



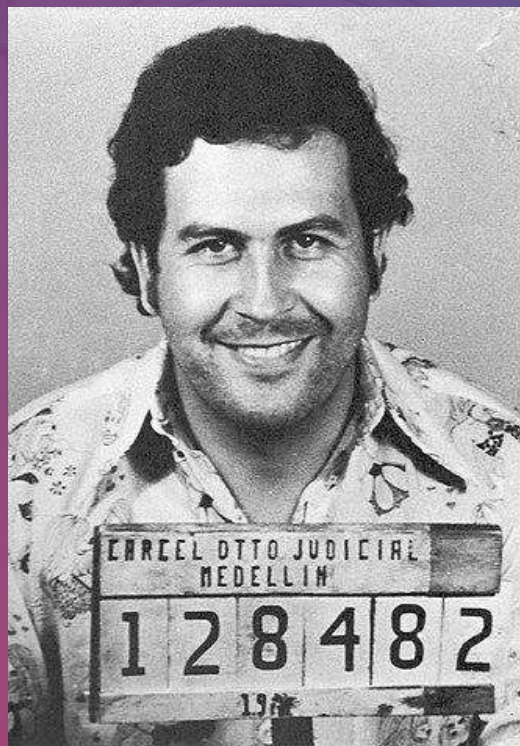
PREVENTION OF MONEY LAUNDERING ACT, 2002

*DAWN OF OPPORTUNITIES FOR CA
PROFESSION*

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Ethics is knowing the difference
between what you have a right to
do and what is right to do.

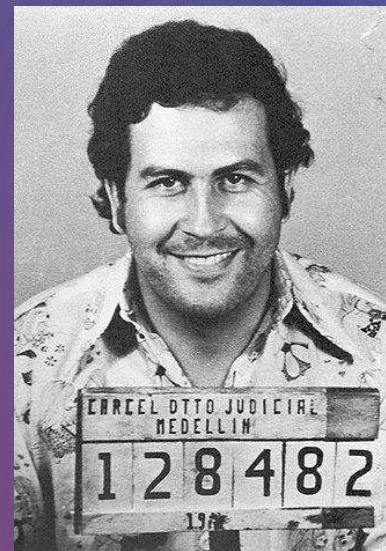
- Potter Stewart





Pablo Emilio Escobar Gaviria was a Colombian drug lord and narcoterrorist who was the founder and sole leader of the Medellín Cartel. Dubbed "*the king of cocaine*",

In 1976, Escobar founded the Medellín Cartel, which distributed powder cocaine, and established the first smuggling routes from Peru, Bolivia and Ecuador, through Colombia and eventually into the United States. Escobar's infiltration into the U.S. created exponential demand for cocaine and by the 1980s it was estimated Escobar led monthly shipments of 70 to 80 tons of cocaine into the country from Colombia.





“

NIRAV MODI

- Basis: On the basis of FIR under Section 420, 467, 471 and 120-B of the Indian Penal Code, 1860 and Section 13 of Prevention of Corruption Act, 1988 registered by CBI, BS & FC Branch, Mumbai, ED had initiated investigation by recording ECIR under Prevention of Money Laundering Act, 2002 (PMLA) in the case of PNB Bank Fraud of Rs. 6498.20 Cr.
- His movable and immovable assets in Honkong and India have been attached
- Furthermore, movable and immovable assets of Nirav Modi and his associates amounting to Rs. 1389 Crore, have been confiscated under provisions of Fugitive Economic Offenders Act, 2018 by Special Court (FEOA), Mumbai.
- Extradition ordered from London as a “fugitive”

“

VIJAY MALLYA

- Basis: Bank loan default and dishonour cheques to the tune of Rs. 9000 crore.
- His movable and immovable assets in India have been attached
- SBI was handed over his properties by Special Court to retrieve the default in loans
- January 2019, he was declared a fugitive economic offender under the Fugitive Economic Offenders Act

“

Karti Chidambaram

- Basis: In 2017, CBI registered a First Information Report (FIR) in INX media money laundering case alleging irregularities in FIPB clearance to the group for receiving overseas funds of **Rs.305 crore** in 2007. In 2018, ED lodges the money laundering case
- His movable and immovable assets in Spain, UK and India have been attached
- Released from Jail, but proceeding continue.

