which is as follows:

**2 (na)** investigation includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence. ?

Proceeds of crime are defined under Section 2(u) and person is defined under Section 2(s) of PMLA, which is an inclusive definition.

**2(u)** proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;

**2(s)** person includes; ”

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses; ?

43. At this stage, therefore, investigation is only for the purpose of collecting evidence with regard to proceeds of crime in the hands of the persons suspected and their involvement, if any, in the offence under

Section 3 of PMLA. I am, therefore, unable to equate ECIR registered by the first respondent to an FIR under Section 154 Cr.P.C and consequently, I agree with the learned Additional Solicitor General that under PMLA the petitioners are not accused at present. Consequently, therefore, the submission on behalf of the petitioners on the assumption that petitioners are accused under PMLA is liable to be rejected.

Point is accordingly answered in the negative.

44. The Supreme Court had an occasion to interpret Section 108 of the Customs Act, which is in parameteria with Section 171-A of the Sea Customs Act. Hence, at this stage, it is relevant to notice the decision of the Supreme Court in **ASSTT. CCE v. DUNCAN AGRO INDUSTRIES LTD.** (2000) 7 SCC 53). Paras 9, 11 and 13 are relevant for our purpose, which are extracted hereunder:

**9**. It must be remembered that Section 171A of the Sea Customs Act, 1878 (which enactment has been repealed by the Sea Customs Act) corresponds to Section 108 of the Customs Act. In this context we may point out that Section 14 of the Central Excise Act is practically the same as Section 108 of the Customs Act. So the decision rendered by this Court under the other corresponding provisions will be of much advantage to discern how the scope of the provisions has been understood by this Court earlier.

**11**. Section 108 of the Customs Act does not contemplate any magisterial intervention. The power under the said Section is intended to be exercised by a gazetted officer of the Customs Department. Sub-section (3) enjoins on the person summoned by the officer to state the truth upon any subject respecting which he is examined. He is not excused from speaking the truth on the premise that such statement could be used against him. The said requirement is included in the provision for the purpose of enabling the gazette officer to elicit the truth from the person interrogated. There is no involvement of the magistrate at that stage. The entire idea behind the provision is that the gazetted officer questioning the person must gather all the truth concerning the episode. If the statement so extracted is untrue its utility for the officer gets lost.

**13**. As early as in 1968 this Court had considered the scope of the statement made under Section 171-A of the Sea Customs Act in Haroon Haji Abdulla vs. State of Maharashtra [AIR 1968 SC 832 = 1968 (2) SCR 641]. Hidayatullah, J. (as he then was) made the following observations:

These statements are not confessions recorded by a Magistrate under Section 164 of the Code of Criminal Procedure but are statements made in answer to a notice under sec.171-A of the Sea Customs Act. As they are not made subject to the safeguards under which confessions are recorded by Magistrates they must be specially scrutinised to finding out if they were made under threat or promise from some one in authority. If after such scrutiny they are considered to be voluntary, they may be received against the maker and in the same way as confessions are received, also against a co-accused jointly tried with him. ?

45. We may also notice the decision of the Supreme Court in **RAMESH CHANDRA MEHTA's** case (21 supra) and para 14 thereof, being relevant, is extracted hereunder:

**14**. In the two earlier cases M.P. Sharma case and Raja Narayanlal Bansilal case this Court in describing a person accused used the expression "against whom a formal accusation had been made", and in Kathi Kalu Oghad case this Court used the expression "the person accused must have stood in the character of an accused person".

