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BINOD KUMAR

v.

STATE OF JHARKHAND AND ORS.
(Civil Appeal No. 2689 of 2011)

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MARCH 29, 2011

[DALVEER BHANDARI AND DEEPAK VERMA, JJ.]

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Prevention of Corruption Act, 1988: ss.7, 10, 11, 13(2) r.w. s.13(1)(e); Penal Code, 1860 – ss.409, 420, 423, 424, 465 and 120-B – Multi-crore scam – Corruption in the matter of grant of iron ore mining lease – Various former minister including a former Chief Minister of the State involved – Allegation against the appellant also – Investment alleged to have been made in the property, shares etc. not only in India, but, also abroad – Basic investigation requiring determination as to whether the money was acquired by an abuse of the official position amounting to any offence under the 1988 Act and under IPC, the persons by whom this was done, the amount which was so earned and places where it was invested – No clear allegations as regards money laundering – High Court held that there was an area of overlap and the same cannot be allowed to form a tool in the hands of the accused to scuttle the investigation – Looking to the gravity and magnitude of the matter, High Court referred the matter to the Central Bureau of Investigation (CBI) and also observed that the Central Government should exercise the powers u/s.45(1A) of the PMP Act for transferring investigation from the Enforcement Directorate (ED) to the CBI and if such an order is not passed by the Central Government, any material found by the CBI during investigation, which would lead to an inference of money laundering within the PML Act would be shared by the CBI with the ED from time to time to enable the ED to take such action as may be necessary – On appeal, held: It was categorically stated that the CBI was investigating

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into the commission of offences under IPC and Prevention of Corruption Act alone and was not investigating any offence under the PML Act as the investigation under the PML Act was solely and exclusively within the jurisdiction and domain of the ED , which was of course subject to the exercise of powers by the Central Government u/s.45(1-A) – There is no provision restricting the investigation of offence other than that of money laundering by any appropriate investigating agency – On consideration of the totality of the facts and circumstances, no interference with the orders of the High Court called for – Prevention of Money Laundering Act, 2002 – s.45 (1A).

In the writ petition filed before the High Court, the basic allegation was amassing of illicit wealth by various former ministers, including a former Chief Minister of the State. The allegation was against the appellant also. The money alleged to have been so earned was of unprecedented amounts which were allegedly invested in property, shares etc. not only in India but also abroad. The basic investigation required determining whether money had been acquired by an abuse of the official position amounting to an offence under the Prevention of Corruption Act and under the Indian Penal Code, the persons by whom this had been done, the amount which had been so earned and places where it had been invested. The High Court in the impugned judgment held that it was neither possible nor desirable to give a positive finding about how much of the crime proceeds were projected as untainted and therefore, there was an area of overlap and same was not allowed to form a tool in the hands of the accused to scuttle the investigation. The High Court referred the matter to the CBI. The High Court also observed that the Central Government should exercise the powers under Section 45(1A) of the Prevention of Money Laundering Act, 2002 (PML Act) for

A transferring the investigation from the Enforcement Directorate to CBI and if such an order is not passed by the Central Government, any material found by the CBI during investigation, which would lead to an inference of money laundering within the PML Act would be shared
B by the CBI with the Enforcement Directorate from time to time to enable the Enforcement Directorate to take such action as may be necessary. The instant appeal was filed challenging the orders of the High Court.

