

**[2022] 143 taxmann.com 291 (Article)**

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## **Prosecution Under PMLA**



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The Prevention of Money Laundering Act 2002 (hereinafter referred as **PMLA**) was enacted with an objective to prevent the financial institutions from being used as an instrument for laundering of money which originated from the commission of crimes with regard to narcotics and drugs, corruption, offence under Indian Penal Code, Companies Act and terrorism. Such underlining offences are called as "scheduled offences" defined under Section 2(1)(y) of the PMLA.

### **OFFENCE OF MONEY LAUNDERING**

Section 3 of the PMLA defines the "offence of money laundering" as any person who attempt or assist or is a party in any process or activity or involved in "proceeds of crime"<sup>1</sup> shall be held liable for offence of money laundering. Section 4 prescribes the rigorous imprisonment ranging from 3 years to 7 years along with fine as punishment for commission of offence of money laundering; however, if the predicate offence or scheduled offence is related to offences under Narcotics

Drugs & Psychotropic Substances Act 1985, then the maximum punishments shall be awarded by the court be ten years.

Article 20(1) of the Constitution of India provides protection from *ex post facto* laws which is also applicable on PMLA. Hence, a person shall not be held guilty for an offence of money laundering, if the scheduled offence was committed before the enactment of PMLA i.e. 01.07.2005.

### **OFFENCE UNDER SECTION 3 IS COGNIZABLE & NON-BAILABLE**

Section 45 of PMLA states that the offence of money laundering as defined under Section 3 shall be cognizable and non-bailable in nature. "Cognizable offence" is defined under Section 2(c) of Code of Criminal Procedure 1973 (hereinafter referred as **CrPC**), as offences wherein the police (or investigating agency in reference to PMLA) may arrest without warrant.

### **MISCELLANEOUS OFFENCES**

Chapter X of PMLA provides punishments for two miscellaneous offences:-

- (a) Section 62 (Punishment for vexatious search) - The Act provides checks and balances on the power of investigating agencies. The unreasonable exercise of power of search or arrest (including unlawful detention) by the investigating agency has been termed as an offence and such officer may be imprisoned for a term extendable upto two years or fine of upto Rs. 50,000/-.
- (b) Section 63 (Punishment for false information or failure to give information, etc.) - The intentional and malicious act of a person of giving false information, resultantly causing an arrest or search, shall be liable for imprisonment for a term upto 2 years and fine of upto Rs. 50,000/-. In certain circumstances mentioned under Section 63(2), such as not honouring the summon issued under Section 50, the penalty ranging between Rs. 500/- to Rs. 10,000/- for every such default or failure.

The central governmental sanction is required for a court to take

cognizance of offences under Section 62 or 63(1) of PMLA. The central government may either grant or refuse to give sanction within 90 days of receipt of sanction.

## **CONSTITUTION OF SPECIAL COURTS**

Section 43 provides establishment of special court for trial of the offence of money laundering punishable under Section 4 of PMLA. The special court has powers of a Court of Session as per the CrPC with regard to trial of offences. Section 44 states the offences triable by the court as well as jurisdiction of such court.

The trial of offence by special court ensures uniformity and expertise in handling prosecution relating to offences of money laundering. Also, constitution of special court shall significantly address the issue of delay in trial proceedings.

## **COMPLAINT UNDER PMLA**

The complaint in writing made by the director or any authorized person shall file a complaint before the special court as mentioned under second proviso of Section 45(1). Thereafter, the special court shall take cognizance of the complaint for offences under Section 3 without the accused being committed to trial.

## **BURDEN OF PROOF**

The offence of money laundering and the scheduled offence are mandatorily required to be associated to each other. The investigating agency is responsible to establish the nexus between the two offences.

Section 24 of PMLA states that the burden of proof is on the accused with regard to the proceed of crime. The court unless proven otherwise, shall presume that the proceed of crime is involved in money laundering.

## **APPEAL & REVISION**

Section 47 provides an opportunity to an aggrieved party on account of orders passed by the special court to either prefer an appeal or a revision before the jurisdictional Hon'ble High Court. Chapter XXIX (Appeal) and XXX (Revision) under CrPC shall govern the power and procedure of appeal and revision, respectively before the Hon'ble High

Court.

## **EFFECT OF ACQUITTAL IN SCHEDULED OFFENCE ON TRIAL OF OFFENCE OF MONEY LAUNDERING**

The prosecution under the PMLA for offence of money laundering and the trial for scheduled offences are inter-linked to each other. The Hon'ble Supreme Court in the landmark judgment of ***Vijay Madanlal Choudhary v. Union of India***<sup>2</sup> has inter-alia held hereinbelow:-

*"187. ....(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."*

The aforesaid principle of ***Vijay Madanlal Choudhary*** (*supra*) was relied by the Hon'ble Supreme Court in another matter of ***Parvathi Kollur v. State by Directorate of Enforcement***<sup>3</sup> whereby on account of acquittal by a trial court in relation to the scheduled offence, the accused was discharged for offence of money laundering as well.

## **CONCLUSION**

The PMLA is a cardinal legislation to support the financial ecosystem of the nation by combating to the offence of money laundering. The Act is a result of a world-wide effort under the aegis of United Nations which later on was reiterated by Indian Parliament in the form of legislation.

The recognition of money laundering as an offences has provided ample scope to the agencies to not only recover the proceeds of crime under the adjudication proceedings but also initiating prosecution proceedings for commission of the offences of money laundering. Such

recognition of money laundering as a criminal offence shall benefit the society at large by deterring other similar minded people.



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1. Defined under Section 2(1)(u) of PMLA
  2. [2022] 140 taxmann.com 640 (SC)/2022 SCC Online SC 929
  3. Criminal Appeal No. 1254/2022, decided on 16.08.2022