

LEGAL UPDATES

MADRAS HC: WHEN THE COMPANY IS CHARGED WITH THE OFFENCES UNDER PMLA, THE DIRECTOR IS LIABLE TO FACE THE TRIAL

The Madras HC division bench presided by Justice S. Vaidyanathan and Justice G. Jayachandran dismissed a petition of a company's shareholder/ promoter ('Petitioner') who was charged for the offences committed under the PMLA. The petition sought for recalling the summons issued by the ADJ, which had called the Petitioner in order to answer the charges as incriminated. The bench noted that, even if the adjudicating authority's decision has attained finality, the summons issued to the petitioner, in this case, cannot be viewed as being premature or unlawful because the petitioner is subject to trial in both his individual capacity and as the person in-charge for the Company, which has been accused of violating the PMLA. The bench highlighted that (i) As per Sec. 50 of PMLA, the director of one company accused and their shareholders had generated income illegally, thereby committing an offence, further, the assets involved are in the company's name and their individual capacity as well, (ii) a portion of this illegally generated income has been transferred in the name of the company and has been shown as legally generated income in the books of accounts of the company, (iii) the monetary benefits as enjoyed by the accused through these illegal transactions were done under the garb of regular sales. The bench noted that there is a non-obstante clause u/s. 44 and 45 of PMLA, further, pointing out that the complaint has to be duly made in writing by an authorized officer, the cognizance of which shall be taken by a special judge without committing the accused. The bench held that the claim of the petitioner that the ED's stand of filing the complaint without first filing an FIR is baseless. In conclusion, with regard to the submission of the petitioner that he is not linked with the accused company, the HC ruled that this is a self-explanatory submission and contradicts the submission of the witnesses as recorded by ED and the evidence collected during the investigation and held that, "Even if the said self-serving statement of the petitioner herein is true, the same has to be proved in the course of trial and a petition to quash the proceedings is not the recourse for the petitioner." Hence, the petition was rejected.