C Dismissing the appeal, the Court

HELD: The matter on the face of it required a systematic, scientific and analysed investigation by an expert investigating agency, like the Central Bureau of Investigation. It was incorporated in the affidavit of the
D State Government that 32 companies were required to be investigated and the money acquired by illegal means was invested in Bangkok, Dubai, Jakarta, Sweden and Libya. It was also mentioned that there were several companies in other countries in which there were huge
E investments by the accused or with the help of their accomplices in foreign countries. The list of countries and companies indicated prima facie that the amount involved could not be mere a few crores but would be nearer a few hundred crores. In the written submission,
F it was categorically stated that the CBI was investigating into the commission of these offences alone and presently was not investigating any offence under the Prevention of Money Laundering Act, 2002 (PML Act) as the investigation under PML Act is solely and exclusively
G within the jurisdiction and domain of the Enforcement Directorate which is subject to the exercise of powers by the Central Government under Section 45(1A) of the PML Act. On consideration of totality of facts and circumstances, no interference with the order of the High Court is called for. [Paras 6, 46 and 47] [650-F-H; 662-C-E]
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Maganbhai Ishwarhai Patel Etc. v. Union of India and Anr. (1970) 3 SCC 400; S. Jagannath v. Union of India an Ors. (1997) 2 SCC 87; Central Bureau of Investigation v. State of Rajasthan and Ors. (1996) 9 SCC 735; Enforcement Directorate and Anr. v. M. Samba Siva Rao and Ors. (2000) 5 SCC 431 – referred to. A
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Case Law Reference:

(1970) 3 SCC 400	referred to	Para 13	
(1997) 2 SCC 87	referred to	Para 13	C
(1996) 9 SCC 735	referred to	Para 17	
(2000) 5 SCC 431	referred to	Para 18	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2689 of 2011. D

From the Judgment & Order dated 04.08.2010 of the High Court Jharkhand at Ranchi in W.P. (PIL) No. 4700 of 2008.

K.K. Venugopal, R. Venkat Ramani, Gopal Shankar Narayanan, Alok Kumar, Santosh Kumar, Arvind Bansal, Anwesh Madhukar, Krishan Kumar, Pandey Neeraj Rai, Mushtaq Ahmad for the Appellant. E

H.P. Raval, ASG, Ranjana Narayan, P.K. Dey, A.K. Sharma, T.A. Khan, B. Krishna Prasad, B.V. Balram Das, Anil Kumar Jha, Santosh Kumar for the Respondents. F

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. Leave granted. G

2. This appeal is directed against the judgment and order dated 04.08.2010 passed in Writ Petition (PIL) No.4700 of 2008 by the High Court of Jharkhand at Ranchi.

3. In the impugned judgment, it is mentioned that the basic H

A allegation is amassing of illicit wealth by various former Ministers, including a former Chief Minister of the State. The money alleged to have been so earned is of unprecedented amounts. However, there is no clear allegation so far about its laundering in the sense mentioned above, but there is an
 B allegation of its investment in property, shares etc. not only in India but also abroad.

4. The basic investigation requires determining whether money has been acquired by an abuse of the official position amounting to an offence under the Prevention of Corruption Act and under the Indian Penal Code, the persons by whom this
 C has been done, the amount which has been so earned and places where it has been invested.

5. The amount is alleged to run into several hundred
 D crores. The investigations done so far allege that the amount unearthed so far in one case is about one and a half crore and in another case is about six and a half crores, which would appear to be merely the tip of the iceberg. The investments having been made not only in various States of the country
 E outside the State of Jharkhand, but also in other countries means that the investigation called for is not only multi-state but also multi-national.

6. The matter on the face of it requires a systematic, scientific and analysed investigation by an expert investigating
 F agency, like the Central Bureau of Investigation. It is incorporated in the affidavit that 32 companies have to be investigated and the money acquired by illegal means being invested in Bangkok (Thailand), Dubai (UAE), Jakarta (Indonesia), Sweden and Libya. It is also mentioned that there
 G are several companies in other countries in which there are huge investments by the accused or with the help of their accomplices in foreign countries. The list of countries and companies indicate prima facie that the amount involved could not be a mere few crores, but would be nearer a few hundred
 H crores.

