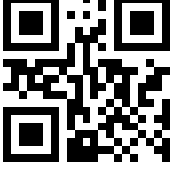
KADK010025862022



IN THE COURT OF III ADDL. DISTRICT & SESSIONS JUDGE & SPECIAL COURT FOR TRIAL OF CASES UNDER PMLA, DAKSHINA KANNADA, MANGALURU

PRESENT:

Smt. SANDHYA S., M.A., LL.B. (spl.)
III Additional District & Sessions Judge,
& Special Judge for trial of cases under PMLA,
Dakshina Kannada, Mangaluru.

Dated this the 8th day of September 2023

Special Case No.89/2022

Complainant: Directorate of Enforcement,
Represented by its Assistant Director,
Government of India,
Bengaluru Zonal Office,
Ministry of Finance, Dept. of Revenue,
3rd Floor, 'B' Block, BMTC,
Shanthinagar, TTMC, K.H. Road,
Bangalore – 560 027.

(By Special Public Prosecutor)

Versus

Accused: Sri. Ananda Balakrishna Appugol and others

In application u/s.8(7) and 8(8) of PML Act

Applicant: The Competent Authority for Krantiveera Sangolli Rayanna Urban Co-operative Society, Belagavi under KPIDFE Act.

(Sri Veeresh Rachoppa Budihal, Advocate)

Versus

Non-Applicant: The Deputy Director, Directorate of Enforcement, Government of India.
(By Special Public Prosecutor)

Order on application filed under section 8(7) & 8(8) of the Prevention of Money Laundering Act, 2002, dated 16.02.2023

The applicant has filed this application seeking an order to release the schedule 'A' properties which are immovable properties at serial no.1 to 31 and schedule 'B' properties which are Bank accounts at serial no. 1 to 32, in their favour, the said properties which have been attached by provisional attachment order dated 09.09.2020, on such terms and conditions as this courts deems fit in the interest of justice and equity.

2. In the annexed affidavit filed by the applicant Assistant Commissioner and Competent Authority, the Special Officer and Competent Authority (IMA and other KPID cases) has mentioned that the competent authority notified as per section 5(1) of the Karnataka Protection of Interest of Depositors in Financial Establishment Act 2004, the applicants herein, is a statutory authority appointed by the Government of Karnataka, in exercise of its powers under the provisions of the Karnataka Protection of interest of Depositors in Financial Establishment Act, 2004 which is a spacial enactment legislated for safeguarding the interest and rights of the gullible investors in financial establishment. The competent authority has been entrusted with the function of enforcing the legal provisions to curb the unscrupulous activities of Financial establishments and further to punish every person including promoter, partner, director, manager or employee responsible for the management or the conduct of the business or affairs of the financial establishment which has fraudulently defaulted in the repayment of deposits on maturity. The Competent Authority as a statutory authority is required to take all legal initiatives to provide relief to the depositors as per the objects and scheme of the KPIDFE, 2004. Further stated that he has been appointed as the Competent Authority for M/s. Krantiveera Sangolli Rayanna Urban Co-operative Society,

Belagavi by the Government of Karnataka, by exercising its powers under section 5(1) of the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 ('KPID Act' for short), in terms of Government Notification No.RD 17 GRC 2022 dated 25-02-2022 & 12-10-2022. The applicant has filed this application seeking an order to release the schedule 'A' properties which are immovable properties from serial no.1 to 31 and schedule 'B' properties which are Bank accounts from serial no. 1 to 32, in their favour, the said properties which have been attached by provisional attachment order dated 09.09.2020, on such terms and conditions as this court deems fit in the interest of justice and equity.

3. In the annexed affidavit filed by the applicant, who is the Assistant Commissioner and Competent Authority, the Special Officer and Competent Authority (IMA and other KPID cases), it is mentioned that the competent authority notified as per section 5(1) of the Karnataka Protection of Interest of Depositors in Financial Establishment Act 2004, the applicants herein, is a statutory authority appointed by the Government of Karnataka, in exercise of its powers under the provisions of the Karnataka Protection of interest of Depositors in Financial Establishment Act, 2004 which is a spacial enactment legislated for safeguarding the interest

and rights of the gullible investors in financial establishment. The competent authority has been entrusted with the function of enforcing legal provisions to curb the unscrupulous activities of financial establishments and further to punish every person including a promotor, partner, director, manager or employee responsible for the management or the conduct of the business or affairs of the financial establishment which has fraudulently defaulted in the repayment of deposits on maturity. The Competent Authority as a statutory authority is required to take all legal initiatives to provide relief to the depositors as per the objects and scheme of the KPIDFE, 2004. Further stated that he has been appointed as the Competent Authority for M/s. Krantiveera Sangolli Rayanna Urban Co-operative Society, Belagavi by the Government of Karnataka, by exercising its powers under section 5(1) of the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 ('KPID Act' for short), in terms of Government Notification No.RD 17 GRC 2022 dated 25-02-2022 & 12-10-2022. Further stated that the jurisdictional and competent police have registered several First Information Reports (FIR) against the said errant financial establishment and its promoters/directors mentioned in the preceding paragraphs under various provisions of the India Penal Code Viz- secs.406, 409, 420, 120-B r/w section 34 of I.P.C. and the

investigation is being carried out by the CID, State of Karnataka. The applicant further reliably understands that the investigation agency/prosecution has filed charge sheet against accused under various provisions of law including under sections 120(B), 420, 403, 34, 36, 37 of IPC, 1860 and section 9 of Karnataka Protection of Interest of Depositors in Financial Establishment Act, (KPID Act), 2004. Further stated that when the various illegalities, fraudulent transactions and illegalities that were against the interest of the gullible depositors were brought to the notice of the Government of Karnataka that the said “errant Financial Establishment” has failed to return to the depositors the money as promised to them, and that there was a “run on the bank”, the Government of Karnataka in exercise of its powers under section 3(2) of the Act has issued a gazette notification bearing Notification No:RD 4 GRC 2019 (P-1) dated 27.06.2019 provisionally attaching the properties of the said “errant Financial Establishment”. Further stated that the Registrar of Co-operative Societies, Bengaluru having noticed that M/s. Krantiveera Urban Co-operative Society has failed to return the deposits collected from the depositors even after its maturity and thereby cheated the depositors and has appointed the Deputy Registrar of Co-operative societies, Belgaum as Inquiry Officer to hold an enquiry into the activities of the respondent No.1 financial

establishment, vide order No:UBC-1/Ci-1/ 218/ Enquiry/2017-18 dated: 11-09-2017. That the Deputy Registrar of Co-Operative Societies, Belagavi submitted their report to the Registrar of Societies (Urban Banks Division, Bengaluru) vide their letter bearing No.DRL/MKT/ENQ/ 09/2017-18, dated 04.08.2018. Further that prima facie the Enquiry Report reveals that the President of the said Society, as on end of 2016-17, had collected around 281.15 crores from around 61,357 investors, through various deposit schemes and balance due to be returned to the said depositors i.e. to 42,151 depositors was Rs.258.85 crores as mentioned supra and further that the financial establishment has defaulted to return the amount to the investors even after its maturity period. Hence, the Government having noticed the fraudulent activities of the said society which is detrimental to the interest of the depositors has appointed the Competent Authority and issued Notification dated 25-06-2019 and 13-01-2023 attaching the properties which are the subject matter of the said notification. Further that his predecessor in office i.e. the previous Competent Authority viz., Assistant Commissioner, Belagavi Sub division, had filed a petition before the Hon'ble Principal District and Sessions Judge Court at Belagavi under section 11(2) (c) of the Act, in Misc. 91/2019 in respect of 47 notified properties. Later, the said

petition came to be transferred to the Special Court constituted in Bangalore (CCH-92) and the same was registered as Misc.117/2022. Further stated that since the said petition was defective, he had withdrawn the said petition with liberty to redo the exercise in accordance with law. Further Hon'ble Special Court for KPID cases was pleased to dispose of the said petition reserving liberty to file a fresh petition by virtue of its order dated 06.04.2022. Further, thereafter they had filed fresh petition under section 5(2) of the KPIDFE Act, 2004 (in respect of 04 properties) in Misc.996/2022. The said petition was allowed vide order dated 17.1.2022 and the Hon'ble Special Court for KPID cases for the State of Karnataka has kindly confirmed the provisional order of attachment and made the attachment absolute. Further that the said order has not been challenged by any of the parties and as such has become fait accompli and is binding on the parties. The petitioner is taking steps to file appropriate petitions in respect of remaining properties. Further that when things stood thus, it came to the knowledge of the Applicant that the Enforcement /Directorate, Union of India, i.e. the non- applicant herein had in exercise of powers clothed on it under section 5(1) of PMLA, provisionally attached some of the properties belonging to the said “errant Financial Establishments”, which were already attached by the Government of