“

Syndicate Bank Fraud

- Basis: The modus operandi of the fraudsters included getting loans sanctioned in their name or in the name of family members and fake cheque discounting purported to be issued by the shell companies controlled by Bharat Bomb. The loans were never repaid by the fraudsters.
- ED had so far issued four Provisional Attachment Orders towards cumulative attachment of assets worth of Rs.478.66 Crore. Additionally, a seizure of Rs. 2.25 Crore in the form of Demand Draft was also carried out.
- With the present attachment the total attachment in the case stands at Rs. 537.72 Crore approximately.

“

Adarsh Credit Cooperative Society

- Basis: Mukesh Modi in collusion with his relatives Virendra Modi, Rahul Modi, Rohit Modi and associates including society's officials, siphoned off depositors' funds from ACCSL by way of interlinked fraudulent transactions.
- The attachment was confirmed by Adjudicating Authority, New Delhi. Thereafter, possession of the confirmed attached properties was taken in July and August of 2020. Subsequently, a Prosecution Complaint was filed before the Special Court under PMLA Act on March 31, 2021, pleading for confiscation of these properties alongside launching of prosecution against 124 accused persons.
- Based on the outcome of the investigation conducted by ED so far, total Proceeds of Crime (POC) unearthed to the tune of Rs 3,830 crore, out of which ED has provisionally attached movable and immovable assets valued at Rs 1,854.97 crore till now.



What is Money Laundering in general??

Money laundering is way in which illegitimate amount, which may be in form of assets, funds or money are converted into legitimate amount. It's not just the earning of money by illegitimate way but also converting it and showing it as legitimate money. This whole process is known as Money Laundering.

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Why law for Money Laundering was introduced?

Money Laundering is a heinous crime which not only affects the social and economic fabric of the country but also tends to promote other serious offences like terrorism and drug trafficking.

It creates an unaccounted parallel economy which can affect world in a huge way.

So law was introduced with an Objective to:

- Prevent and control money laundering
- To Confiscate and Seize the property obtained from the Laundered Money
- To deal with any other issues connected with Money Laundering in India



Brief History of PMLA

Global efforts to combat Money Laundering

- **The Vienna Convention (UN 1988):** It created an obligation for signatory states to criminalize the laundering of money from drug trafficking.
- **G-10's Basel Committee 1989 - Statement of Principles** (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States, with Switzerland playing a minor role.): **It issued a "statement of principles" with which the international banks of member states are expected to comply.**
- **The 1990 Europe Convention (Council of Europe):** It established a common criminal policy on Money Laundering.



Brief History of PMLA

- **The International Organization of Securities Commissions (IOSCO):** It encourages its members to take necessary steps to combat Money Laundering in securities and futures markets.
- **The Financial Action Task Force:** It has been set up by the governments of the G-7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom and the United States) at their 1989 Economic Summit, has representatives from 24 OECD (Organisation of Economic Co-operation and Development) countries, Hong Kong, Singapore, The Gulf Cooperation Council, The European Commission. It monitors members' progress in applying measures to counter Money Laundering. The famous Forty Recommendations are given by FATF.
- **IMF (International Monetary Fund):** It has pressed its 189 member countries to comply with international standards to thwart terrorist financing.