7. The High Court in the impugned judgment has also mentioned that it is neither possible nor desirable at this stage to give a positive finding about how much of the crime proceeds have been 'projected as untainted'. Therefore, there is an area of overlap and the same cannot be allowed to form a tool in the hands of the accused to scuttle the investigation. Looking to the gravity and magnitude of the matter, after hearing learned counsel for the parties, the Division Bench of the High Court referred the matter to the Central Bureau of Investigation. The High Court also observed that the Central Government should exercise the powers under section 45(1A) of the Prevention of Money Laundering Act, 2002 (for short "the PML Act") for transferring investigation from the Enforcement Directorate to the CBI. If such an order is not passed by the Central Government, any material found by the CBI during investigation, which leads to an inference of money laundering within the PML Act will be shared by the CBI with the Enforcement Directorate from time to time, to enable the Enforcement Directorate to take such action, as may be necessary.

8. The appellant, aggrieved by the said judgment preferred this appeal before this court. Shri K.K. Venugopal, the learned senior counsel appearing on behalf of the appellant formulated following substantial questions of law concerning the impugned judgment and the interpretation of the PML Act.

- “1. Whether the PML Act is a self-occupied Code while the Act constituting the CBI is limited?
2. Whether, in light of Section 45(1A) read with Sections 43 and 44 of the PML Act, the CBI has any authority to investigate offences which are the sole domain of the Enforcement Directorate?
3. Whether the High Court was right in brushing aside all the allegations against the PIL and directing investigation by the CBI?”

A 9. According to the learned counsel for the appellant, the offence of money laundering, under section 4 of the PML Act may be investigated only by the Enforcement Directorate and tried only by the Special Court under the Act.

B 10. Mr. Venugopal submitted that the PML Act is a self-contained Code while the Act constituting the CBI is limited.

C 11. Mr. Venugopal further submitted that the PML Act was enacted pursuant to the Political Declaration adopted by the Special Session of the United Nations General Assembly on 8th to 10th June, 1998, which called upon member States to adopt national money-laundering legislation and programmes. (Preamble to the PML Act).

D 12. Learned counsel for the appellant submitted that the Delhi Special Police Establishment Act, 1946 ('DPSE Act') is limited to investigating offences in Delhi and the Union Territories.

E 13. Mr. Venugopal submitted that the PML Act was enacted pursuant to Article 253 of the Constitution and would prevail over any inconsistent State enactment. Reliance has been placed on *Maganbhai Ishwarbhai Patel Etc. v. Union of India and Another* (1970) 3 SCC 400 at para 81 and *S. Jagannath v. Union of India and Others* (1997) 2 SCC 87 at para 48. This is however not the case with the DSPE Act.

F 14. Learned counsel for the appellant also submitted that the PML Act is a special legislation enacted by Parliament and not only sets out the 'Offences' (Chapter II) but also the 'manner of investigation', attachment and adjudication (Chapter III), the power to summon, search, seizure and arrest (Chapter V), establishment of Tribunals (Chapter VI), Special Courts (Chapter VII), Authorities and their powers (Chapter VIII) and International arrangements (Chapter IX).

H 15. Mr. Venugopal contended that the Act establishes a

specialized agency which consists of Police Officials, Revenue Officials, Income Tax Officials and various specialized officials drawn from various departments. It also empowers the Enforcement Directorate under Section 54 to call on assistance of officials from: A

(a) Customs and Excise Department; B

(b) Under the NDPS Act;

(c) Income Tax'

(d) Stock Exchange; C

(e) RBI;

(f) Police;

(g) Under FEMA; D

(h) SEBI; or

(i) Any Body Corporate established under an Act or by the Central Government E

16. Learned counsel for the appellant also contended that the CBI is comprised only of the police officers and does not have the expertise or wherewithal to deal with the offences under the PML Act. In addition, as specifically defined in Section 55 (c) of the PML Act, the ED is empowered internationally to trace the proceeds of crime, with great freedom accorded to the ED when the nexus is established with a contracting state. The CBI does not possess such an advantage. F

