

NATIONAL JUDICIAL ACADEMY



REFRESHER COURSE FOR MONEY LAUNDERING

COURTS (P-1204)

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PROGRAMME REPORT

Submitted by

Ms. Shruti Jane Eusebius, Research Fellow

OBJECTIVE

National Judicial Academy organised a refresher course for courts designated under the Prevention of Money Laundering Act, 2002 (PMLA). The course assessed and audited the working of the PMLA courts; and sought to identify bottlenecks encountered in adjudicating cases and evolve strategies for resolving such bottlenecks and challenges. The 24 participant judges were acquainted with the evolving jurisprudence on money laundering, and were engaged in discussion on core issues in adjudication of cases by these courts. The course also enabled the identification of appropriate measures to assist judges presiding over Money Laundering Courts to dispose off cases speedily.

RESOURCE PERSONS

1. Hon'ble Mr. Justice Joymalya Bagchi , Judge, Calcutta High Court
2. Hon'ble Mr. Justice P.S. Dinesh Kumar , Judge, Karnataka High Court
3. Hon'ble Ms. Justice Mukta Gupta , Judge, Delhi High Court
4. Hon'ble Mr. Justice Rajive Bhalla, Former Judge, Punjab & Haryana High Court
5. Mr. Sanjay Kumar Mishra, Director, Enforcement Directorate
6. Mr. Rajiv Awasthi, Advocate
7. Mr. Somasekhar Sundaresan, Advocate
8. Mr. Nitesh Rana, Advocate

SESSION 1

Theme: Money Laundering as an Economic Offence

Speakers: Mr. Sanjay K. Mishra and Mr. Rajiv Awasthi

Chair: Justice Rajive Bhalla

The speaker discussed the Financial Action Task Force Recommendations as the standard and basis of anti-money laundering law. The terrorism and tax evasion angles of money laundering were stressed on. The speaker dwelt on the concept of money laundering as a method of introducing the proceeds of crime into the monetary system and to convert illegal money into legal. The speaker explained the process of money laundering, the concepts of 'proceeds of crime', 'layering' and 'integration'. The complex nature of money laundering was explained to highlight the challenges in investigating and adjudicating such offences. The rationale for harsh law and stringent actions by the executive was discussed and emphasis was placed on the role of the judiciary as a balance to ensure fairness in the process. The evolving methods of money laundering was discussed and the need for drastic changes in the law to meet the challenge of the new methods was stressed on. The human angle in cases before the PMLA courts i.e the individual and his rights was emphasised upon. The speaker discussed the concept of 'terror financing', legal and illegal sources of funds, main players, sources and processes of transferring funds. Important concerns in investigating money laundering and terror financing were discussed *viz.* multiple opaque and complex structure in movement of funds.; Complex routing of transactions; challenges in tracing cases due to complex and deliberate masking of transactions; tendency of accused to leave country and obtain citizenship or residency in other countries; lack of internationally agreed robust system for tracking of cancelled passport or for compliance of RCN issued by Interpol; limited extradition treaties; slow and cumbersome legal mechanism; and innovative ways of money laundering.

SESSION 2

Theme: Role of Special Courts under PML Act

Speakers: Mr. Sanjay K. Mishra and Mr. Rajiv Awasthi

Chair: Justice Rajive Bhalla

The speaker discussed the definition of the offence of money laundering under Section 3 of the PMLA, its elements and scope. Money laundering was emphasized as a continuing and dynamic offence which can continue till confiscation of property. The speaker discussed the terms 'proceeds of crime' and 'value' as defined in Section 2(u) and Section 2(zb) of the PMLA. It was pointed out that a frequent challenge to attachment proceedings is that the value of the property attached is far greater than the value of the proceeds of crime. It was stated in this regard that as per Section 2(zb) of the PMLA the value is to be determined from the date of acquisition or date of possession as the value of acquisition may be less than the present market value. Value should be the value at time of acquisition or possession and should not to be taken at the date of attachment. The speaker discussed the Enforcement Case Information Report, its format and the necessary processes related to the same. The case of *J. Sekar v. Enforcement Directorate* (2018 SCC Online Del 6523) was discussed. The powers of the investigating officer under Section 50 of the PMLA was discussed.

