

IN THE HON'BLE SUPREME COURT OF INDIA**T.C. (CRL.) NO. 4/2018****IN THE MATTER OF:****KARTI P. CHIDAMBARAM****... PETITIONER*****VERSUS*****DIRECTORATE OF ENFORCEMENT****... RESPONDENT****PROPOSED ISSUES FOR ADJUDICATION IN RESPECT OF THE
PMLA, 2002 SUBMITTED BY MR. KAPIL SIBAL, SR. ADV.**

- A.** Is the PMLA a 'criminal law' that creates a new offence called 'money laundering', defines the ingredients of the offence, provides for investigation and trial, and provides for punishment thereof?
- B.** In view of the definition of 'money laundering' (Sec 3) and the definition of 'proceeds of crime' (Section 2(h)), is it not mandatory that there should be a predicate offence before there can be a charge of money laundering? In other words, absent a predicate offence, can there be a charge of money laundering?
- C.** Is it not mandatory that in the commission of the predicate (scheduled) offence, there should be 'proceeds of crime'? In other words, if in the commission of a predicate offence (e.g. murder), there are no proceeds of crime, can there be a charge of money laundering?
- D.** Is it not the sole right of the police to investigate the predicate offence? Can the ED also investigate the predicate (scheduled) offence in the guise of investigating a case of money laundering?

- E.** If it is held that the right to investigate the predicate offence belongs solely to the police (Question 4), then does it not follow that only upon completion of that investigation and a charge sheet is filed, can the ED register and investigate an offence of money laundering? (If the police come to the conclusion that the no predicate offence has been committed, then any investigation by the ED will be premature and futile).
- F.** Is the practice followed by the ED to register a case of money laundering within hours after a police authority (like CBI) has registered an FIR for the predicate (scheduled) offence grossly violative of, and therefore forbidden by, Articles 14 and 21 of the Constitution?
- G.** Are the authorities/ officers of the ED, empowered to investigate the offence of money laundering, police officers within the meaning of Section 25 of the Evidence Act?
- H.** Is the procedure followed by the ED to register and investigate a case of money laundering arbitrary, unreasonable and violative of Articles 14, 19 and 21 of the Constitution?
- I.** Under PMLA, is the offence of money laundering cognizable or non-cognizable? What is the effect of the deletion of clause (a) of Section 45(1) by the Amendment Act of 2005?
- J.** Can a non-cognizable offence be made cognizable by adding a mere Explanation in 2019 and purporting to create a deeming fiction?

- K.** Assuming that the offence is cognizable after the Amendment in 2019 (with effect from 1-8-2019), can the amended provision be made applicable retrospectively to a case of money laundering registered before 1-8-2019? Does the retrospective application of the amended provision violate Articles 14, 20 and 21 of the Constitution?
- L.** In view of Section 65 of PMLA, as also under the general principles of criminal jurisprudence, is not the ED obliged to follow and abide by the provisions of Chapter XII of Cr P C?
- M.** Assuming that the offence of money laundering is cognizable, does the failure of the ED to abide by Section 154 Cr P C, Section 157 (report to the Magistrate) and Section 172 (to maintain a case diary) render the entire investigation illegal, null and void?
- N.** Does the willful and deliberate failure of the ED to follow and abide by the provisions of Chapter XII of Cr P C render the entire investigation, and all subsequent steps pursuant to the investigation, illegal, null and void?
- O.** Are Sections 5 to 11A of Chapter III of PMLA unconstitutional and void?
- P.** Are Sections 17 and 18 of PMLA relating to search and seizure unconstitutional and void, especially in view of the amendments made by Finance (No.2) Act of 2019?
- Q.** Is the power of arrest conferred on the ED authority by Section 19 of PMLA unbridled, unguided, uncontrolled and unreasonable, and therefore violative of Articles 14 and 21 of the Constitution?

- R.** Is Section 24 of PMLA contrary to the basic principle of criminal law that every person is presumed innocent until proven guilty in a Court of Law?
- S.** Is the Explanation to Section 3 of PMLA (added by an amendment in 2019) contrary to the main part of Section 3 and hence unconstitutional and void?
- T.** Does the amendment made in 2019 adding clause (ii) to the Explanation to Section 2(u) of PMLA have the effect of making the offence of money laundering a “continuing offence”? Does Parliament have the legislative competence to make a completed offence (e.g. completed in 2007-2008) a continuing offence in 2014 or thereafter?
- U.** Is the addition of Explanation sub-clause (i) to Section 44 of PMLA by an amendment in 2019 beyond the legislative competence of Parliament and hence unconstitutional and void? Further, is the said amendment arbitrary, unreasonable, unconstitutional and void?
- V.** Was clause (a) of Section 45 of PMLA omitted by an amendment in 2015? Is it correct that the said clause (a) was never restored by Parliament?
- W.** What is the effect of the judgement of this Court reported in (2018) 11 SCC 1? Did Parliament have the competence to “restore” the offending provisions by an amendment in 2019? Is not the said amendment unconstitutional and void?

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Date: 24.07.2021