17. Mr. Venugopal placed reliance on the judgment of this Court in *Central Bureau of Investigation v. State of Rajasthan & Others* (1996) 9 SCC 735 where the identical issue arose of the CBI seeking to investigate offences under the FERA, which was the sole domain of the ED, the Court held as follows: G

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- A (i) The officers of the ED are empowered to exercise the powers under the FERA as per Sections 3 & 4, and no other authority has been empowered except as the Central Government may empower from time to time.
- B (ii) FERA is a special and a central legislation enacted later in time than the DSPE Act, and Section 4(2) of the Cr.P.C. makes it clear that only in the absence of any provision in any other law relating to investigation will a member of the police force be authorized to investigate the offence.
- C (iii) The FERA Act is a complete code in itself.
- D (iv) As the allegations in the case related to FERA offences outside India, and the DSPE under Sections 1 and 2 are authorized only to investigate offences inside India, the DSPE member is "not clothed with the authority to investigate offences committed outside India".
- E 18. Learned counsel further submitted that in addition to the above, this court in *Enforcement Directorate and Another v. M. Samba Siva Rao and Others* (2000) 5 SCC 431 at para 5 reiterated that the provisions of the FERA constitute a complete code. The provisions of the PML Act are identical, and in some ways more wide-ranging.
- F 19. Learned counsel for the appellant further submitted that as the allegations in the complaint against the appellant relate to so-called national and trans-national offences, the only authority which is legally and factually equipped to investigate the offences is the Enforcement Directorate.
- G 20. Mr. Venugopal further submitted that in the light of section 45 (1A) read with sections 43 and 44 of the PML Act, the CBI has no authority to investigate the offences which are the sole domain of the Enforcement Directorate.
- H 21. Mr. Venugopal referred various sections of the PML

Act to demonstrate that only the Enforcement Directorate can A
investigate the matter. He also submitted that the conduct of
investigation by the CBI is therefore contrary to both the intent
of the Legislature as well as the Executive and further if the plea
of CBI is put to test it leads to absurdity. It is submitted that in
order to convict a person of an offence punishable under section B
4 of the PML Act, the Enforcement Directorate has to first rule
that the scheduled offence is committed which can be an
offence under the Indian Penal Code or the Prevention of
Corruption Act or Narcotics, Drugs, Psychotropic Substances
Act or any other offence given in any other Act in the schedule C
in the PML Act. Once this first part is proved then the
Enforcement Directorate has to prove how much money or what
property was derived from committing the scheduled offence
and lastly how was it being projected as untainted. The
appellant prayed that the investigation by the CBI of Vigilance D
FIR No.09/09 registered at Ranchi be set aside and the
appellant be released from illegal detention forthwith.

22. The written submissions have also been filed on behalf
of the CBI and the Directorate of Enforcement. It is mentioned
in the written submissions that the Vigilance P.S. Case No.09/ E
2009 dated 02.07.2009 is instituted inter alia alleging
commission of offence under sections 409, 420, 423, 424, 465,
120-B of IPC and Sections 7, 10, 11, 13(2) read with Section
13(1)(e) of the Prevention of Corruption Act, 1988. The said
complaint was registered on directions of the Special Judge, F
Vigilance, Ranchi, who exercised powers under Section 156(3)
of the Cr.P.C. It named Shri Madhu Koda, former Chief Minister,
Shri Kamlesh Singh, former Minister, Shri Bhanu Prasad Shah,
former Minister and Bandhu Tirky, former Minister of Jharkhand.

23. During the course of investigation into the said G
complaint by the Vigilance, P.S., State of Jharkhand,
involvement of the appellant Binod Kumar Sinha had surfaced.
The FIR also contains clear allegations against the appellant.
The Central Bureau of Investigation is investigating into the H

- A commission of these offences alone and is not investigating any offence under the PML Act, 2002 since the investigation under the said Act is solely and exclusively within the jurisdiction and domain of the Enforcement Directorate, which is of course subject to the exercise of powers by the Central Government under section 45 (1-A) of the said Act.