SESSION 3

Theme: Contemporary Adjudicatory Challenges in PMLA cases: Way Forward

Speakers: Mr. Sanjay K. Mishra and Mr. Rajiv Awasthi

Chair: Justice Rajive Bhalla

It was stated that at the time of arrest, volumes of records are placed before the court for consideration while granting bail. Sifting to such voluminous records proves to be a challenge for judges. The need for streamlined processes in PMLA cases was stressed upon. On the issue of whether the PMLA court can impound a passport, it was stated that it can only be a direction by the court as a condition for grant of bail, and the court can direct the accused not to leave the country and to surrender the passport to the Enforcement Directorate. The procedure to be followed in cases which relate to PMLA offences and offences under other special legislations. The value of the evidence of hostile witnesses was analysed and it was stated that the evidence can be relied on unless the retraction is immediate and there are cogent reasons for retraction.

SESSION 4

Theme: Burden of Proof & Appreciation of Evidence in PML Act

Speaker: Mr. Rajiv Awasthi and Mr. Nitesh Rana

Chair: Justice Mukta Gupta

The meaning of evidence, the principles of relevancy, admissibility and appreciation of evidence were discussed. The relevancy of various types of evidence such as admissions, confessions, documents etc were explained. The speaker also discussed the principles for appreciation of circumstantial evidence. The cases of *Hanumant Govind Nargundkar v. State of Madhya Pradesh* [AIR (1952) SC 343] and *Sharad Birdhichand Sarda v. State of Maharashtra* [AIR (1984) SC 1622] were discussed in this regard. The speaker then dwelt on the admissibility of statement recorded before the authorized officer under Section 50 of PMLA

and discussed the case of *A. Tajudeen v Union of India* [2015 (4) SC 435]. The provisions of Section 24 were discussed to explain the burden of proof in PMLA cases. The cases of *K. Sowbaghya v. E.D.* [2016 SCC OnLine Kar 282], *Union of India v. Hassan Ali Khan* [2012 Cri. L.J. 1630 (SC)], *Mohan Lal vs. State of Punjab* [2018 (17) SCC 627] and *Noor Aga vs. State of Punjab* [2018 (16) SCC 417]. The constitutional validity of Section 24 was discussed and reference was made to *B. Rama Raju v. Union of India* [2011 SCC OnLine AP 152], *Usha Agarwal v. Union of India* [2017 SCC OnLine Sikk 146] and *Janata Jha v. Assistant Director, Directorate of Enforcement, Govt. of India* [2013 SCC OnLine Ori 619]. Presumptions under Section 22 and 23 of the PMLA were discussed.

SESSION 5

Theme: Bail under Prevention of Money Laundering Act, 2000

Speaker: Mr. Rajiv Awasthi and Mr. Nitesh Rana

Chair: Justice Mukta Gupta

The speaker dwelt on the provisions of Section 45, the conditions prescribed under Section 45 and discussed the cases of *Nikesh Tarachand Shah v. Union of India* [2018 (11) SCC 1], *Vinod Bhandari v. Assistant Director, Directorate of Enforcement* [2018 SCC OnLine MP 1559] and *Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra & Anr.* [(2005) 5 SCC 294]. The power to arrest and prerequisites for the same under Section 19 of PMLA were discussed and a comparison was made between Section 19 PMLA and Section 41(1) CrPC. The guidelines for grant or refusal of anticipatory bail under PMLA as laid down in *P. Chidambaram v. Directorate of Enforcement* [2019 SCC OnLine SC 1143] were discussed. The cases of *Siddharam Satlingappa Mhetre v. State of Maharashtra* [(2011)], *Jai Prakash Singh v. State*

of Bihar [(2012) 4 SCC 379] and *Y.S. Jagan Mohan Reddy v. CBI* [(2013) 7 SCC 439] with regard to grant of anticipatory bail were discussed. Guidelines for grant or refusal of regular bail under PMLA were discussed. The case of *Union of India v. Hassan Ali Khan* [(2011) 10 SCC 235] was discussed.

