

NATIONAL JUDICIAL ACADEMY



P-1157

Refresher Course on Prevention of Money Laundering Act, 2002

(22nd – 24th , March 2019)

PROGRAMME REPORT

PROGRAMME COORDINATORS:

Mr. Rahul I. Sonawane & Ms. Sonam Jain

Faculty NJA

The NJA organized a three-day "Refresher Course on Prevention of Money Laundering Act, 2002" (hereinafter PMLA) from 22nd March 2019 to 24th March 2019. The course centered on basic areas concerning the offenses of Money Laundering and how it happens; investigated National and International Responses to handle Money Laundering; thought upon the Prevention of Money Laundering Act, its Objectives and Historical Background. The sessions also included Role of Special Court under PML Act, its power under the Act, remand, and cognizance, Trial Procedures and speedy trial, Bail under PML Act and Cross-border Money Laundering etc. Amid the talk, the members shared best practices on Burden of Proof and Appreciation of Evidence in PML Act. The seminar was divided into 8 sessions.

Session 1

Money Laundering: Origins and Evolution

Speakers: Justice Rajive Bhalla & Adv. Rajiv Awasthi

In this session, the speaker said 'Money Laundering' is the concealment of the origins of illegally obtained money, typically by means of transfers involving foreign banks and legitimate business. Accentuation was laid on section 2 (u) of the PMLA which portrays "proceeds of crime". Section 3 and 4 of the Act were also examined wherein meanings of money laundering and its punishment have been enumerated. Speakers articulated the stages of Money laundering viz. Placement, Layering and Integration. In the later part of

the session the origin of money laundering was discussed. The term developed, when an Italian mafia known as "Al Capone" who was a criminal, opened a laundry shop so as to utilize and carry the illicitly gotten cash into the standard and to extend as a profit lawfully derived from such clothing business. UN convention of 1988 on Money Laundering and importance of Financial Action Task Force (FATA) were also discussed in detail.

Session 2

Prevention of Money Laundering Act, 2002: Nuances

Speakers: Justice Rajive Bhalla, Adv. Somasekhar Sundaresan & Adv. Anand Grover

In this session speaker discussed some major provisions of the Act. The scheme of the Act was discussed in detail and it was suggested that Sec. 3, 4, 5 & 8 are the most important parts of the PML Act as far as the special courts are concerned. As far as other parts of the Act are concerned, composition and jurisdiction of adjudicating authority vis-à-vis jurisdiction of special court was also discussed in detail. Major amendment of 2013 was also discussed in the light of role of special court. It was emphasized that PML Act is a special legislation to curb the menace of money laundering and black money. Some needs to pass to develop the jurisprudence under this Act.

Session 3

Role of Special Courts under PML Act

Speakers: Justice Rajive Bhalla, Adv. Somasekhar Sundaresan & Adv. Rajiv Awasth

In this session, it was stated that PMLA offence and connected scheduled offence can be tried by the Special Court constituted in this regard under Section 44(1)(a) of the Act and such court can take cognizance of the case on a complaint made by an authority in this regard. The difference between scheduled offence and PMLA offence was discussed with special reference to role of special courts. It was emphasized that even if the accused has been discharged or acquitted from scheduled offence by a competent court, the trial for offence under PML Act can proceed with independently but due consideration has to be given by a special court to the order and findings of court which tried the scheduled offence. The provisions of presumptions under PMLA i.e. sections 22-24 were discussed in this session with reference to the queries raised by the participants.

Session 4

Burden of Proof & Appreciation of Evidence in PML Act

Speakers: Adv. Rajiv Awasthi & Adv. Nitesh Rana

In this session the concepts like burden of proof and reverse burden as envisaged under sec. 24 of the Act were discussed. It was stated that though it is said that accused has to prove his innocence, the initial burden is always on the prosecution to establish the presumption of guilt and then only accused can be asked to discharge his burden. It was

emphasized by the speakers that, offence of money laundering is a continuous offence and requires ongoing investigation as it is very difficult to trace the money trail. Therefore, supplementary charge-sheets whenever necessary should be allowed. Section 50 and the power of investigation officer to record statement was also discussed with relevant case laws viz. Gaurav Gupta vs. Enforcement Directorate, Kanhaiya Lal v. Union of India, Toofan Singh v. State of Tamil Nadu etc.