Karnataka, in exercise of its powers under section 3(2) of the Act. Further stated that enforcement Directorate had issued a Provisional Attachment order No.05/2020 (in EICR No. GAZO/22/2020), dated 09.09.2020, attaching as many as 31 immovable properties having the market value/worth of about Rs.30.71 Crores and 32 Bank Accounts having total balance of about Rs.35.50 Crores belonging to accused financial establishment and its connected persons. Further that under these circumstances, it is relevant to mention here that the Government of Karnataka had issued the provisional order of attachment, in exercise of its powers under section 3(2) of the KPID Act on 25.06.2019 and further that the Enforcement Directorate, Union of India in exercise of its powers under the relevant provisions of the PMLA Act, has issued the Provisional Attachment order on 09.09.2020. Thus the provisional order of attachment with respect to the properties in question has been issued by the Enforcement Directorate, Union of India, subsequent to the provisional attachment issued by the Government of Karnataka. Further that when things stood thus one of the depositors of the said financial establishment had approached the Hon'ble High Court of Karnataka, Bench at Dharwad by initiating a Writ petition under Articles 226 and 227 of the constitution of India, which was numbered as W.P.10377/2021 seeking certain directions to the respondents, to take action as per

the provisions of the KPIDFE Act, 2004. That Learned Single Judge of the Hon'ble High Court of Karnataka, Bench at Dharwad, by virtue of their order dated 12.04.2022, passed in W.P. No. 10377/2021 was pleased to allow the said writ petition. Further that consequent to the said order, the petitioner in the above Writ Petition has filed Contempt of Court Petition in CCC 100214/2022 before the Hon'ble High Court of Karnataka at Dharwad, alleging that the respondents therein in the said Writ Petition have not complied with the directions of the Hon'ble High Court and the same is pending consideration of the Hon'ble Division Bench. Further stated that in the meantime, the Enforcement Directorate, Union of India, being highly aggrieved by the directions issued by the Learned Single Judge in W.P. No. 103774/2021, has preferred an Intra Court Writ Appeal in WA 100389/2022 challenging the correctness of the directions issued by the Learned Single Judge in W.P. No.10377/2021, dated 12.04.2022. Further that the said Contempt Petition and the Writ Appeal are being taken up together and the Hon'ble Division Bench, High Court of Karnataka, Bench at Dharwad, having heard the above matters together on 06.12.2022 has kindly been pleased to inter alia reserve liberty to the Applicant herein to move this Hon'ble Court seeking release of properties. The Order dated 06.12.2022 passed by the Hon'ble High Court of

Karnataka, Bench at Dharwad, in W.A. No. 100389/2022, can be looked into.

4. Further it is stated by the applicants that some of the depositors of the said financial establishment have approached the Hon'ble High Court of Karnataka, Dharwad Bench in WP 105525/2022 seeking to Issue writ in the nature of mandamus or direction to Respondent/ED to release the property seized in favour of the Competent Authorities in order to comply the provisions of KPID Act and such other relief. The Hon'ble High Court, by its order dated 16.01.2023 has disposed off the said Writ Petition inter alia directing the applicant herein to move this Hon'ble Court and the same may be looked into.

5. Further it is stated by the applicants that section 8(7) of the PMLA confers and empowers this Hon'ble Court to consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed, the same may be looked into. Further stated that the word 'trial' has neither been defined in the Criminal Procedure Code nor under the PMLA and in view of the ratio laid down by the Hon'ble Supreme Court of India in several judgments,

> *"the word 'trial' has no fixed or universal meaning and has to be considered with regard to the particular context in which it is used and with regard to the scheme and purpose of the particular Act".*

6. Further it is stated by the applicants that though sub-rule 4 of the said Rule 3A prescribes that an opportunity of being heard should be given to the owner of the properties which are to be restored, the same may not be necessary with regard to the schedule property as these have already been declared as absolute attached by the Hon'ble Special Court for KPIDEE Act and attained finality to the knowledge of applicant herein, and also because the said provisional order of attachment issued by the Government of Karnataka has now become absolute in terms of section.5(2) of the KPID Act and the properties so attached by the Government of Karnataka stands vested with the Applicant herein, free from all encumbrance, by the operation of law, in terms of the rigor of section 3(4) of the KPID Act. Further stated that in view of the fact that under the order of Special Court, property stood vested with the Applicant herein, there is no requirement of hearing accused herein all over again. Further submitted that in the light of already pronounced judgment of the Hon'ble Special Court for KPIDFE Act for absolute attachment of schedule properties, there is no requirement

in law to hear the owners of the properties. Further, the Hon'ble Special Court for KPIDFE Act has already directed for expeditious distribution of the proceeds of the properties amongst the depositors and the said order having become final and binding on the parties concerned, it is humbly submitted that arraying of the owners of the properties as Respondents in the instant application may kindly be dispensed with. Further stated that in the cases being handled under the KPIDFE Act, the amounts realized from the sale of absolute attached assets are to be distributed amongst the gullible depositors who are innocent persons who suffered loss of their deposits as well as assured returns on account of the diversion of the funds by the Financial Establishment. Further stated that these depositors are undoubtedly eligible for settlement of their claims as the claimants defined under first proviso to section 8(8) of the PML Act. Further stated that, under similar circumstances and identical facts, the Hon'ble Special Court for MPID and PMLA at Bombay in Misc Application No.583/23019 in MPID Special Case No. 1/2014 has allowed the prayer for release of the properties. Further stated that the provisional order of attachment issued by Enforcement Directorate under the provisions of PMLA is subsequent to the provisional order of attachment issued by the Government of Karnataka under the

provisions of the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 and that Applicant who is Competent Authority appointed by the Government of Karnataka will have preferential rights over the properties provisionally attached by the Enforcement Directorate, i.e. the non applicant herein. Further stated that the provisional attachment order of the non-applicant herein i.e. of the Enforcement Directorate is subsequent to the provisional attachment order issued by the Government of Karnataka under the provisions of the Karnataka Protection of interest of Depositors in Financial Establishments Act, 2004, and for the said reason, the subsequent attachment process initiated by the non-applicant herein i.e. of the Enforcement Directorate under the provisions of PMLA shall have to yield to the prior in point of time initiated attachment process of the Government of Karnataka. Further stated that in terms of section 3(4) of the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004, the provisionally attached properties of the Financial Establishment shall stand vested with the Petitioner forthwith, once the said section 3(2) notification is issued, by the operation of law and for the said reason the assets that are provisionally attached by the non-applicant herein i.e. of the Enforcement Directorate stood vested with the

Applicant herein on 25.06.2019 itself, by the operation of the law, and for the said reason, the non-applicant herein i.e. of the Enforcement Directorate did not have the power/authority to attach the said assets/properties that had already been attached (provisionally) by the Government of Karnataka. The relevant portion of section 3 i.e. section 3(4) may be looked into. Further stated that the order of provisional attachment issued by the non-applicant herein i.e. of the Enforcement Directorate, under the Prevention of Money Laundering Act, 2002 was passed much after the order of provisional attachment was issued by the Government of Karnataka under the provisions of the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004, and under these circumstances, the instant Application deserves to be allowed and the assets which have been provisionally attached by the non-applicant herein i.e. of the Enforcement Directorate deserves to be de-attached and released in favor of the Applicant herein. Further stated that in view of the fact that the State Government has exercised its powers under the State Act and that too, prior in point of time than the Respondent under the Central Enactment, the assets so attached by the Respondent shall have to be directed to be released in favour of the Petitioner herein, so as to facilitate the Petitioner to discharge his