SESSION 6

Theme: Search, Seizure/Attachment and Disposal of Property under PML Act

Speaker: Mr. Rajiv Awasthi and Mr. Nitesh Rana

Chair: Justice Mukta Gupta

The speakers discussed the provisions of Sections 5 (with regard to attachment of property), 16 (power to survey), 17 and 18 (search and seizure). The case of *M. Saraswathy v. The Registrar* [2012 SCC OnLine Mad 2583] was referred to. Emphasis was placed on rights of persons being searched and safeguards to ensure fair processes. The extra-territorial jurisdiction and extra-state jurisdiction in regard of attachment of property was discussed. The cases of *K. Sowbaghya v. Union of India* [2016 SCC Online Kar 282] and *J. Sekar v. Enforcement Directorate* [2018 SCC Online Del 6523] were discussed. The evidentiary value of statements under Section 50 of the PMLA was discussed and it was stated that such statements are relevant and admissible but do not have character of judicial confession under 164 CrPC. It was stated that in cases involving persons who have taken asylum in another country the court can rely on the provisions of Section 8 of the PMLA which enables the confiscation of property involved in money laundering. In case of offences where the total value involved is greater than 100 crore, the person can be declared a fugitive economic

offender under the Fugitive Economic Offenders Act, 2018 (FEO Act) and the properties belonging to such person can be confiscated.

SESSION 7

Theme: Fugitive Economic Offenders Act, 2018

Panel: Justice Joymalya Bagchi, Justice P.S. Dinesh Kumar and Mr. Somasekhar Sundaresan

The speaker dwelt on the genesis of anti-money laundering law in international law as a measure to control organised crime and to check illegal benefits of crime. The major concerns in checking money laundering under the PMLA were discussed *viz.* abysmal conviction rate, absconding offenders, evasion of proceedings by seeking asylum in other countries. In this background, the intention of the Parliament in enacting the FEO Act to tackle cases involving absconding offenders. The meaning of the term ‘fugitive economic offender’ and the procedure for declaration of a person as a fugitive economic offender was explained. Jurisdiction and powers of PMLA courts under FEO Act was discussed. The speaker also dwelt on schedule offences under FEO Act. It was highlighted that the standard of proof in FEO Act is preponderance of probabilities, which is a civil standard for a criminal offence. The speaker also discussed the provisions for attachment, search and seizure under FEO Act. The speaker raised concerns regarding the issues that would arise in the exercise of the power to disallow civil claims under Section 14 of FEO Act, in the sense that actionable claims of third parties uninvolved in the case would be affected. The provisions for serving notice to persons residing abroad or absconding were discussed and it was stated that the procedure under Chapter 9 of the PMLA can be followed. The provisions of Section 10 of FEO Act also provides the methods

for serving notice. It was emphasised that in cases where the person is evading the processes of law by leaving the country the notice can be served electronically to his email address associated with his PAN, Aadhaar or any other electronic account recently accessed by the accused.

Session 8

Theme: Cross-Border Money Laundering: Issues and Challenges

Panel: Justice Joymalya Bagchi, Justice P.S. Dinesh Kumar and Mr. Somasekhar Sundaresan

The provisions of Section 43(1) of PMLA was discussed and the query was raised as to the procedure to be followed when the court under the Prevention of Corruption Act, 1988 is designated as PMLA court. It was stated that Section 44(d) mandates that the procedure applicable to a court of sessions is to be followed in PMLA cases and that even in cases where the court designated under PMLA is not a court of sessions, it will be deemed to be a court of sessions as soon as it is notified as PMLA court under Section 43(1). In response to a query, the speakers stated that a PMLA court does not need to be separately designated under the FEO Act. The speakers dwelt on the challenges involved in segregating proceeds of crime from legitimate funds and stated that it is a question of fact which has to be decided on a case-to-case basis and that no fixed formula can be determined for the same. The applicability of Section 209 CrPC to PMLA cases was discussed. The presumption under Section 23 of PMLA with regard to interconnected transactions was discussed. A query was raised as whether a third party can apply for stay of proceedings of notice and attachment under Section 10 of the FEO Act. The speakers responded by stated that adjudication and prosecution are independent and

that criminal proceedings cannot be stayed. Furthermore, under Section 5(4) enjoyment continues and transfer is banned so there is no need for stay of proceedings. Another query raise was that if the case almost concluded before other court and then transferred to the PMLA court, which stage should the PMLA court start trial. In response, the speaker referred to Section 44(c) of the PMLA which specifies that the proceedings should continue from the stage at which it is committed. The applicability of the FEO Act to foreign nationals was discussed.