Brief History of PMLA

- ❖ **UN Convention Against Illegal Traffic on Narcotic Drugs and The Psychotropic Substances, 1998**, provided comprehensive measures against drug trafficking, including provisions against money laundering and the diversion of precursor chemicals. It provided for international cooperation through, for example, extradition of drug traffickers, controlled deliveries and transfer of proceedings. **India signed this declaration.**
- ❖ **The PML Bill, 1999** was adopted by both Houses of Parliament in 1999 and was introduced as Prevention of Money- Laundering Act, 2002. PMLA, 2002 which received the President's approval on January 17, 2003 and was brought into force as Act No. 15 of 2003. And became effective July 1, 2005.
- ❖ **The PMLA was amended by the PML (Amendment) Laws of 2005** (No. 20 of 2005), 2009 (No. 21 of 2009) and 2012 (No. 2 of 2013) to introduce the concept of 'compliance'. This is to link the provisions of Indian law with the laws of other Countries.



Important Amendments



2005 Amendments

- **Insertion of [(na)“investigation” includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence;**
- **Section 45(1A):- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.**



2009 Amendments

Insertion of Numerous Offences in Schedule, some of which are listed below:-

- ▣ **Offences under - The Explosive Substances Act, 1908**
 - **The Unlawful Activities (Prevention) Act, 1967**
 - **Indian Penal Code**
 - **Explosives Act, 1884**
 - **The Antiquities And Arts Treasures Act, 1972**
 - **The Securities And Exchange Board Of India Act, 1992**
 - **The Customs Act, 1962**
 - **The Bonded Labour System (Abolition) Act, 1976**
 - **The Child Labour (Prohibition And Regulation) Act**
 - **Informational Technology Act, 2000**



2012 Amendments

- ▣ **Substitution of Section 12- Reporting entity to maintain records**
- ▣ **Insertion of Section 12A- Access to information**
- ▣ **Substitution of Section 14- No civil or criminal proceedings against reporting entity, its directors and employees in certain cases**
- ▣ **Substitution of Section 15- Procedure and manner of furnishing information by reporting entities**
- ▣ **Substitution of Section 20- Retention of property.**
- ▣ **Substitution of Section 21- Retention of Records.**
- ▣ **Substitution of Section 24- Burden of proof.**
- ▣ **Offences under the Narcotic Drugs And Psychotropic Substances Act, 1985**
- ▣ **Offences Under The Unlawful Activities (Prevention) Act, 1967**
- ▣ **Offences Under Indian Penal Code**
- ▣ **Offences Under Explosives Act, 1884**



Latest 2019 Amendments

- **Section 3** :Explanation – ‘Continuing Offence’ : *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.*
- **Section 2(1)(u)**: Expanding definition of ‘Proceeds of Crime including 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 relating to the scheduled offence”



Latest 2019 Amendments (Contd.)

- **Section 44: Trial and Inquiry of Scheduled Offence and Money Laundering under this Act are independent/Separate of each other**
- **Section 45: All offences “*shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences*” Therefore, ED officers are empowered to arrest an accused without warrant, subject to certain conditions.**



What is Cognizable Offence?

1. Meaning: Cognizable = able to be apprehended.
2. Definition: S.2. (c) (Cr.P.C.) Cognizable offence means an offence for which, and cognizable case means, a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.
3. Cognizable offences are usually serious in nature. (For full details the visitor is advised to see First Schedule of Cr.P.C.)
4. Sec. 154 Cr.P.C. provides that the Police Officer has to receive FIR relating to cognizable offences without Magistrate's permission, and enters it in General Diary and immediately starts investigation.
5. The Police may arrest the accused, in cognizable offence without warrant.
6. In cognizable offences, police has a duty to investigate the case without seeking permission from the Magistrate.