statutory functions. Further stated that even otherwise the Enforcement Directorate i.e. the non-applicant herein has a policy of "Restitution of Assets/Properties" and hence the assets provisionally attached by the Enforcement Directorate deserve to be restituted in favor of the Applicant herein. Further stated that it is a matter of record admitted and undisputed by the Enforcement Directorate that in the matter of defrauding and siphoning of the funds of nationalized banks by Vijay Mallya, Nirav Modi and Mehul Choksi through their companies which resulted in total loss of Rs.22,585.83 Crores to the banks and as a sequel to FIR by CBI, the Directorate of Enforcement has taken swift action by unearthing myriad web of domestic and international transactions and stashing of assets abroad and that as a result of the investigation conducted by Enforcement Directorate, assets worth Rs.19,111.20 Crores has been attached under the provisions of PMLA, out of which, assets worth Rs.15,113.91 crores has been restituted to the Public Sector Banks. Hence, 84.61% of the total defrauded funds in these cases have been handed over to Banks/Confiscated to Government of India. Further, the consortium of banks led by SBI has realized Rs.7975.27 crores by sale of assets handed over to them by he Directorate of Enforcement. Thus in the instant case also, the Directorate of Enforcement deserves to be directed

to follow the said same policy, in the interest of lakhs of depositors. Further stated in the affidavit that even otherwise, considering the statement of objects and preamble of the KPID Act, the rigor of the provisions of PML Act are required to be reconciled harmoniously with the objective of KPID Act. Further stated that under PML Act, it is to be appreciated that in case of the confiscation, the end result is that the property would be appropriated by the Government of India and in such case the poor gullible investors, some of them who have invested their life savings in the said errant and fraudulent financial establishment and who are now having difficulty to even make both their ends meet, i.e. the depositors, for whose benefit the KPID Act has been enacted would not be benefited and the lofty intent of the KPID Act, which is in furtherance of the constitutional mandate of welfare governance would stand obliterated and in order to avoid such a constitutional casualty of the interest of the poor depositors and in order to protect and promote the interest of the depositors, it is submitted that justice would be squarely met if this Court in exercise of its powers under section 8(7) of the PML Act is kindly pleased to release and restore the attachment made under by the PML Act, in favour of the Applicant herein, in the interest of justice and equity. Further prayed that this Court may kindly be pleased to pass an order

directing the Enforcement Directorate to restore and release the schedule properties in favour of the applicant Competent Authority for distribution of the proceeds of the same amongst the depositors of the errant financial establishment as per provisions of the KPIDFE Act 2004. Further prayed that this Court be kindly pleased to allow the instant Application and be further pleased to direct the Enforcement Directorate to release the following schedule properties in favour of applicant herein, attached by it vide PAO dated 09.09.2020, vide Annexure-F at the earliest and on such terms and conditions as this Hon'ble Court deems fit in the interest of justice and equity. The details as available with the applicant regarding the total number of depositors, total deposit money collected and the total amount that is payable due by the financial establishment is produced in tabular forum:

Total Number of Depositors (approximately)	Deposit collected in money (approximately)	No. Depositors payable due	Balance amount payable due
61,357	Rs.281.15 Crores	42,151	Rs.258.85 Crores

7. Further it is stated by the applicants that there has been a rapid growth of Financial establishments, not covered by the Reserve Bank of India Act, 1934 (Central Act II of 1934) in the State. These financial establishments are

receiving deposits from the public, mostly middle class and poor classes on the promise of high rates of interest and easy gains. Many of the financial establishments have defaulted to return to the public, the deposits on maturity and thereby cheating the depositors of their legitimate due. There have been representations from Depositors Associations and public, to have a legal mechanism to protect the interests of depositors. The Reserve Bank of India has also suggested that the State Government should enact law in order to protect the interests of the depositors. Therefore it was considered necessary to bring a suitable legislation to regulate the activities of such financial establishments, other than those covered by the Reserve Bank of India Act,1934. Hence applicant has prayed to allow this application.

8. On the other hand Learned Special Public Prosecutor has filed his objections to the said application, stating that the Competent Authority for Krantiveera Sangoli Rayanna Urban Cooperative Society, Belagivi under KPIDFE Act, has filed an application under section 8(7) and 8(8) of the Prevention of Money Laundering Act, 2002 praying to allow the said Interlocutory Application and to release the properties attached vide PAO No.05/2020 dated 09.09.2020 totally valuing Rs.31,07,40,049.12. That the said Application filed on behalf of the applicant is highly frivolous, vexations

and not maintainable either under law or on facts of the case. Further that based on the complaint of Assistant Registrar of Co-operative Society, Sub Division, Belagavi City, an FIR No.185/2017 dated 01.09.2017 was registered by Khadebazar Poice Station, Belagavi City u/s 406, 408 and 420 of IPC 1860, on 01.09.2017 against one Anand Balakrishna Appugol, Chairman of Krantiveer Sangoli Rayanna Urban Co-operative Credit Society (KSRUCCS), Belagavi City and 15 others. It was alleged in the FIR that they have embezzled more than Rs.232.69 crores, which were collected from the public through fixed deposits by promising them that they will return the money along with high rate of interest, but did not return the money to the public on time. Further that the charge sheet No.1/2020 was filed by Dy.SP, EOW, CID, Bengaluru before the Hon'ble Addl. City & Sessions Court, Belagavi u/s 120B, 420, 403 r/w section 34, 36 & 37 of Indian Penal Code and under section 9 of KPID (Karnataka Protection of Interest of Depositors) Act, 2004 against KSRUCCS Ananda Balkrishna Appugol/accused no.1 and other accused persons as per the charge sheet, that accused promised to give higher rate of interest and opened 35 branches in and around Belgaum and Bagalkot and collected Rs.281.14 Crore from 26,000 depositors, who invested in Deposits and without giving any interest or without returning the deposit amounts to the

public and accused persons misused the said amount for their personal use and conspired together and they opened 62 bogus accounts and transferred an amount of Rs.275,53,48,000/- and showed it as loan disbursed to the accounts and collected the same and misused the same for their personal use and purchased properties in their names. Further that subsequently, an ECIR No. BGZO/22/2020 dated 16.03.2020 was recorded against Accused no.1 and 15 others. Further that during the course of investigations, PAO No. 05/2020 dated 09.09.2020 was issued, attaching total of 31 immovable properties in the form of agricultural lands and residential house, amounting to Rs.30,71,89,115/- and a total of 32 movable properties in the form of bank accounts held by KSRUCCS and Smt. Prema Anand Apugol totally valued at Rs.31,07,40,049.12/-. Further that the Adjudicating Authority, vide order dated 09.02.2021, confirmed all the provisionally attached movable properties. Out of the 31 provisionally attached immovable properties, the Learned Adjudicating Authority confirmed 28 properties however, the residential properties in the name of Shri. Sanjay Patil were not confirmed by the Ld. Adjudicating Authority. The impugned order has been challenged before the Learned Appellate Tribunal, New Delhi vide PMLA Appeal No.4173/2021 filed on 26.08.2021 by the Directorate and the same is pending as on date. Further that subsequently

the confirmed assets were taken possession under section 8(4) of PMLA r/w Rule 3 of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013. Further that accused No.1 was arrested u/s 19(1) of PMLA on 05.01.2022 after following all the due procedures of law and on 10.01.2022 was sent to Judicial Custody. Further that on 09.02.2022 Prosecution Complaint bearing PCR No. 02/2022 under section 200 of CrPC 1973 r/w section 45(1) of PMLA was filed before this court. That this Court took cognizance of the offence and registered the case as Special Case No. 89/2022 on 09.06.2022 and the same is pending as on date for framing of charges. Therefore, the plain reading of this section itself demonstrates that the provision quoted in the application by the claimant has no significance, because, in this case, it is not the case of the claimant that Trial cannot be conducted, concluded. Accordingly, the trail is yet to be commenced. The definition/explanation canvassed by the claimant in Para No.14 of his affidavit is not correct.

9. Further it is stated by Learned Special Public Prosecutor that the plain reading of section 8(8), 1st Proviso, in unequivocal language makes it clear that the Special Court shall not consider such claim unless it is satisfied that the

claimant has acted in good faith and has suffered the loss depicted having taken all reasonable precautions and he is not involved in the offence of money laundering. In the case on hand admittedly, the property sought to be restored are involved in the case of money laundering. Therefore, it is out of the scope of this Court to entertain the application which is filed by the claimant. Further, the Court may be kind enough to consider section 24 of the Act simultaneously.

> 24. Burden of Proof. - When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on accused.