Session 5

Bail under PMLA

Speakers: Adv. Rajiv Awasthi, Adv. Somasekhar Sundaresan & Adv. Nitesh Rana

Provision relating to bail viz. sec. 45 of the Act and twin conditions therein were discussed in detail with special reference to judgement of Hon'ble Apex Court in case of Nikesh Tarachand Shah vs. Union of India and subsequent amendment to the PML Act. It was stated that though after the judgement of Supreme Court, twin conditions are not applicable, the conditions laid down in amended sec. 45 have to be complied with for granting bail under this Act. It was asserted that section 437 and 439 of CrPC are different from that of section 45 of PMLA and a complaint may be filed as provided u/s. 45, also it is a settled position that the PMLA overrides the CrPC in explicit terms or by necessary implication to the extent indicated in the PMLA. As regards anticipatory bail u/s. 45 of CrPC for PMLA offences is concerned it was stated that the jurisprudence in this regard is yet developing and we have to wait for some time to get this area crystalized.

Session 6

Endemic Pathologies in Search, Seizure/Attachment & Disposal

Speakers: Adv. Rajiv Awasthi, Adv. Somasekhar Sundaresan & Adv. Nitesh Rana

This session was initiated with explaining the definition of 'proceeds of crime'. Speakers also discussed the role of adjudicating authority as well as role of special court in this regard. It was emphasized that attachment of property in PMLA offence is very crucial to the progress of trial as it forms an important evidence. No doubt, if after attaching the property, if the charge-sheet or complaint is not filed within stipulated period of 365 days, the attachment ceases to exist and property needs to be released. The special court can also pass an order of disposal of property at the conclusion of trial. Apart from this adjudicating authority under this Act has special powers to deal with the seized/attached property under this Act. At the end speakers discussed various important case laws on the topic and concluded the session.

Session 7

Cross-Border Money Laundering: Issues and Challenges

Speakers: Justice D. Sheshadri Naidu, Mr. S. K. Mishra & Adv. Rajiv Awasthi

The session was initiated by the speaker by explaining the concept of money laundering and how it can have cross-border implications. It was emphasized that now a days a world has turned into a global village and due to accessibility the menace of cross-border

money laundering has grown to a large extent. Speaker said mispricing, barter-trade, terror financing are some of the current issues in cross-border money laundering. The issues and challenges in cross-border money laundering includes, tendency of accused to leave the country before detection of offence or just after offence known to public, obtaining permit to live/ citizenship of the country with which India does not have extradition treaty or the overseas country is known for very poor record of extraditing accused persons, lack of internationally agreed robust system for tracking of cancelled passport or for complying the terms and conditions of RCN issued by the Interpol etc. Due to this, investigating a cross-border money laundering is itself a task and therefore, courts should be more cautious in such cases.

Session 8

Contemporary Adjudicatory Challenges in PMLA cases: Way Forward

Speakers: Justice D. Sheshadri Naidu & Mr. S. K. Mishra

In this session, the provisions regarding the filing of Prosecution Complaint before Special Court and challenges faced by the investigating agencies in this regard were discussed in detail. It was highlighted that the rules under the PMLA do not prescribe a format for filing prosecution complaint. However, in order to standardise the process, a pro forma has been devised as part of Standard Operating Procedures (SOP). It was emphasized that since action under the PMLA is as sequel to predicate offence registered

against the accused by another Law Enforcement Agency, investigation of the scheduled offence and filing of charge-sheet has a bearing on investigation proceedings and that may cause delay in filing complaint under PMLA. Interconnection between scheduled offence and criminal activities relating to scheduled offence under the PMLA often lead to delay in filing prosecution complaint as well as in taking cognizance of the charges in the prosecution complaint under PMLA. Apart from this, digital transactions and cryptocurrencies have created many problems for law enforcement agencies and courts as regards to investigation and trial of money laundering cases.

With expression of vote of thanks to all the resource persons and participants refresher course was concluded.