24. In the written submissions, comprehensive information about investigation has been submitted. It is also incorporated that the appellant, who was an absconder and evaded arrest, is not entitled to any relief in exercise of discretionary jurisdiction of this court under Article 136 of the Constitution of India. It is also prayed that this appeal which challenges the order transferring investigation of Vigilance P.S. No. 09/2009 to the CBI deserves to be dismissed.

25. It is also incorporated that the appellant is involved in a multi crore scam – corruption in the matter of grant of iron ore mine leases and other acts as more particularly set out. It is incorporated in the affidavit that a perusal of various provisions of the Act would show that the said Act does not empower the Enforcement Directorate to investigate offences under IPC or Prevention of Corruption Act, 1988 or any of the scheduled offences. It is the PML Act which authorizes the Enforcement Directorate only to investigate offences of money laundering as defined under Section 3 and punishable under Section 4 thereof. It also provides attachment, adjudication and confiscation of the property involved in money laundering and setting up of Special Courts.

26. Section 2(p) defines Money Laundering as under:

“money-laundering” has the meaning assigned to it in section 3”

27. Section 2(ra) defines offence of cross border implications and the same is reproduced hereunder:-

"offence of cross border implications", means--

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(i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person remits the proceeds of such conduct or part thereof to India; or

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(ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

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Explanation.-- Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-laundering (Amendment) Act, 2009.

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28. Section 2(u) defines proceeds of crime and the same is reproduced hereunder:

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(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;

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29. Section 2(x) defines Schedule and the same is reproduced hereunder :

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"Schedule" means the Schedule to this Act".

30. Section 2(y) defines Scheduled Offences and the same is reproduced hereunder :-

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- A (2y) "scheduled offence" means--
- (i) the offences specified under Part A of the Schedule; or
 - (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or
 - B (iii) the offences specified under Part C of the Schedule.

31. Sections 3 and 4 are reproduced hereunder:-

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

- E **"4. Punishment for money-laundering.—** Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees:

- F Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."

- G 32. Mr. H.P. Raval, learned Additional Solicitor General appearing for the C.B.I. submitted that a bare perusal of the above provisions makes it clear that the offence of money laundering is a stand alone offence within the meaning of the said Act and its investigation alone is in the exclusive domain
- H of the Enforcement Directorate.

33. He also submitted that the provisions of the said Act do not contemplate the investigation of any of the Indian Penal Code, Prevention of Corruption Act or any of the scheduled offences by the Enforcement Directorate. A

34. Mr. Raval contended that having regard to the terminology of section 3, any process or activity connected with the proceeds of the crime and projecting it as untainted property is the offence of money laundering which is made punishable under section 4. B

35. Mr. Raval submitted that section 5 (1) of the said Act provides that the Director or Authorised Officer has reason to believe, to record in writing on the basis of material in his possession that any person is in possession of any proceeds of crime, that such person has been charged of having committed the scheduled offence and such proceeds of crime are likely to be concealed, transfer or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under Chapter III of the said Act, then by an order in writing such property may be provisionally attached for a period not exceeding 150 days. C
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36. According to Mr. Raval, a bare reading of the said provision makes it clear that the jurisdiction to initiate action of attachment has to be founded on a reasonable belief of a person being in possession of any proceeds of the crime and not on a concluded investigation of the person being in possession of the proceeds of the crime. The distinction is clear and it follows from Section 5(1)(b) that the second condition for initiation of action of attachment of property involved in money laundering is that such person in respect of whom there is reason to believe that he is in possession of any proceeds of the crime, has been charged of having committed a scheduled offence. F
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37. Mr. Raval contended that if the contentions of the appellant were true, then the sections of the said Act would have H

A been differently worded. He also submitted that the contention of the appellant on the basis of provisions of sections 43 to 45 that any of the scheduled offences can only be investigated exclusively by the Enforcement Directorate is not justified and tenable at law.