Counsel for Mehta urged that the earlier authorities were superseded in Kathi Kalu Oghad case and it was ruled that a statement made by a person standing in the character of a person accused of an offence is inadmissible by virtue of Article 20(3) of the Constitution. But the Court in Kathi Kalu Oghad case has not set out a different test for determining the stage when a person may be said to be accused of an offence. In Kathi Kalu Oghad case the Court merely set out the principles in the light of the effect of a formal accusation on a person viz. that he stands in the character of an accused person at the time when he makes the statement. Normally a person stands in the character of an accused when a first information report is lodged against him

in respect of an offence before an Officer competent to investigate it, or when a complaint is made relating to the commission of an offence before a Magistrate competent to try or send to another Magistrate for trial the offence, where a Customs Officer arrests a person and informs that person of the grounds of his arrest, (which he is bound to do under Article 22(1) of the Constitution) for the purpose of holding an enquiry into the infringement of the provisions of the Sea Customs Act which he has reason to believe has taken place, there is no formal accusation of an offence. In the case of an offence by infringement of the Sea Customs Act and punishable at the trial before a Magistrate there is an accusation when a complaint is lodged by an officer competent in that behalf before the Magistrate. ?

46. The later decision of the Supreme Court in **PADAM NARAIN AGGARWAL's** case (14 supra) also considered Section 108 of the Customs Act comparing with the provisions of Cr.P.C and held in paras 39, 40 and 41 that a person called upon to make statement before the customs authority cannot be an accused of a offence. Reference may also be made to the decision in **VEERA IBRAHIM's** case (11 supra).

47. From the above decisions, it would be clear that when an ECIR is lodged with the Directorate of Enforcement there is no Magisterial intervention unlike an FIR and mere registration of ECIR against the suspects of offence under Section 3 of PMLA cannot go to mean that such persons are accused under Section 3 of PMLA. Consequently, therefore, the protection against testimonial compulsion as under Cr.P.C as well as under Article 20(3) of the Constitution of India, in my view, would not be available, as claimed by the petitioners.

48. Learned senior counsel for the petitioners would, however, submits that keeping in view the Constitutional guarantee under Article 20(3) of the Constitution of India, the provisions of Section 50 of PMLA are required to be read down so as to ensure that petitioners are not prejudiced in the CBI case as well as under PMLA. Reliance is placed upon **M. RATHINASWAMI'S** case (19 supra) and particularly paras 27 and 28 and also on a decision of the Supreme Court in **SHYAMLAL MOHANLAL CHOKSI's** case (1 supra).

49. In view of the point already answered that petitioners are not accused under PMLA, in my view, the reading down of Section 50 of PMLA, even if permissible, would not arise on the facts and circumstances of the case. Point No.3 is accordingly answered.

Consequently the writ petition fails and is accordingly dismissed.

**WP.No.31143 of 2015:**

50. This writ petition was also filed by the petitioners questioning the further action taken by the respondents against the petitioners under Section 63(4) of PMLA, which is punitive.

51. Petitioners contend that they received summons from the respondents commencing from 20.10.2014, which was duly replied by the petitioners through their counsel. However, without responding thereto, again summons was issued on 03.11.2014, once again petitioners replied thereto, but without reference to the reply again summons was issued on 19.11.2014. Thereupon, WP.No.36838 of 2014 was filed and at the time of admission, this Court directed the respondents to defer the proposed examination of the second petitioner. While the said writ petition was heard in part and was pending, the respondents are stated to have issued another summons on 09.02.2015 contrary to the direction of this Court and a further summons dated 11.06.2015, which was also replied to. However, the respondents initiated further proceedings under Section 63(4) of PMLA, which is questioned in this writ petition.

52. Respondents filed a separate counter denying that there was any direction of this Court to defer issuance of summons eternally. They also defended their action in issuing summons more than once on the ground that the second petitioner was not cooperating and ultimately, had to initiate further proceedings under Section 63(4) of PMLA.

53. The issue involved in this writ petition fully depends upon the result in WP.No.36838 of 2014, which is

already considered and dismissed, as above.

In view of that, this writ petition also does not survive and is accordingly dismissed.

In the result, the writ petitions are dismissed. As a sequel, miscellaneous applications, if any, pending shall stand closed.

There shall be no order as to costs.