10. Further learned Special Public Prosecutor has mentioned in the objection that therefore, at this stage there is no scope to conclude otherwise, i.e., to be specific, the properties are not involved in money laundering. In the above said circumstances, there is no scope to entertain the present application. Accordingly, as per the 2nd proviso, the Special Court may consider such application during the trial of the case in such manner as may be prescribed. The manner how it should be considered and dealt with, is prescribed/laid down in rule 3A of the Prevention Of Money Laundering (restoration of property) rules, 2016. Said provision of law, if taken into consideration, the application is premature, defective, and is beyond the jurisdiction of this Court. Further that there is no quantifiable loss suffered by this

claimant that would come within the meaning of the loss defined under Rule-2(b) of The Prevention of Money Laundering (Restoration of Confiscated Property) Rules – 2016. Accordingly, section 71 of PMLA has overriding effect. Therefore, the say of the claimant that the properties sought to be restored are attached by the State Government prior to the attachment order of complainant and as such they were having priority is unsustainable. Further that the objection of the complainant may kindly be considered and appreciated by this Court in backdrop of the Statement of Objects and Reasons to the Prevention of Money-laundering Act, 2002 which reads as follows:

> *"It is being realized, world over, that money laundering poses a serious threat not only to the financial systems of the countries but also to their integrity and sovereignty".*

11. Further it is stated by Learned Special Public Prosecutor that the sovereignty has to prevail upon any other claim. Moreover, PMLA is a special enactment containing the provisions with adequate safeguards with a view to prevent money – laundering. The preamble to the prevention of Money-Laundering Act, 2002 states that:

> *"An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto."*

12. Further learned Special Public Prosecutor has mentioned in the objection that the statement of objects and reasons of the act itself are self explanatory. Therefore, the offences under PMLA should be treated as crime not against the individual, but against society/nation. It is as serious as waging war against the nation. This view is very much stated in Pankaj Grover v. ED - Allahabad High Court and State of Gujarat v.Mohanlal Jitamalji Porwal - (1987) 2 SCC 364 and Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439. Hence, the contention of the claimant that "they have attached the property prior to the attachment of order of Enforcement Directorate, hence is having a priority and their claim will prevail", is unsustainable. The substantial question of law is it to be ascertained in the writ appeal No.100389/2022, pending before the division bench of Hon'ble High Court of Karnataka, Dharwad Bench. Hence, on this ground also, the present application is premature in nature and is liable to be dismissed. It is pertinent to note that the applicant has not approached the Court with bonafide and with good faith. Therefore if the application is allowed it will cause irreparable hardship, loss and damage to this Complainant. Therefore Learned Special Public Prosecutor has prayed that the application filed by the applicant may kindly be rejected, in the interest of justice and equity.

13. Furthermore, Learned Counsel appearing for Accused No.1 and 10, Sri. Y.V.Hegde, has also filed objections to the said application, stating that the application filed by the competent authority is not maintainable on law or facts and hence liable to be dismissed. That the properties sought to be released in favour of the applicant has not been acquired though illegal means and as such the properties ought not be released in favour of the competent authority as the said authority will dispose of the said property causing undue loss and hardship to accused No.1 and 10. That the Kranthiveer Sangolli Rayanna Urban Co-operative Society was accepting deposits from the general public and also disbursing loans to the general public. That the financial operation of the above mentioned society was being run in a transparent and legal manner by complying with all the rules and regulation for the acceptance of deposit and disbursal of loans. That the balance amount payable due as shown in the affidavit filed by the competent authority is highly exaggerated. The application or the affidavit filed in support does not mention the outstanding dues from the general public to the society and it is submitted that in case, the competent authority takes the necessary steps to recover the outstanding amounts due to the society the same can be utilized for repaying the depositors. That accused No.1 is in custody since the year 2019 and hence he is unable to take the necessary steps for recovery of the

amounts due to the society and as such the competent authority in order to safe guard the interest of the depositors or to take necessary steps to recover the amounts due to the society from its members and in case the said amount is recovered it will more than cover the amounts that the society has to repay to its depositors. That the competent authority having failed to take any steps for recovery of the amounts due to the society have hastily filed the above application seeking the release of the properties standing in the name of accused No.1 and 10, in order to dispose of the same causing great loss and irreparable financial hardship to accused herein. That it is submitted that the application is filed only in order to harass and humiliate accused No.1 and 10 and as such it is prayed, that the application filed being devoid on merits is liable to be dismissed, is the gist of the objections filed by the learned counsel for accused no.1 and 10.

14. This court has heard arguments of the learned counsel appearing for the applicant and Learned Special Public Prosecutor and learned counsel representing accused No.1 and 10 and perused all the papers on record.

15. The following points that arise for consideration of this Court:

1. Whether the applicant has made out sufficient grounds for granting an order to release the schedule 'A' and 'B' properties, on application filed under section 8(7) & 8(8) of the prevention of money laundering act, 2002, dated 16.02.2023 in favour of applicant, as sought for?

2. What order?

16. This court has answered the above points as under:-

Point No.1: In the **Affirmative,**

Point No.2: As per final order for the following:-

R E A S O N S

17. **Point No.1:** On considering all the papers on record, it is evident to note that the applicants have filed this application under section 8(7) and 8(8) of the prevention of money laundering act, 2002, dated 16.02.2023, seeking an order to release the schedule 'A' properties which are immovable properties at serial no.1 to 31 and schedule 'B' properties which are Bank accounts at serial no. 1 to 32, in their favour, which have been attached by provisional attachment order dated 09.09.2020, on such terms and conditions as this courts

deems fit in the interest of justice and equity. Hence this application.

18. The argument of learned counsel appearing for applicant Sri Veeresh Rachoppa Budihal, Advocate is that Karnataka Protection of Investors Act (KPID) have filed this application under section 8(7) and 8(8) of the Prevention of Money Laundering Act 2002 and that the trial will take time and owners have intent and KPID has powers. Further argued that PMLA is penal act and KPID is beneficial act for the benefit of the investors. That owner of KSRUCCS, Belagavi City, is accused in this case and now after the provisional attachment, we the applicants are the owners. Further argued that the order of Hon'ble High Court of Karnataka in W.A 100389//2022 can be looked into. Further that the order in W.P No. 103774/2021 dated 12-04-2022 of Hon'ble High Court of Karnataka, can also be looked into. That there are more than 61,000 investors out of which 41,000 investors have lost everything because of this KSRUCCS, Belagavi City scheme and are put on streets. Further argued that as per the provisions of the PML Act, original owner is no more owner and the applicants are the original owners now. Further that the notification under section 3(1) of applicant is unchallenged and if that is so, on 27.12.2022 we have attached the said

properties and on January 2023 if Enforcement Directorate could have not attached then, on the relevant day they could have not confiscated. Further argued that Para 23 and 27 of the said application may be looked into and that they have filed the affidavit. Further more Enforcement Directorate in their objections do not say it as false and the objections by the Enforcement Directorate is only a formal objection. Further argued that the word **'trial'** has to be seen by the Court. Whenever there is money trade and trial then PMLA Act comes in to force and the difference between the enforcement directorate and KPID is that in Enforcement Directorate, confiscation of the property is done and in KPID matters, the depositors welfare is seen and hence any conditional order may be passed on the application filed by the applicant. That the PMLA act is more on criminal side and KPID aims at welfare of the investors. Further argued that trial is not specifically defined in criminal procedure code and negotiation cannot be made in this case in dealing with application filed by the applicant. Further the learned counsel for the applicant has produced the copy of Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004, Copy of the Government Notification, Copy of the Section 3(2) notification issued by the Government of Karnataka on 25.06.2019, Copy of the said order dated 17.11.2022

passed by the designate Special Court for KPID cases in Misc. 996/2022, making the attachment absolute, Copy of the said Provisional Attachment order dated 09.09.2020, Copy of the said order dated 12.04.2022 passed by the Ld. Single Judge of the Hon'ble High Court of Karnataka, Bench at Dharwad, in W.P.No.103774/2021, Copy of the daily order dated 06.12.2022 passed by the Hon'ble Division Bench, High Court of Karnataka, Bench at Dharwad in W.A.No.100386/2022 and companion Contempt Petition, Copy of the orders in W.P.105525/22 and the copy of the orders passed by Hon'ble Special Court for MPID and PMLA at Bombay in Misc Application No.583/2019 in MPID Special Case No.1/2014 in support of his argument. Further the learned counsel for the applicant has filed memo furnishing the following citations in support of his argument.