B 38. Mr. Raval submitted that the embargo from taking cognizance by the Special Court of any offence as provided in the second proviso of sub section (1) of section 45 is only with respect to an offence punishable under section 4. It is only in respect of an offence punishable under section 4 of the
C Prevention of Money Laundering Act that cognizance is barred to be taken by the Special Court except on a complaint in writing as provided in sub clause (1) and (2) thereof.

D 39. He also submitted that this provision cannot be construed to mean that the Enforcement Directorate has the exclusive jurisdiction to investigate any of the scheduled offences.

E 40. Mr. Raval contended that the contention of the appellant that merely because under section 44 of the PML Act, the Special Court constituted in the area in which the offence has been committed, has been authorized statutorily to try the scheduled offence and the offence punishable under section 4 is equally unsustainable in law since nothing in the said
F provision of section 44 of the said Act envisages the exclusive investigation of the scheduled offences by the Enforcement Directorate. Mr. Raval submitted that the trial of the scheduled offence is distinct and different from investigation under the PML Act.

G 41. The above contention of the respondent is buttressed having regard to provisions contained in Section 43(2) which provides that while trying an offence under the Prevention of Money Laundering Act (which means the offence of Money Laundering alone) the Special Court shall also try an offence
H other than referred to sub section (1) of section 43 with which

the accused under the Code of Criminal Procedure be charged at the same trial. A

42. He contended that the scheme of the Act would, therefore, not construe the submission of the appellant that in case of there being an allegation of offence of money laundering, the scheduled offence also has to be exclusively investigated by the Enforcement Directorate. Such a contention is not supported by the provisions of the Act since there is no provision restricting the investigation of offence other than that of money laundering by any appropriate investigating agency. B C

43. Mr. Raval submitted that the money alleged to have been so earned is of unprecedented amounts. It is further recorded that, however, there is no clear allegation so far about its laundering in the sense mentioned in the PML Act. It is further observed that there is an allegation of his investment in the property, shares etc. not only in India, but, also abroad. Having so observed it is recorded that therefore the basic investigation requires determining whether money has been acquired by abuse of official position amounting to an offence under the Prevention of Corruption Act and under the Indian Penal Code and persons by whom the same has been done the amount of money which has been so earned and the places where it has been invested. D E

44. According to the learned counsel for the respondents, the High Court in the impugned order has recorded cogent reasons for directing the investigation by the Central Bureau of Investigation. Even this court while issuing notice vide order dated 01.09.2010 has directed the CBI to continue to investigate as directed by the High Court. Under the circumstances, the appellant is not entitled to any relief as contended. F G

45. Mr. Raval informed the Court that the charge sheet in fact has been filed on 12.11.2010 before the Court of Competent Jurisdiction alleging inter alia commission of H

A offence under section 120-B IPC, Section 9, Section 13 (2)
read with section 13(1) (d) of the Prevention of Corruption Act,
1988 against various accused including the appellant Shri
Binod Kumar Sinha. It is further submitted that the investigation
is still on and subsequent charge sheets may be filed as and
B when during investigation sufficient material surfaces on other
aspects.

46. In written submission it is categorically stated that the
Central Bureau of Investigation is investigating into the
commission of these offences alone and presently is not
C investigating any offence under the PML Act as the investigation
under the PML Act is solely and exclusively within the
jurisdiction and domain of the Enforcement Directorate, which
is of course subject to the exercise of powers by the Central
Government under Section 45 (1-A) of the said Act.

D 47. We have heard the learned counsel for the parties at
length and perused the written submissions filed by them. On
consideration of the totality of the facts and circumstances, we
are clearly of the view that no interference is called for.

E 48. The appeal being devoid of any merit is accordingly
dismissed.

49. In the facts and circumstances of the case, we direct
the parties to bear their own costs.

F D.G.

Appeal dismissed.