

2022 LiveLaw (SC) 896

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UDAY UMESH LALIT; CJI., BELA M. TRIVEDI; J.**

October 31, 2022

**CRIMINAL APPEAL NO. 1864 OF 2022 (arising out of SLP (Crl.) No. 2668 OF 2022)
DIRECTORATE OF ENFORCEMENT *versus* PADMANABHAN KISHORE**

Prevention of Money Laundering Act, 2002; Section 3 - Appeal against High Court quashed PMLA proceedings against 'Bribe Giver' - Allowed - 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.

(Arising out of impugned final judgment and order dated 01-03-2021 in WP No.25670/2019 passed by the High Court of Judicature at Madras)

For Petitioner(s) Mr. Balbir Singh, ASG Ms. Alka Agrawal, Adv. Mr. Naman Tandon, Adv. Mr. Samarvir Singh, Adv. Mr. Digvijay Dam, Adv. Mr. Prasenjeet Mohapatra, Adv. Ms. Snehashish Mukherjee, Adv. Mr. Vishal Agarwal, Adv. Mr. Mukesh Kumar Maroria, AOR

For Respondent(s) Mr. S. Nagamuthu, Sr. Adv. Mr. Y. Aruna Giri, Adv. Mr. S. Ashok Kumar, Adv. Mr. Rajagopal Vasudevan, Adv. Mr. G.R. Vikas, Adv. Mr. Subramanya Bhann, Adv. Mr. P.V.K. Devendran, Adv. Mr. Rohan, Adv. Mr. P. Soma Sundaram, AOR

J U D G M E N T

Uday Umesh Lalit, CJI

1. Leave granted.
2. This appeal challenges the final judgment and order dated 1.3.2021 passed by the High Court of Judicature at Madras in Writ Petition No. 25670/2019.
3. The aforestated writ petition was filed by the respondent herein seeking quashing of proceedings initiated against him under the provisions of the Prevention of Money Laundering Act, 2002 ("PML Act", for short).
4. The basic facts which led to the filing of said writ petition stand captured in paragraphs 2.1 to 2.3 of the judgment under appeal, as under: -

“2.1 One Andasu Ravinder (A1), IRS, was working as Additional Commissioner of Income Tax, Chennai. On intelligence, the Central Bureau of Investigation (for brevity “the CBI”) checked a car that was parked in front of the premises of the said Andasu Ravinder's (A1) house on 29.08.2011 and recovered a sum of Rs.50,00,000/- in cash. It is alleged that Andasu Ravinder (A1) and one Uttam Chand Bohra (A3) were in that car at that time.

2.2 During investigation, it came to light that the sum of Rs.50,00,000/- was handed over to the said Andasu Ravinder (A1) by one Padmanabhan Kishore (A2), petitioner herein, whose income tax file was pending with Andasu Ravinder (A1) for clearance. Since Padmanabhan Kishore (A2) wanted certain benefits, he had allegedly paid the sum of Rs.50,00,000/- as bribe to Andasu Ravinder (A1).

2.3 In connection with this seizure, the CBI registered an FIR in R.C.No.MA1 2011 A 0033 on 29.08.2011 and after completing the investigation, filed charge sheet in C.C.No.3 of 2013 before the Special Court for the CBI Cases, Chennai, for the offences under Section 120B IPC and Sections 7, 12, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, against Andasu Ravinder (A1), Padmanabhan Kishore (A2), Uttam Chand Bohra (A3), Ramakrishnan (A4), T.Banusekar (A5) and P.Chandrasekaran (A6). Since the case registered by the CBI disclosed the commission of a 'schedule offence' under the Prevention of Money Laundering Act, 2002 (for brevity “the PML Act”), 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 Everonn Education Limited and three others including Padmanabhan Kishore (A2) for the offences under Section 3 r/w 4 of the PML Act, for quashing which, Padmanabhan Kishore (A2) is before this Court.”

5. As is evident from the quoted portion, the respondent had allegedly handed over a sum of Rs.50,00,000/- (Rupees fifty lakhs only) to a public servant, which transaction and the surrounding circumstances were projected in FIR dated 29.8.2011, leading to registration of crime under Section 120B, Indian Penal Code, 1860 (“IPC”, for short) and Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (“PC Act”, for short). Later, a case was registered by the Enforcement Directorate against the accused including the respondent under Sections 3 and 4 of the PML Act.

6. The basic submission advanced on behalf of the respondent was that the amount in question, as long as it was in the hands of respondent, 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 the respondent could not be said to be connected with proceeds of crime and could not be proceeded against under the provisions of the PML Act. The submission was accepted by the High Court with the following observations: -

“7. 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 Padmanabhan Kishore (A2) could not have been stated as a tainted money because it is not the case of the CBI in C.C.No.3 of 2013 that Padmanabhan Kishore (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 Andasu Ravinder (A1) accepted it as a bribe. Even before Andasu Ravinder (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.

8. Therefore, the prosecution of Padmanabhan Kishore (A2) under the PML Act, in our considered opinion, is misconceived.

7. The High Court thus allowed the writ petition and quashed the proceedings in PML Act against the respondent, which decision is presently under challenge before us.

8. We have heard Mr. Balbir Singh, learned Additional Solicitor General of India in support of appeal and Mr. S. Nagamuthu, learned senior counsel for the respondent.

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

“2. Definitions. — (1) In this Act, unless the context otherwise requires,—

xxx xxx xxx

(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;”

10. 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 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 moneylaundering 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:

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section

shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.”

11. Paragraph 8 of the Part-A of the Schedule to the PML Act deals with offences under the PC Act and said paragraph is to the following effect: -

“PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 of 1988)

| Section | Description of offence |
|----------------|--|
| 7. | Offence relating to public servant being bribed. |
| 7A. | Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence. |
| 8. | Offence relating to bribing a public servant. |
| 9. | Offence relating to bribing a public servant by a commercial organisation |
| 10. | Person in charge of commercial organisation to be guilty of offence. |
| 11. | Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant. |
| 12. | Punishment for abetment of offences. |
| 13. | Criminal misconduct by a public servant. |
| 14. | Punishment for habitual offender.” |

12. The respondent stands 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 the respondent can be proceeded against under the provisions of the PML Act.

13. 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”.

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

15. Said 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 (*emphasis added by us*).

16. 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.

17. 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.

18. 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.

19. 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).

20. We therefore allow this appeal and set aside the judgment and order passed by the High Court. Consequently, the respondent 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.

21. The appeal is thus allowed.

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