1. The Supreme Court of India in Criminal Appeal Nos. 53 and 54 of 1965 in the case of The State of Bihar vs. Ram Naresh Pandey wherein it is held that;

> ......8. “Learned counsel for the respondents has raised a fresh point before us for maintaining the order of the High Court setting aside the discharge of the appellant by the Magistrate. The point being purely on of law, we have allowed it to be argued. His contention is that in a case triable by a Court of Session, an application by the Public Prosecutor for withdrawal with the

consent of the Court does not lie in the committal stage. He lay emphasis on the wording of section 494 which says that “in cases tried by jury, any public prosecutor may, with the consent of the Court, withdraw from the prosecution of any person before the return of the verdict”. This, according to him, clearly implies that such withdrawal cannot be made until the case reaches the trial stage in the Sessions Court. He also relied on the further phrase in the section, “either generally or in respect of any one or more of the offences for which h e is tried.” The use of the word 'tried' in this phrase confirms, according to him, the contention that it is only when the case reaches the stage of trial that section 494 can be availed of. He draws our attention to a passage in Archbold's Criminal pleading, Evidence and Practice (32nd ED), PP 108, 109 section, 12 that

“a nolle prosequi to stay proceeding upon an indictment or information pending in any court may be entered, by leave of the Attorney – General, at the instance of either the prosecutor or the defendant, at any time after the bill of indictment is signed, and before judgment.”

He urges that it is this principle that has been recognized in the first portion of section 494 of the Code of Criminal Procedure. It appears to us that the analogy of the English Practice would be misleading as an aid to the construction of section 494. The scheme of our criminal procedure code is substantially different. The provision corresponding to the power of the Attorney General to enter nolle prosequi is section 33 of the code of criminal procedure which refers to jury trials in High Court. The procedure under section 494 does not correspond to it. The phrase “in other cases before the Judgment is pronounced” in section 494 would, in the context, clearly apply to all cases other than those tried by jury. Now, there can be no doubt that at least as regards these other cases, when the consent for withdrawal is given by the Court, the result is either a discharge or an

acquittal, according to the stage to which that case has reached, having regard to the two alternatives (a) and (b) of section 494 of the Code of Criminal Procedure. It follows that at least in every class of cases other than those tried by jury, the withdrawal can be at any stage of the entire proceedings. This would include also the stage of preliminary inquiry in a sessions case triable without a jury. But if the argument of the learned counsel for the respondents is accepted, that power cannot be exercised at the preliminary inquiry stage, only as regards cases which must lead to a jury trial. We can find no conceivable reason for any such discrimination having been intended and prescribed by the Code. We are unable to construe section 494 as involving any such limitation. The wording is perfectly wide and general and would apply to all classes of cases which are capable of terminating either in a discharge or in an acquittal, according to the stage at which the section is invoked. The whole argument of the learned counsel is bases upon the use of the word 'tried' and he emphasises the well known distinction between 'inquiry' and 'trial' in the scheme of the code. Our attention has also known drawn to the definition of the word 'inquiry' in section 4(k) of the code which rules as follows;

“Inquiry' includes every inquiry other than a trial conducted under this code by a Magistrate or Court”.

9. There is hardly anything in this definition which throws light on the question whether the word 'trial' is used in the relevant section in a limited sense as excluding an inquiry. The word 'trial' is not defined in the code. 'Trial' according to stroud's judicial Dictionary means “the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal” (Stroud's Judicial Dictonary, 3rd ED, Vol, 4, p. 3092) and according to Wharton's Law Lexicon means “the hearing of cause, civil or criminal, before a Judge who has jurisdiction over it, according to the laws of the land”

> (Wharton's Law Lexicon, 14th Ed, p. 1011). The word 'tried' and 'trial' appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn the words 'tried' and 'trial' have been used in the sense of reference to a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the code, they should necessarily be limited in their connotation and significance. They are words which must be considered with regard to the particular context in which they are are used and with regard tot he scheme and purpose of the provision under consideration".

2. The High Court of Andhra Pradesh at Hyderabad in C.R.P. No. 4078/2005 in the case of Vempalli Srinivasula Reddy Vs. V.M. Ramakrishna Reddy and others wherein it is held that;

> .....16. "In the Law Lexicon by Sri. Bashi on "commencement" it was started;
> Commencement : In the "words and Phrases" (Permanent Edition) Vol. 42-A, at page 171, under the Head "commencement", it is stated "A trial" commences at least from the time when work of empanelling of a jury begins' union of India V. Madanlal Yadav, 1996 (1) JIC 719 (SC).

19. While dealing with the word or expression trial both before the Civil Court and the Criminal Court it was stated by Sri Bakshi.

> Trial : It is, according to Wharton's Law Lexicon

'the examination of a cause civil or criminal, before a judge who has jurisdiction over it according to laws of the land”. According to the Oxford Dictionary the meaning of the word given under the heading 'trial' is (1) The examination and fixation of a cause by a judicial tribunal, determination of the guilt or innocence of an accused person by a Court. It is no doubt difficult to define the term 'trial' precisely; as a definition given for the purpose of one context may not be very satisfactory for another. Broadly speaking, however, a trial is the examination by the competent Court of the facts or law in dispute or put in issue in a case. It is the in jurisdictional examination of issues between the parties whether they are of law or of facts.

The beginning of a trial therefore, means the first date a Court or a Tribunal begins on such judicial examination. Such a date is capable, of being fixed by the Court or Tribunal itself, and not by any outside authority. The Explanation to sub section (4) however lays down a specific rule and provides, interalia, that the trial for the purposes to begin on the date fixed for the respondents to appear before the Tribunal and to answer the claim or claims made in the petition.

The word 'trial' has two meanings. It may mean the trial of a controversy that begins from an issue. It may equally means the trial of an election petition or a complaint or an action from beginning to end. The word used in section 90(1) of the Act refer the letter.

In the sense the word 'trial' covers the entire process of litigation from the

> acceptance of the election petition for trial to its disposal. Refer representation of People Act 1951, section 90, H.V Kamath Vs. Election Tribunal AIR 1958 MP LJ. 426, 1958 JAB LJ 14 (1958) ELR 147).
>
> The term 'trial' cannot be given a fixed meaning to be applied in all cases uniformly commotation of that word changes with the difference in which the terms is employed in a particular provision of any statute.

3. The Supreme Court of India in Civil Appeal No. 7251/2008 in the case of Vidyabai and others and Padmalatha and another, wherein it is held that;

> 9. Although in a different context, a Three Judge Bench of this Court in Union of India and others Vs. Major General Madan Lal Yadav (1996) 4 SCC 127) took note of the dictionary meaning of the terms "trial" and "commence" to opine ;
>
> 19. It would, therefore, be clear that trial means act of proving or judicial examination or determination of the issues including its own jurisdiction or authority in accordance with law or adjudging or innocence of the accused including all steps necessary thereto. <u>The trial commences with the performance of the first act or steps necessary or essential to proceed with the trial.</u>

4. 1957 SCR 279 AIR 1957 SC 389 1957 Criminal LJ 567 in Criminal Appeal No 53 of 1956 in the case of State of Bihar Vs. Ram Naresh Pandey and another, in Criminal

Appeal No. 54 of 1956 in the case of Mahesh Desai Vs. Ram Naresh Pandey and others wherein it is held that,

> 5. Learned counsel for the respondents has raised a fresh point before us for maintaining the order of the High Court setting aside the discharge of the appellants by the Magistrate. The point being purely one of law, we have allowed it to be argued. His contention is that in a case triable by a Court of session, an application by the Public Prosecutor for withdrawal with the consent of the Court does not lie in the committal stage. He lays emphasis on the wording of section 494 of the Code of Criminal Procedure which says that "in cases tried by jury, any public prosecutor may, with the consent of the Court, withdraw from the prosecution of any person before the return of the Verdict". This, according to him, clearly implies that such withdrawal cannot be made until the case reaches the trial stage in the sessions Court. He also relies on the further phrase in the section "either generally or in respect of any one or more of the offences for which he is tried". The use of the word "tried" in this phrase confirms, according to him, the contention that it is only when the case reaches the stage of trial that section 494 of the code of criminal procedure can be availed of.
> We can find no conceivable reason for any such discrimination having been intended and prescribed by the code.
>
> There is hardly anything in this definition which throws light on the question whether the word "trial" is sued in the relevant section in a limited sense as excluding an inquiry. Th word "trial" is not defined in the code. "Trial" according to Stroud's Judicial Dictionary means " the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal and according to Wharton's Law Lexicon means "the hearing of a cause, civil or criminal, before a judge who has jurisdiction over it, according