Supreme Court Decision in Vijay Madanlal Choudhary Vs Union Of India

- ❖ **Section 3:** It was held that the the expression “and” occurring in Section 3 has to be construed as “or”, to give full play to the said provision so as to include “every” process or activity indulged into by anyone
- ❖ **ECIR not Mandatory:** Disclosing grounds and reasons before arrest is enough
- ❖ **Burden of Proof:** On the accused
- ❖ **Section 45:**
 - Offences are Cognisable and Non Bailable
 - Twin conditions : If bail plea is opposed, the court needs to be satisfied that the accused person is not guilty and will not commit any crime after release.
- ❖ ECIR (Enforcement Case Information Report): cannot be equated with FIR and is considered an “internal document” and not given to the accused.
- ❖ Accused-Bound to be a Witness: Section 63 of PMLA states that information must be given by the accused, false information or no information will constitute another offence. 2022 SCC OnLine SC 929



What is ENFORCEMENT DIRECTORATE?

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- The Directorate of Enforcement is a multi-disciplinary organization mandated with investigation of offence of money laundering and violations of foreign exchange laws. Directorate of Enforcement is a specialized financial investigation agency under the Department of Revenue, Ministry of Finance.
- In 1956, an 'Enforcement Unit' was formed, in the Department of Economic Affairs, for handling Exchange Control Laws violations under,
- In 1957, this Unit was renamed as 'Enforcement Directorate'.
- ED enforces the following laws:
 - Foreign Exchange Management Act, 1999 (FEMA)
 - Prevention of Money Laundering Act, 2002 (PMLA)
 - The Fugitive Economic Offenders Act, 2018 (FEOA)
 - The Foreign Exchange Regulation Act, 1973 (FERA)
 - Sponsoring agency under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)

Organizational Structure (Authorities)


Headquarters New Delhi: led by the Director of Enforcement



Regional Offices : Mumbai, Chennai, Chandigarh, Kolkata and Delhi are all led by Special Directors of Enforcement.



Zonal Offices - Ahmedabad, Srinagar, Chandigarh, Bengaluru, Chennai, Cochin, Delhi, Kolkata, Hyderabad, Mumbai and Lucknow, etc all led by Joint Directors of Enforcement



Sub Zones – Indore, Surat, Nagpur, Jammu, etc led by Deputy Directors



Prevention of Money Laundering Act, 2002



The Prevention of Money Laundering Act, 2002 ('PMLA')
is **stand alone - criminal law**
which was brought into operation on **July 1, 2005**.

The major amendments were:

PML (Amendment Act), 2005 (20 of 2005)

PML (Amendment Act), 2009 (21 of 2009)

PML (Amendment Act), 2012 (2 of 2013)

Finance Act, 2019



- The Act envisages civil procedure for attachment and confiscation of proceeds of crime and also for criminal prosecution of persons involved in money laundering
- It deals with money/ gains generated out of the criminal activities related to Scheduled Offences.

Scheduled Offences

- **Arms Act**
- **Wild life Protection Act**
- **Immoral Traffic Act**
- **Prevention of Corruption Act**
- **The Explosive Act**
- **SEBI Act**
- **Customs Act**
- **Bonded Labour System (Abolition) Act**
- **Child Labour (Prohibition and regulation) Act**
- **Transplantation of Human Organ Act**
- **The Juvenile Justice Act**
- **The Emigration Act**
- **The Passports Act**
- **The Foreigners Act**
- **The Copyright Act**
- **The Trade Marks Act**
- **The Information Technology Act**
- **The Biological Diversity Act**
- **The Protection of Plant Varieties And Farmers Right Act**
- **The Environmental Protection Act**
- **The Water (Prevention and Control of Pollution) Act**
- **The Air (Prevention and Control of Pollution) Act**



Money Laundering under the Act??

Money laundering is an illegal practice of filtering “dirty” money, or ill-gotten gains, through a series of transaction until the funds are “clean” or appear to be proceeds from legal activities.

