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## **Case Commentary: *ED Authorities Are Not Police Officers; Article 20(3) Protection Applies Only After Arrest, Not at Summons Stage – Supreme Court***

*By Ayushi Pandey*

### **Title of the Case**

Pankaj Bansal v. Union of India & Others, 2023

### **Court and Year**

Supreme Court of India, 2023

### **Bench / Judges**

Justice A.S. Bopanna and Justice Sanjay Kumar

### **4. Background and Facts of the Case**

The matter emerged after the Enforcement Directorate (ED) summoned numerous individuals under the Prevention of Money Laundering Act, 2002 (PMLA)<sup>1</sup>. The ED is a specialized agency that investigates economic crimes such as money laundering, proceeds of crime, and transactions involving unlawful gains.

One of the petitioners in this case, Pankaj Bansal, was summoned by the ED to attend for questioning. He petitioned the Supreme Court, claiming that the ED officers were acting as police officers and that any statement recorded by them should be deemed inadmissible in court

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<sup>1</sup><https://enforcementdirectorate.gov.in/sites/default/files/Act%26rules/THE%20PREVENTION%20OF%20MONEY%20LAUNDERING%20ACT%2C%202002.pdf>

under Article 20(3) of the Constitution<sup>2</sup>. He further argued that he should not be forced to answer questions or make any statements that could be used against him.

This raised a bigger constitutional question: Does Article 20(3), which protects a person from self-incrimination, apply during the summons stage, before any arrest is made? Are ED personnel classified as "police officers" for this purpose?

## 5. Issues Before the Court

The Supreme Court examined two important legal questions:

1. **Whether Enforcement Directorate officials are to be recognized as "police officers" under Article 20(3) of the Indian Constitution?**
2. **Is there any protection under Article 20(3) for those called by the ED prior to arrest or official accusation?**

## 6. Arguments by the Petitioner

The petitioners presented the following main arguments:

- **ED officers are like cops:** The PMLA grants them the same powers as normal police officers, including arrest, search, seizure, and interrogation. As a result, they should be considered as police officers under both the BSA and the Constitution.
- **Statements are self-incriminating:** If the ED records a statement during a summons and later uses that statement as evidence in court, it violates Article 20(3), which prohibits individuals from being forced to testify against themselves.
- **Right to silence:** The Constitution protects the right to keep silent in the face of probable criminal prosecution. The petitioner contended that this privilege is applicable from the time of summons, not merely after arrest.

## 7. Arguments by the Government (Respondents)

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<sup>2</sup><https://indiankanoon.org/doc/366712/>

The Union of India, through its Solicitor General, provided the following counterarguments.

- **ED officers are not police.** While they have some investigative capabilities, they do not submit charge sheets as the police do under the Criminal Procedure Code. Instead, they file complaints with a Special Court under the PMLA. This differentiates them from police officers.
- **Article 20(3) only applies to accused individuals:** To be protected under Article 20(3), a person must be formally indicted or detained. A summons under Section 50 of the PMLA is only part of an inquiry or investigation.
- **No coercion at the summons stage:** Simply requesting someone to present and provide information during an inquiry does not constitute compulsion or a breach of their rights, unless proven otherwise.

#### **8. The Supreme Court's Decision**

The Supreme Court issued a momentous decision. Here are the main points of the judgment:

- ED officials are not classified as "police officers" under the Indian Evidence Act or the Constitution. They may have investigation powers, but their operations are not the same as those of ordinary police. To buttress this, the Court cited earlier opinions such as *Raj Kumar Karwal v. Union of India* (1990) and *K. I. Pavunny v. Asst. Collector* (1997). Article 20(3) does not protect everyone who is called by an authority. It applies only if:
  - A person is accused of an offense,
  - There is a sense of obligation to provide proof against oneself.
- The Court stated that a person who has just been called under the PMLA is not yet an accused, hence Article 20(3) does not apply at the summons stage.
- Only after an arrest or official accusation does a person's right against self-incrimination take effect. Until that point, any voluntary statement made to the ED may be utilized as evidence.

However, the Court underscored that no one may be forced to deliver a declaration under pressure or danger. If it is established that a statement was made under duress, it will not be accepted in court.

## **9. Legal Principles Laid Down**

This decision clarifies various constitutional and evidentiary issues.

The definition of "police officer" is restricted. Simply having police-like capabilities does not qualify an officer as a "police officer" under the law.

Scope of Article 20(3):

- It only applies after an arrest or when official charges are filed.
- It does not apply during the pre-arrest or pre-accusation stage, such as during an ED summons.
- Statements to ED are admissible unless proven to be made under duress or threat.

This interpretation supports the work of special investigative agencies such as the ED while simultaneously clarifying and limiting the scope of constitutional protection to suitable circumstances.

## **10. Critical Analysis**

The decision strikes a careful balance between empowering investigators and safeguarding individual rights. By declaring that ED personnel are not police officers, the Court has resolved a long-standing ambiguity in economic crimes cases. This verdict assures that PMLA investigations can proceed without being hampered by the inadmissibility of statements, as opposed to conventional police investigations.

However, the verdict has sparked controversy and concerns:

- Critics believe that summoned individuals are susceptible to coercion, and that without Article 20(3) protection at that point, they may be pushed to self-incriminate indirectly.

- There is some ambiguity in deciding whether a person is "compelled" to make a remark. People may feel scared and unwilling to participate because the ED has the power to arrest and seize.
- While the Court ruled that comments made under duress are inadmissible, it may be difficult for persons to prove coercion later, particularly if there is no recording or independent witness.
- The verdict boosts the ED's anti-money laundering efforts, which is beneficial to both national security and the economy. However, it must be supplemented with controls to guarantee that investigative powers are not abused.

Overall, the decision promotes legal clarity while also reminding the government and agencies to be responsible.

## **11. Conclusion**

This decision by the Supreme Court marks a fundamental shift in India's constitutional and criminal law. It underlines that the right against self-incrimination under Article 20(3) is not an absolute right that applies at all stages. It applies only to individuals who have been formally accused or arrested.

By determining that ED officials are not police officers, the Court has increased the flexibility of financial crime investigations. However, the verdict serves as a reminder that constitutional protections must not be weakened, and investigating agencies must be constantly monitored to prevent misuse of power.

This case establishes a precedent that will guide future investigations under economic laws such as the PMLA, FEMA, and others. Legal scholars and human rights groups will continue to assess the long-term effects on criminal justice and civil liberty.

## **12. References**

- Constitution of India – Article 20(3)
- Bharatiya Sakshya Adhiniyam (BSA) 2023
- Prevention of Money Laundering Act, 2002 – Section 50
- *Raj Kumar Karwal v. Union of India*, (1990) 2 SCC 409
- *K.I. Pavunny v. Assistant Collector*, (1997) 3 SCC 721
- Supreme Court judgment in *Pankaj Bansal v. Union of India*, 2023