> to the laws of the land. The word tried and trial appears to have no fixed or universal meaning. No doubt, in quite a number of sections in the code to which our attention has been drawn the word 'tried' and 'trial' have been used in the sense of reference to a stage after the inquiry. That meaning attached to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the code.
>
> It may also be mentioned that the word inquiry and trial were both defined in the code of 1872 but that the definition of the word trial was omitted in the 1882 code and that later on in the 1898 code the definition of the word inquiry was slightly altered by adding the phrase “other than a trial' leaving the word “trial” undefined. These various legislative changes from time to time with reference to section 494 of the Code of Criminal Procedure and the definition of the word 'inquiry' confirm the view above taken that section 494 of the code of criminal procedure is wide enough to cover every kind of inquiry and trial and that the word 'trial' in the section has not been taken used in any limited sense. Substantially the same view has been taken in Giribala Dasee vs. Madar Gazi and Vishwanadham V Madan Singh and we are in agreement with the reasoning therein as regards this question.

Hence, the application of the applicant be allowed, is the argument of the learned counsel for the applicant.

20. On the other hand, learned special Public Prosecutor has argued that PMLA is special enactment and KPID is for protection of investors with special enactment. Further that KPID is a State Legislature and attachment

made by them will not prevail on PMLA. Further that PMLA is central enactment and it will prevail with other enactment. The objectives of the act may be looked into. Further that section 71 of the PMLA has over-riding effect. The provisions of this Act shall have over-riding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further the order was made absolute on 17.04.2022 and preliminary order dated 09.09.2020, can be seen here. The preliminary order dated 09.09.2020 was confirmed on 09.02.2021 and hence, they cannot claim right. Further possession was handed over to Enforcement Directorate. On fact also the claim of the applicant is not maintainable. Usually after provisional order adjudicatory authority will order as necessary. Complaint has to be lodged by Enforcement Directorate and matter is tried by Court if property found tainted then immovable property are confiscated. It is not their case that no money laundering is present but KPID is admitting that society offered, acquired property by proceeds of crime. For the Property not involved in money laundering principle provision 8(2) may be looked into.

21. Further Learned Special Public Prosecutor has argued that the nomenclature of stage is not the essence and the application is pre-mature as trial has not

commenced. Further we are the ostensible owner of property i.e., only by agreement we are owner and not by wested right of sale, but only contingent right. Further argued that the argument of the counsel for the applicant is prosthetic argument and is not maintainable. Further that framing of charge is our concern and trial, we cannot by-pass the provision of law. Further section 3(a) cannot be by-passed and claimant emotions cannot be sailed, charge not framed, Hence the application of the applicants be dismissed is the argument of Learned Special Public Prosecutor.

22. On going through the papers on record, it reveals that based on the compliant of Assistant Registrar of Co-operative Society, Sub Division, Belagavi City, FIR in Crime No.185/2017 dated 01.09.2017 was registered by Khadebazar Police Station, Belagavi City against Anand Balakrishna Appugol, Chairman of KSRUCCS, Belagavi City and 15 others for embezzling more than Rs.232.69 crores collected from the public through fixed deposits by promising them that they will return the money along with high rate of interest and did not return the money to the public in time and committed breach of trust and cheated the public at large. The fraud happened between 12.08.2017 and 01.09.2017 when the President, Vice

President, Board of Directors, Secretary, Assistant Secretary and other bank officials colluded to divert funds and large sums were swindled. Sources hinted that the President, Vice President, Board of Directors, Secretary, Assistant Secretary of KSRUCCS, Belagavi City with access to funds and decision-making powers, could have colluded with the bank officials to commit the fraud. The Khadebazar Police have booked Anand Balakrishan Appugol, Chariman of KSRUCCS/Accused no.1 and 15 others under criminal breach of trust and cheating and have sought further details on the suspicious transactions. Discreet enquiries also revealed that Chairman was arrested by the Police in the said case. Hence accused no.1 Chariman of KSRUCCS, Belagavi City and others used the public money for personal use by acquiring immovable properties in their names and their family members and projected the same as untainted. The prima-facie quantum of proceeds of crime was estimated as Rs. 232.69 crores. Subsequently, ECIR No. BGZO/22/2020 dated 16.03.2020 was recorded since the offence of section 420 of IPC, 1860 mentioned in the FIR is scheduled Offence under section 2(1)(x) & 2(1)(y) of PMLA. Investigation was initiated under PMLA against accused no.1, Chairman of KSRUCCS, Belagavi City and 15 others after recording brief facts of the

offence in the Enforcement Case Information Report and the said case is pending for charge now before this court.

23. It can be seen that on considering the oral arguments and all the relevant documents on record, that the applicant herein, is a statutory authority appointed by the Government of Karnataka, in exercise of its powers under the provisions of the Karnataka Protection of interest of Depositors in Financial Establishment Act, 2004, which is a spacial enactment legislated for safeguarding the interest and rights of the gullible investors in financial establishment and that they are for the welfare of the depositors. The documents reveal that the competent authority has been entrusted with the function of enforcing legal provisions to curb the unscrupulous activities of financial establishments and further to punish every person including a promotor, partner, director, manager or employee responsible for the management or the conduct of the business or affairs of the financial establishment which has fraudulently defaulted in the repayment of deposits on maturity, which is clear as per the affidavit filed by applicants. Further that they have been appointed as the Competent Authority for M/s. Krantiveera Sangolli Rayanna Urban Co-operative Society, Belagavi by the Government of Karnataka, by exercising its

powers under section 5(1) of the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 ('KPID Act' for short), in terms of Government Notification No.RD 17 GRC 2022 dated 25-02-2022 and 12-10-2022 and the investigation is being carried out by the CID, State of Karnataka is revealed by the affidavit and documents placed before this court. Further it also clear by the affidavit and argument adduced by the Learned counsel appearing for the applicants that when the various illegalities, fraudulent transactions and illegalities were against the interest of the gullible depositors, which were brought to the notice of the Government of Karnataka that the said “errant Financial Establishment” has failed to return to the depositors, the money as promised to them, and that there was a “run on the bank”, the Government of Karnataka in exercise of its powers under section 3(2) of the Act has issued a gazette notification bearing Notification No:RD 4 GRC 2019 (P-1) dated 27.06.2019 provisionally attaching the properties of the said “errant Financial Establishment” which is in favor of the applicants, is the arguments adduced by the counsel appearing for the applicants. Further the documents placed before this court also reveals that the Registrar of Co-operative Societies, Bengaluru, having noticed that M/s. Kranviveera Urban Co-operative Society has failed to

return the deposits collected from the depositors even after its maturity and thereby cheated the depositors and has appointed the Deputy Registrar of Co-operative societies, Belgaum as Inquiry Officer to hold an enquiry into the activities of the respondent No.1 financial establishment, vide order No:UBC-1/Ci-1/ 218/Enquiry/2017-18 dated: 11-09-2017.

24. It is the gist of the application that prima facie the Enquiry Report reveals that the President of the said Society, as on end of 2016-17, had collected around 281.15 crores from around 61,357 investors through various deposit schemes and balance due to be returned to the said depositors i.e. to 42,151 depositors is Rs.258.85 crores as mentioned supra and further that the financial establishment has defaulted to return the amount to the investors even after its maturity period. Hence, the Government having noticed the fraudulent activities of the said society which is detrimental to the interest of the depositors has appointed the Competent Authority and issued Notification dated 25-06-2019 and 13-01-2023 attaching the properties which are the subject matter of the said notification is also evident from the affidavit and documents placed.

