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Generalibus Specilia Derogant in the Light of S.17 of PMLA, 2002 and S. 102 Of Cr.PC, 1973

ABHINAV SHARMA¹

ABSTRACT

Inconsistency, ambiguity or conflict between provisions of different statute creates an arena of confusion and opens the door for judicial interpretation on overlapping provisions. Sententia legis or logical interpretation calls for the comparison of the statute with other statutes and with the whole system of law in addition to the consideration of the terms and circumstances in which the statute was passed. In contemplation of the above-mentioned maxim, the intention of legislature acts as a benchmark for clarifying the inconsistency and differentiating between two statutes as a special statute/local statute and general statute. Firstly, the intention of legislature is reflected in its object which is based on historical facts and the need of immediate remedy; secondly, on the language used in its clauses. In the instant research, PMLA, 2002 is a statute which has a commonality of subject-matter with Cr.PC, 1973 and authorities under the act have been arbitrarily using the provisions of Cr.PC in the cases related to money-laundering. Thereof, I would like to analyse certain provisions of both the statutes with various principles of interpretation of statutes in the light of judicial pronouncements as to conclude whether PMLA prevails over Cr.PC or not.

Keywords: *Sententia Legis; Special statute; General statute; PMLA, 2002; Cr.PC, 1973*

I. INTRODUCTION

“It is always necessary in construing a statute and in dealing with the words you find in it to consider the object with which the statute was passed, it enables one to understand the meaning of the words introduced into the enactment.”²

A legislation is enacted with a definite object in the mind of the legislature. In other words, *Index Animi sermo (intent of legislature)*, a recognized principle of interpretation of statutes is that expressions used therein should ordinarily be understood in a sense in which they best

¹ Student of Amity Law School, Amity University Chhattisgarh, India.

² Channell, Justice, In *Reigate Rural District Council v. Sutton District Water Co.*, [1908] 99 L.T.R. 168, at pp. 170-171

harmonize with the object of the statute. In **Satheedevi v. Prasanna**³, it was held that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature. Thereof, the intention of legislature includes dual aspect, that is to say, intention is derived from the purpose/object and language/words used in a statute. The object of any statute is provided in “*Statement of Objects and Reasons*” and the language underlies in the provisions, acting as a reflection of the object of any statute.

In pursuance to the above explanation, the intention of legislature behind Prevention of Money Laundering Act, 2002 (hereinafter to be referred as PMLA) is to curb money-laundering and in addition to provide procedures for confiscation and seizure of property derived from money laundered. In contrast to this, The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.PC), on seizure of property provides that any police officer may seize any property which creates suspicious circumstances in relation to the commission of any offence i.e. Cr.PC provides for general procedure to be followed in all cases of seizure of property. This primary comparison presents commonality of subject-matters and provides a way to understand the outlook of the legislature. Thereof, primarily, any inconsistency or ambiguity between statutes dealing with common subject-matter, is the difference of giving a statute special position over another statute and secondly enabling that an instrument needs to be read as a whole in order to understand the inconsistency with any other instrument.

This brings us to understand the ideology of the legislature and the approach of judiciary, while inserting or interpreting any special provision mentioned under PMLA w.r.t. to the general procedure mentioned under Cr.PC.

II. EXTENT OF SPECIAL LAW PREVAILING OVER GENERAL LAW

“*Generalibus specilia derogant*” means special things derogate from general things. The special provisions in a statute control the general provisions. In other words, general provisions have no application in the matters that are governed by special provisions. It can therefore be said that a special provision on a matter excludes application of general provision and always overrides the general provision but this overriding effect is restricted to the extent of inconsistency between them. In **Yakub Abdul Razak Memon v. State of Maharashtra**⁴, the Supreme Court held that a conflict between provisions of two statutes must have to be resolved by reference to purpose and policy underlying two enactments. The Court must take into consideration the principal subject matter of statute and particular perspective in order to

³ (2010) 5 SCC 622

⁴ (2013) 13 SCC 1

determine whether a statute is a special or general one. In addition to the above-mentioned dictum, the Supreme Court in **Sarabjit Rick Singh v. Union of India**⁵ held that Extradition Act, 1962, is a special statute and hence would prevail over the provisions of a general statute like Cr.PC.

In contemplation to the dicta, Cr.PC is considered as a general statute providing general procedures for all criminal proceedings. This inclines me in comprehending the laws governing common subject-matter. The foregoing inclination is cleared by a dictum of the Supreme Court in **Maya Mathew v. State of Kerala**⁶, where the rules of interpretation in relation to a subject governed by two sets of rules are explained. They are undermentioned:

- *“...When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the latter law repeals the earlier law. The rule-making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;*
- *When two provisions of law—one being a general law and the other being a special law govern a matter, the court should endeavour to apply a harmonious construction to the said provisions. But where the intention of the rule-making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.*
- *If the repugnancy or inconsistency subsists in spite of an effort to read them harmoniously, the prior special law is not presumed to be repealed by the later general law. The prior special law will continue to apply and prevail in spite of the subsequent general law. But where a clear intention to make a rule of universal application by superseding the earlier special law is evident from the later general law, then the later general law, will prevail over the prior special law.*
- *Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law....”*

Firstly, whenever there is an inconsistency between the statutes, special statute is placed on a higher footing. Secondly, the afore-mentioned dictum provides that a provision needs to be included in a special statute for giving an overriding effect over general statute. In pursuance

⁵ (2008) 2 SCC 417

⁶ (2010) 4 SCC 498

to the foregoing explanation, it enables me to take a way towards the provisions of the statutes and the views of judiciary.

