

Bribe-giver under PMLA?

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CAN a person who gives a bribe to a GST officer be prosecuted under PMLA? Though not GST officer, the Supreme Court ([2022-TIOL-92-SC-PMLA](#)) this Monday decided a similar issue pertaining to an Income Tax officer.

The two important characters in our story are:

A1 - An IRS officer then working as Additional Commissioner of Income Tax.

A2 - An Income Tax assessee whose file was with A1.

A1 was working as Additional Commissioner of Income Tax, Chennai. On intelligence, the Central Bureau of Investigation (CBI) checked a car that was parked in front of the premises of A1's house on 29.08.2011 and recovered a sum of Rs.50,00,000/- in cash. It is alleged that A1 and another person were in that car at that time.

During investigation, it came to light that the sum of Rs.50,00,000/- was handed over to A1 by A2, whose income tax file was pending with A1 for clearance. Since A2 wanted certain benefits, he had allegedly paid the sum of Rs.50,00,000/- as bribe to A1.

In connection with this seizure, the CBI registered an FIR on 29.08.2011 and after completing the investigation, filed charge sheet before the Special Court for the CBI Cases, Chennai, for the offences under Section 120-B IPC and Sections 7, 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, against A1, A2 and some others. Since the case registered by the CBI disclosed the commission of a 'schedule offence' under the Prevention of Money Laundering Act, 2002 (PMLA), the Enforcement Directorate registered a case in E.C.I.R.No.13 of 2016 and after completing the investigation, filed a complaint in C.C.No.60 of 2018 against A2 among others for the offences under Section 3 and 4 of the PMLA.

Thus, A2 had allegedly handed over a sum of Rs.50,00,000/- (Rupees fifty lakhs) to a public servant, for which a case was registered by the Enforcement Directorate under Sections 3 and 4 of the PML Act.

The basic submission advanced on behalf of A2 was that the amount in question, as long as it was in the hands of A2, could not be said to be tainted money; that it assumed such character only after it was received by the public servant; and as such A2 could not be said to be connected with proceeds of crime and could not be proceeded against under the provisions of the PML Act. This submission was accepted by the High Court with the observations: -

For attracting the penal provisions of the PML Act, the accused should have projected the proceeds of a crime as untainted money. In this case, the sum of Rs.50,00,000/- as long as it was in the hands of A2 could not have been stated as a tainted money because it is not the case of the CBI that A2 had mobilised Rs.50,00,000/- via a criminal activity. The sum of Rs.50,00,000/- became the proceeds of a crime only when A1 accepted it as a bribe. Even before A1 could project the sum of Rs.50,00,000/- as untainted money, the CBI intervened and seized the money in the car on 29.08.2011.

The High Court thus allowed the writ petition of A2 and quashed the proceedings in PML Act against A2, which decision is under challenge before the Supreme Court by the Enforcement Directorate.

The definition of **proceeds of crime**, as appearing in Section 2(1)(u) of the PML Act is: -

(u) "**proceeds of crime**"

means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation. - For the removal of doubts, it is hereby clarified that "**proceeds of crime**"

include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

Sections 3 and 4 of the PML Act which are the principal sections for the present purposes, are as under: -

3. Offence of money-laundering. - Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation. -For the removal of doubts, it is hereby clarified that, -

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely: -

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

4. Punishment for money-laundering. - Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine:

Paragraph 8 of the Part-A of the Schedule to the PML Act deals with offences under the PC Act: -

A2 here is charged for having committed offence of conspiracy to commit offences punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the PC Act. The controversy in the instant matter is not with regard to his involvement in the offence punishable under the PC Act, but raises a question whether A2 can be proceeded against under the provisions of the PML Act.

The Supreme Court observed,

The definition of "**proceeds of crime**"

in PML Act, inter alia, means any property derived or obtained by any person as a result of criminal activity relating to a scheduled offence. The offences punishable under Sections 7, 12 and 13 are scheduled offences, as is evident from paragraph 8 of Part-A of the Schedule to the PML Act. Any property thus derived as a result of criminal activity relating to offence mentioned in said paragraph 8 of Part-A of the Schedule would certainly be "**proceeds of crime**".

The further question to be answered is: whether the role played by A2 could come within the purview of Section 3 of the PML Act?

Section 3 states, inter alia, that whoever knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition, or use shall be guilty of offence of money-laundering.

It is true that so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money. If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the public servant, the offence would be of misappropriation or species thereof but certainly not of bribe. The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the amount is handed over. Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "**proceeds of crime**"

including inter alia, the aspects of possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person.

On a bare perusal of the complaint made by the Enforcement Directorate, it is quite clear that the respondent was **prima facie** involved in the activity connected with the proceeds of crime.

The view taken by the High Court that the respondent cannot be held liable for the offence under the PML Act is thus completely incorrect.

The observations made by us regarding involvement of the respondent are **prima facie** in nature and for considering whether the allegations made by the prosecution if accepted to be true at this stage, would make out an offence or not. Needless to say, that on facts, the matter shall be considered purely on merits at the appropriate stage(s).

The Supreme Court allowed this appeal and set aside the judgment and order passed by the High Court. Consequently, the respondent A2 shall continue to be arrayed and proceeded against in accordance with law in E.C.I.R. No. 13 of 2016 registered by the Enforcement Directorate.

Epilogue : In a press release issued on 03.10.2022, the Enforcement Directorate stated that:

Directorate of Enforcement (ED) has provisionally attached immovable property valued at Rs.7.33 Crore under the provisions of the Prevention of Money Laundering Act (PMLA), 2002 relating to the disproportionate assets case registered against A1, Additional Director of Income Tax who was compulsorily retired from service by the Finance Ministry under 56 J of Central Civil Services Conduct rules.

Earlier in the same case, the illegal gratification of Rs.50 Lakhs alleged to have been delivered on 29.08.2011 to A1 at his residence relating to certain favours extended by the official resolving tax related disputes was provisionally attached and subsequently confirmed by the Adjudicating Authority, New Delhi under Section 8(3) of the PMLA, 2002 during 2018.

Moral: A bribe will not end with CBI; ED will follow.

Until Next week