25. Further as argued by learned counsel for applicants that the enforcement Directorate had issued a Provisional Attachment order No.05/2020 (in EICR No. GAZO/22/2020), dated 09.09.2020, attaching as many as 31 immovable properties having the market value/worth of about Rs.30.71 Crores and 32 Bank Accounts having total balance of about Rs.35.50 Crores belonging to the accused financial establishment and its connected persons. It is relevant to mention here that the Government of Karnataka had issued the provisional order of attachment, in exercise of its powers under Section 3(2) of the KPID Act on 25.06.2019 and further that the Enforcement Directorate, Union of India in exercise of its powers under the relevant provisions of the PMLA Act has issued the Provisional Attachment order on 09.09.2020. Thus the provisional order of attachment with respect to the properties in question has been issued by the Enforcement Directorate, Union of India, subsequent to the provisional attachment issued by the Government of Karnataka.

26. Further Learned counsel for the applicants has brought to the notice of this court that one of the depositors of the said financial establishment had approached the Hon'ble High Court of Karnataka, Bench at Dharwad by initiating Writ petition under Articles 226

and 227 of the constitution of India, which was numbered as W.P.10377/2021 seeking certain directions to the respondents, to take action as per the provisions of the KPIDFE Act, 2004. That Learned Single Judge of the Hon'ble High Court of Karnataka, Bench at Dharwad, by virtue of **Order dated 12.04.2022 passed in W.P. No. 103774/2021** was pleased to allow the said writ petition with, inter alia, the following directions:

1. Writ Petition is allowed.
2. Respondent No.3 i.e. (the Enforcement Directorate) is directed to release the properties of Shri Kranthiveer Sangolli Rayanna Credit Society Ltd., Shri Gajarj Co-operative Credit Society Ltd., and Shri Bhimambika Co-operative Credit Society Ltd and the properties of the directors of the said societies attached by the Respondent No.3. (the Enforcement Directorate) in favour of the Competent Authority – KPID (Applicant herein) within a period of 60 days from the receipt of the copy of the order.
3. <u>The Competent Authority -KPID i.e. the Applicant hereon, shall thereafter act in terms of the KPID Act and bring the properties for sale and distribute the sale proceedings among the depositors in a time bound manner.</u> The Competent Authority under the KPID shall keep the ED informed of the action taken by the Competent Authority.
4. Respondents shall act on a print out of the uploaded copy of this Order without waiting for a certified copy. In the event of anyone being in doubt, the same could be crosschecked with the website and all the counsels appearing in the matter.

5. The petitioner is also directed to furnish a copy on the respondents.

With due respect to their lordship, this order of the Hon’ble High Court of Karnataka, is in support to the application filed by the applicant.

27. Further Learned counsel for the applicants has brought to the notice of this court, Order dated 06.12.2022 passed by the Hon'ble High Court of Karnataka, Bench at Dharwad, in **W.A. No. 100389/2022** wherein it is held that:

ORDER IN CCC NO. 100214/2022

Contempt Petition has been filed seeking action to be initiated in-so-far as non-compliance of the order passed in W.P. No. 103774/2021, Writ Appeal has been filed by the Government of India challenging the order passed by the learned Single Judge in W.P. No. 103774/2021 and have raised various contentions. In the light of the Writ Appeal having been filed, the proceedings in contempt petition relating to the first respondent/ first accused is kept in abeyance for the present.

ORDER IN W.A. No. 100389/2022

The legal question regarding the primacy of The Prevention of Money Laundering Act, 2002 (for short 'PMLA ACT') or The Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 (for short 'KPIED Act') is a question that requires to be resolved.
Subject to further consideration keeping in mind the interest of the depositors it is observed that in the event of any of the properties being confiscated under the

> provisions of PML Act. It is open to the competent authority under the KPIED Act to make application under section 8(8) of the PMLA Act, if so advised and circumstances are so made out without prejudice to the legal contentions that are canvassed in the writ appeal. **If such an application is made before the Special Court under the PMLA Act, the same may be taken up and disposed of expeditiously keeping in mind the interest of the depositors.** However, it is clarified that this direction would be subject to the eventual orders to be passed in the writ appeal. Pleadings in the writ appeal by the respondent to be completed within three weeks. List these mattes on 10.01.2023.

28. The Hon'ble High Court of Karnataka, by its order dated 06.12.2022 as mentioned above, has directed the applicant herein to move this Court for such application made under PMLA act which has to be disposed expeditiously keeping in mind the interest of depositors, with due respect to their lordship is also in favor of this applicants.

29. The learned counsel appearing for applicant has brought to the notice of this court the Order of Hon'ble High Court of Karnataka, Dharwad Bench in **W.P.No.105525/2022 (GM-RES)** dated 16th day of January, 2023, which is in favour of the argument adduced by the learned counsel for the applicants, wherein it is held:

"......The main grievance urged by the petitioners in the preset petition is that respondents No.6 to 10 are due in a sum Rs.8,32,35,144/- and payable to the petitioner/depositors who have obtained award/orders from the jurisdictional consumer courts despite which petitioners have not been able to realize the amounts and as such, they are before this courts by way of presents petition.

Per contra, learned counsel for respondents No.12 and 13 submits that respondents No.12 and 13 are in the process of addressing the grievances of the petitioners and other depositors before the court of CCH92 XCI Additional City Civil and Sessions Judge, Bangalore established under the KPID Act as well as before the jurisdictional Court in terms of the directions issued by the Hon'ble Division Bench of this Court in W.A. No. 100389/2022. It is submitted that respondents No.12 and 13 will take necessary steps in accordance with law.

In view of the aforesaid facts and circumstances, I deem it just and appropriate to dispose off this petition directing CCH-92 Court of XCI Additional City Civil And Sessions Judge, Bangalore established under the KPID Act to consider the claims of the petitioners in accordance with law as expeditiously as possible.

Respondents No.12 and 13 also directed to take necessary steps in this regard to address the grievance of the petitioners before the PMLA Court in accordance with law as expeditiously as possible in terms of the direction issued by the Hon'ble Division Bench in Writ Appeal No. 100389/2022. It is further directed that in the event respondents No.12 and 13 file necessary applications before the PMLA Court, the said Court shall consider the said application and proceed further in accordance with law as expeditiously as possible. Subject to the aforesaid directions petition stands disposed off.

With due respect to their lordship, this order of the Hon'ble High Court of Karnataka, is in support to the application filed by the applicant.

30. Further learned counsel for applicant has brought to the notice of this court the order passed by learned XCI Additional City Civil and Sessions Judge, Bengaluru (CCH-92) order dated 17th November 2022 in Misc. No: 996/2022, werein it is mentioned that:

ORDER

The application filed by the petitioner (IA No.I) under section 5 of the Limitation Act is hereby allowed. Consequently the delay in filing the petition is condoned.

The petition filed by the petitioner under Section 5(2) of the Act, 2004 is hereby allowed with costs.

Consequently by exercising the power conferred under Section 12(4) of the Act-2004, the interim order of attachment passed by the Government vide Notification No.RD.04.GRC.2019(P-1), Bengaluru, dated 25/06/2019 is hereby made absolute with regard to the petition schedule properties.

The competent authority is hereby directed to take steps expeditiously for realization of the amount from the said attached properties by auctioning the same for the present market value and for equitable distribution of the amount so realized among the depositors of the respondent No.1 Financial Establishment in accordance with law.

The petitioner shall submit the periodical report once in two months with regard to the steps taken in this regard.

This again is in favor of the arguments adduced by the learned counsel appearing for the applicants.

31. The learned counsel for applicant has brought to the notice of this court the provisions of Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004, which reads thus:

> 1. Short title and commencement:-
>
> (1) This Act may be called the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004.
> (2) It shall come into force on such date as the Government may, by notification appoint and different dates may be appointed for different provisions of the Act.
> This Act has came into force w.e.f. 17th day may 2006, by Notification No.FD 44 TAR 2006 dated 17.05.2006.
>
> 2. Definitions: In this Act unless the context otherwise requires:-
> 1) “Competent Authority” means the authority appointed under Section 5;
> 2) “Deposit” includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in nay other from, but dos not include:-
> (i) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given and regulations made by the Security Board of India, established under the Securities and Exchange Board of India Act, 1992.

<u>Attachment of properties on default of return of deposits</u> - [The Government or the District Magistrates in their respective jurisdiction, suo moto or based on the market intelligence reports or Police Authority on receipt of any complaint may cause investigation of a complaint or fraudulent transaction referred to in this section through its functionaries, collect the information regarding the properties and money believed to have been acquired by any financial establishment, from public or organizations or other institutions as deemed appropriate. The district magistrate shall forward his report together with the complaints, if any, received by him along with the investigation or inquiry report from the Authorised Authority under section 4 including Police Authorities or Investigation Agencies at District level or State level to the Government (Revenue Department) at the earliest.