Inconsistency between the Provisions of PMLA and Cr.PC

The inconsistency between the provisions of PMLA and Cr.PC has been dealt in numerous of cases, out of which, some have been under-mentioned:

1. In **Gautam Kundu v. Directorate of Enforcement**⁷, the Supreme Court recognised PMLA as a special statute. The relevant portions have been mentioned under:

“...Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money-laundering and Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by Parliament for dealing with money-laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict...”

2. Similarly, In **Rajesh Kumar Agarwal v. Deputy Director Directorate of Enforcement**⁸, the Appellate Tribunal considered PMLA as a special statute. The important portions have been mentioned below:

“...The PML Act is the Special Act. The provisions of said Act are very stringent which have to be applied strictly. No different meaning or interception can be given in the absence of ambiguity of any provisions.

*It is settled law that a particular thing should be done in a particular manner, it must be done in that way and none other. Reliance in this regard is also placed on a judgment of Hon'ble Supreme Court in the cases of **Dipak Babaria v. State of Gujarat**⁹, and **J. Jayalalitha v. State of Karnataka**¹⁰...”*

The dictum re-captures the intention of the legislature behind enactment of PMLA, that is to say, PMLA has an overriding effect over Cr.PC, to the extent of inconsistency between them.

⁷ (2015) 16 SCC 1; (2016) 3 SCC (Cri) 603;2015 SCC OnLine SC 1333

⁸ 2019 SCC OnLine ATPMLA 111.

⁹ (2014) 3 SCC 502

¹⁰ (2014) 2 SCC 401

III. RESOLUTION OF CONFLICT: WHETHER S.17 OF PMLA PREVAILS OVER S. 102 OF CR.PC?

(A) Words used under Section(s): Intent of Legislature

The bare perusal of the two sections bring us to the use of two words that are 'Reason to believe' under S. 17 of PMLA and 'suspicion' under S. 102 of Cr.PC. Therefore, it is important to understand the scope of both the words.

1. Supreme Court on 'Reason to believe' under S. 17 of PMLA

In the case of **P. Chidambaram v. Directorate of Enforcement**¹¹, the Supreme Court explained the term 'Reason to believe' which is not defined under PMLA. i.e. *"...The expression 'Reason to believe' has been defined in Section 26 IPC. As per the definition in Section 26 IPC, a person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise. The specified officer must have 'Reason to believe' on the basis of material in his possession that the property sought to be attached is likely to be concealed, transferred or dealt with in a manner which may result in frustrating any proceedings for confiscation of their property under the Act. It is stated that in the present case, exercising power under Section 5 of PMLA, the adjudicating authority, had attached some of the properties of the appellant. Challenging the attachment, the appellant and others are said to have preferred appeal before the Appellate Tribunal and stay has been granted by the appellate authority and the said appeal is stated to be pending..."*

2. Courts on 'Reason to believe' under S. 5 of PMLA

In the case of **Ramani Mistry v. The Deputy Director Directorate of Enforcement**¹², the Appellate Tribunal while interpreting the importance of the expression 'Reason to Believe' held as under:

"...The word 'Reason to believe' is not same as suspicion or doubt. Belief is a higher level of the state of mind. When it is said that a person has 'Reason to Believe' a thing, it means that the circumstances and facts known to him are such that a reasonable man, by probable reasoning, can conclude or infer regarding the nature of the thing concerned. It may not be an absolute conviction or inference. But it may be a possible conclusion or prima facie conclusion...."

A similar view has been taken by the High Court of Delhi in the case of **Mahanivesh Oils &**

¹¹ (2019) 9 SCC 24; (2019) 3 SCC (Cri) 509; 2019 SCC OnLine SC 1143

¹² FPA-PMLA/296/KOL/2015

Foods Pvt. Ltd. v. Directorate of Enforcement¹³ and by the Appellate Tribunal in the case of Amit Pandey v. The Joint Director, Directorate of Enforcement (Lucknow)¹⁴, where the meaning of expression ‘Reason to believe’ is held to be based on the principle of sufficient cause and definition under section 26 of IPC, 1860 has been relied upon.

3. Supreme Court differentiating between ‘Reason to believe’ and ‘suspicion’

In the case Of **Joti Parshad v. State of Haryana¹⁵**, the Supreme Court compared the meaning of the word ‘reason to believe’ w.r.t. the word ‘suspicion’.

“... ‘Reason to believe’ is another facet of the state of mind. ‘Reason to believe’ is not the same thing as “suspicion” or “doubt” and mere seeing also cannot be equated to believing. “reason to believe” is a higher level of state of mind. Likewise, ‘knowledge’ will be slightly on a higher plane than ‘reason to believe...”

Thereof, S. 17 of PMLA, 2002 clearly enumerates that S. 17 requires the principle of sufficient cause and higher level of state of mind which is more than the suspicious circumstances provided under S. 102 of Cr.PC.

4. “Expressio unius est exclusio alterius”

The maxim connotes that where the legislature expressly mentions certain provisions of one statute (for example, a general statute) applicable to another statute (for example, a special statute), it is deemed that all the other provisions of the former statute have been excluded intentionally. The above legal maxim enables to understand the scope of provisions dealing with same subject matter. In the instant research paper, S. 65 of PMLA is a reflection of it, where certain provisions of a general statute are included and certain provisions are not.

5. Comparative analysis of S. 65 of PMLA and S. 5 of Cr.PC

- **S. 65 of PMLA provides that:** *“The provisions of the Code of Criminal Procedure, 1973 shall apply, insofar as they are not **inconsistent** with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.”*
- **S. 5 of Cr.PC provides that:** *“Nothing contained in this code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or*

¹³ (2016) 1 HCC (Del) 265; 2016 SCC OnLine Del 475

¹⁴ FPA-PMLA/913/LKW/2015

¹⁵ 1993 Supp (2) SCC 497

any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

The former provision clearly captures the ideology of the legislature that PMLA has to be given a special effect over Cr.PC and the latter mentioned provision also speaks the same.

(B) Special Reference to the Case of Abdullah Ali Balsharaf at Delhi Hc

In the case of **Directorate of Enforcement v. Abdullah Ali Balsharaf & other(s)**¹⁶, purview of S. 17 of PMLA and S. 102 of Cr. PC have been explained. The High Court of Delhi, followed two approaches namely:

- i. S. 17 of PMLA provides the power to the officers specified under S. 17 to attach, seize or freeze a property, if the designated officer has the Reason to believe that the property is:
 - o connected to proceeds of the crime or related to the crime and
 - o recording the reasons for the same.

Whereas, S. 102 of Cr.PC enables seizure of property on mere suspicion without such special requirements.

- ii. The order of seizure under S. 20 of PMLA, is temporary attachment of property i.e. for 180 days.

Whereas, S. 102 of Cr.PC provides seizure for an indefinite period.

(C) Kinds of Property that can be Seized under Respective Provisions Of PMLA and Cr.PC

The Supreme Court in the case of **Nevada Properties Pvt. Ltd. v. State of Maharashtra**¹⁷, held that the expression ‘any property’ mentioned under S. 102 of Cr.PC means only movable property, which can be seized during the course of investigation. This is due to the reason that immovable property cannot be seized on mere suspicion. Whereas, PMLA rules created under Section 73 of PMLA provide rules (i.e. Rule 4 and 5) that deal with both i.e. movable and immovable property. The reason behind foregoing provision connects to the principle of sufficient cause which is latent meaning of the expression used under S. 17 of PMLA. Thereof, S. 17 of PMLA will always prevail over S. 102 of Cr.PC.

¹⁶ 2019 SCC OnLine Del 7942

¹⁷ 2019 SCC OnLine SC 1247

IV. CONCLUSION

“When inconsistent provisions cannot be reconciled, it should be determined which is a leading provision and which is a subordinate provision and further which should give way to other. Only by determining hierarchy of provisions, it will be possible to give each provision, a meaning which gives best effect to its purpose.”¹⁸

The purpose of a special statute is to exclude a more general law from a less general law. This helped me to understand the intention of the legislature that in case of an inconsistency between a special statute and a general statute, special statute shall always prevail to the extent of inconsistency. In other words, Special Statute is always placed in a higher footing in comparison to a general statute. As in case of freezing of assets, Cr.PC provides wide ambit over PMLA, providing the authority (ED) to follow an uncomplicated procedure. Thereof, the use of Cr.PC in various cases of money-laundering by authority in respect to attachment, seizure and confiscation of property is just like a sword provided in the hands of authority. On heading further, the expressions used in either of the provisions of the statute are based on a different principle; on one side of the coin the principle of sufficient cause is used and on the other side, the principle of subjective satisfaction is used. In general, the use of search and seizure is a deprivation of civil liberty, and as such, the principles of natural justice need to be complied with. This furnishes the ideology of recording the reasons for such search and seizure under PMLA which is further communicated to the aggrieved party. In absence of such a communication, the search and seizure so conducted is bad in law for the want of natural justice. This also attracts the ideology of the legislature, that logical reasoning to be provided by the authority behind every fact concluded.

Thereof, in case of conflict between both the statutes, PMLA will always prevail over Cr.PC i.e. to say,

- When PMLA provides provisions which are in conflict with Cr.PC, PMLA prevails and
- In all other conditions, where no procedures or mechanisms are mentioned under PMLA, Cr.PC will be used generally.

On a concluding note, every part of the statute must be construed together, within the four corners of statute. Every clause of a statute should be construed to its context to make a consistent approach towards the statute itself and to eradicate the inconsistency with the other statutes.

¹⁸ Lord Herschell, Institute of Patent Agents & Ors. v. Joseph Lockwood, 1894 A.C. 347 at 360.