2. Not withstanding anything contained in any other law for the time being in force, [where, suo moto or based on the market intelligence reports or upon complaint received from any depositors or otherwise, the Secretary to Government, Revenue Department is satisfied that any financial establishment has failed. -

a) to return the deposit after maturity or on demand by depositor; or

b) to pay interest or other assured benefit; or

c) to provide the service against such deposit; or;]

The Government may, in order to protect the interests of the depositors of such Financial Establishments, after recording reasons in writing, issue an order by publishing it in the official gazette, attaching the money or property believed to have been acquired by such financial establishment either in its own name or in the name of any other person from and out of the deposits collected by the financial establishments, and where it transpires that such money or other property is not available for attachment or not sufficient for the repayment of the deposits, such other property of the said financial

> establishments, or the personal assets of the promoters, partners, directors, managers or members or any other person of the said Financial Establishments.

The above provisions of Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004, are in sink with the argument adduced by learned counsel for applicants and in support of the applicants.

32. The Learned Special Public Prosecutor has argued and mentioned that *"It is being realized, world over, that money laundering poses a serious threat not only to the financial system of the countries but also to their integrity and sovereignty",* no doubt money laundering is a threat to any nation, but the fate of the distressed depositors is far more worse as they have come to streets by loosing their everything in the desire to get good interest.

33. Further as argued by learned counsel representing accused No.1 and 10, that the properties sought to be released in favour of the applicant has not been acquired through illegal means and as such the properties ought not be released in favour of the competent authority as the said authority will dispose of the said property causing undue loss and hardship to the accused No.1 and 10, this cannot be considered as the property sought as per the application

of the applicant is already attached by the concerned authority.

34. Further as argued by counsel for applicant that earlier measures have been taken by the enforcement directorate to restoration of the attached properties to the benefit of distressed depositors and in the instant case also, the Directorate of Enforcement deserves to be directed to follow the said same policy, in the interest of lakhs of depositors. It is stated that, even otherwise, considering the statement of objects and preamble of the KPID Act, the rigor of the provisions of PML Act are required to be reconciled harmoniously with the objective of KPID Act and the same can be considered in this case also for the application filed by the applicants.

35. Further as argued by the learned Special Public Prosecutor that the plain reading of section 8(8), 1st Proviso, in unequivocal language makes it clear that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss depicted having taken all reasonable precautions and he is not in money laundering and that in the above said circumstances, there is no scope to entertain the present application. Further that as per the 2nd proviso,

the Special Court may consider such application during the trial of the case in such manner as may be prescribed. The manner how it should be considered and dealt with, is prescribed/laid down in rule 3A of the Prevention Of Money Laundering (restoration of property) rules, 2016 and the said provision of law, if taken into consideration, the application is premature, defective, and is beyond the jurisdiction of this Court. Whereas learned counsel appearing for the applicant has argued and has invited the attention of this court to the proviso provided to section 8 of the PML Act, which speaks that the special court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case, in such manner as may be prescribed and in view of this submission also this court can exercise the power of restoration of the property which can be availed during the pendency of the trial. Further that there is no quantifiable loss suffered by this claimant that would come within the meaning of the loss defined under Rule-2(b) of The Prevention of Money Laundering Act, cannot be accepted as the faith of distressed depositors as mentioned in the affidavit that the distressed depositors have come on streets due to the loss they sustained, has to be considered here.

36. Further as per para 23 of the affidavit of the applicant mentions that “Even otherwise the Enforcement Directorate i.e. the non-applicant herein has a policy of “Restitution of Assets/Properties” and hence the assets provisionally attached by the Enforcement Directorate deserve to be restituted in favour of the applicant herein,” has to be considered here. Further more, as mentioned in para 27 of the affidavit of the applicant that “this Court may kindly be pleased to pass an order directing the Enforcement Directorate to restore and release the schedule properties in favour of the applicant competent authority for distribution of the proceeds of the same amongst the depositors of the errant financial establishment as provisions of the KPIDFE Act 2004”, needs to be considered here.

37. Further as argued by both the parties on this application, it can be seen that

Section 8(7) of the PMLA, reads as follows:

> "(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding

confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

Section 8(8) of PMLA, reads as follows:

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

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

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

38. On considering the argument by the counsel for the applicant, that the application is not premature, on the other hand learned Special Public Prosecutor has argued stating that the present application need not be considered, as until now the trial has not commenced and application deserves to be dismissed. Whereas as a counter to the said argument learned counsel appearing for the applicants has

brought to the notice of this court the citation reported in 1) The Supreme Court of India in Criminal Appeal Nos. 53 and 54 of 1965 in the case of The State of Bihar vs. Ram Naresh Pandey , 2) The High Court of Andhra Pradesh at Hyderabad in C.R.P. No. 4078/2005 in the case of Vempalli Srinivasula Reddy Vs. V.M. Ramakrishna Reddy and others, 3) While dealing with the word or expression trial both before the Civil Court and the Criminal Court it was stated by Sri Bakshi. 4) The Supreme Court of India in Civil Appeal No. 7251/2008 in the case of Vidyabai and others and Padmalatha and another, 5) 1957 SCR 279 AIR 1957 SC 389 1957 Criminal LJ 567 in Criminal Appeal No 53 of 1956 in the case of State of Bihar Vs. Ram Naresh Pandey and another and 6) in Criminal Appeal No. 54 of 1956 in the case of Mahesh Desai Vs. Ram Naresh Pandey and others, which are, with due respect to their Lordships, the above said citation are aptly applicable to the said application on hand. That there is no strict rule to follow that trial has to be commenced to consider such applications as made by these applicants and that at any stage of the case also such applications can be entertained by the court. Further more, the word trial has to be taken in a harmonious way and trial does not begin after the charges are framed but even prior to that also trial commences is the argument of the learned counsel for applicants. Further more, owing to the argument of Learned

counsel appearing for the applicants and further the pain of the distressed depositors should be considered, who have lost their everything due to the deposit in the society of accused no.1 and others.

39. Further section 8(2) of the Prevention of Money-Laundering Act, 2002 reads thus:

> (2) The Adjudicating Authority shall, after—
>
> (a) considering the reply, if any, to the notice issued under sub- section (1)
>
> (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and
>
> (c) taking into account all relevant materials placed on record before him,
>
> by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

40. Considering the entire documents furnished by both the parties and for the discussion as made supra, the PMLA Act is more on criminal side and KPID aims at welfare of the investors. Further that trial is not specifically defined in criminal procedure code and negotiation cannot be made in this case in dealing with application filed by the

applicants at this juncture. Further the provisions of the KPID Act and the PML Act are required to be applied at this stage harmoniously and under the PML Act, in case of confiscation the property would go to the Government and in such case the investors and the distressed depositors would be put to hardship. Further whereas the KPID aims at the welfare of the investors and depositors by making repayment returned to them. In view of the same this court is of the opinion that in order to protect the interest of the distressed depositors, it is necessary to invoke the power under Section 8 of the PML Act and to allow the application filed by the applicants. Considering all these aspects , this court has no hesitation to conclude that the applicant is entitled for prayer as sought in the application filed under section 8(7) & 8(8) of the prevention of Money Laundering Act, 2002. Hence, under these circumstances, the applicant has made out sufficient grounds in their favour at this stage as prayed for. Consequently, Point No.1 is answered in the **Affirmative.**

41**. Point No.2**: In view of answer of this Court on point No.1, this Court proceeds to pass the following:-

ORDER

The application filed under section 8(7) & 8(8) of the prevention of Money Laundering Act, 2002, dated 16.02.2023, by the applicant is hereby **Allowed.**

Further the Enforcement Directorate is ordered to restore and release the schedule 'A' properties which are immovable properties at serial no.1 to 31 and schedule 'B' properties which are Bank accounts at serial no. 1 to 32, attached vide Provisional Attachment Order dated 09.09.2020, in favour of the applicant-Competent Authority for distribution of the proceeds to the distressed depositors on priority basis, as per the provisions of KPIDFE Act 2004.

(Dictated to the Stenographer directly on the computer, the same is corrected by me and then pronounced in open Court, this the **8th day of September, 2023.**).

(Sandhya S.)
III Addl. District and Sessions Judge,
D.K. Mangaluru.