1. Placement
2. Layering
3. Integration

Stages in Money Laundering

Placement

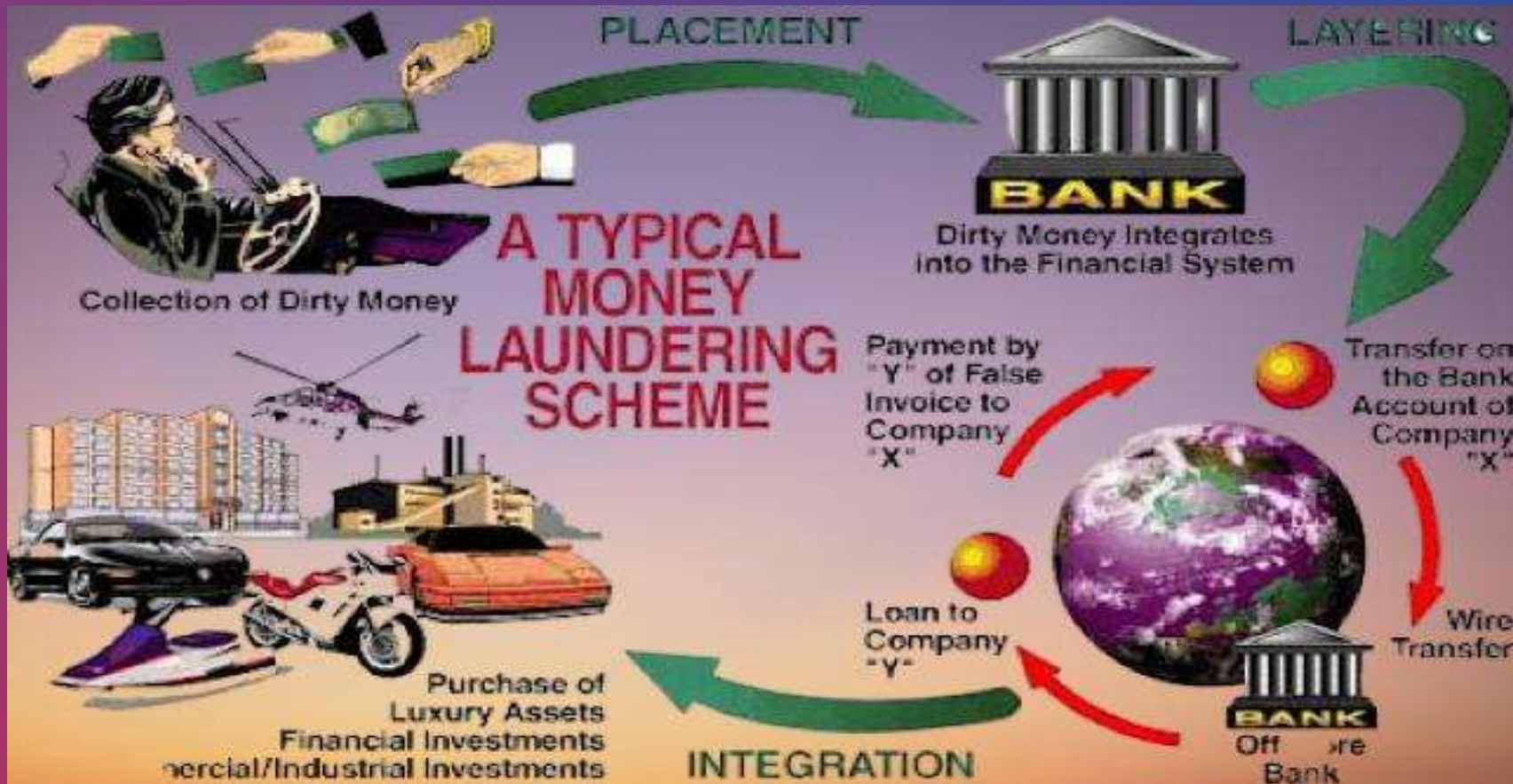
Illegal funds or assets are bought into the financial system.

Layering

Use of multiple accounts, banks, intermediaries, corporations, countries etc. to disguise the origin.

Integration

Funds are made available as apparently legitimate.



Some of the Popular Activities through which Money is laundered...

False Export-Import Invoices



Stock Markets

Agricultural Products



Showing Loans



Popular Activities

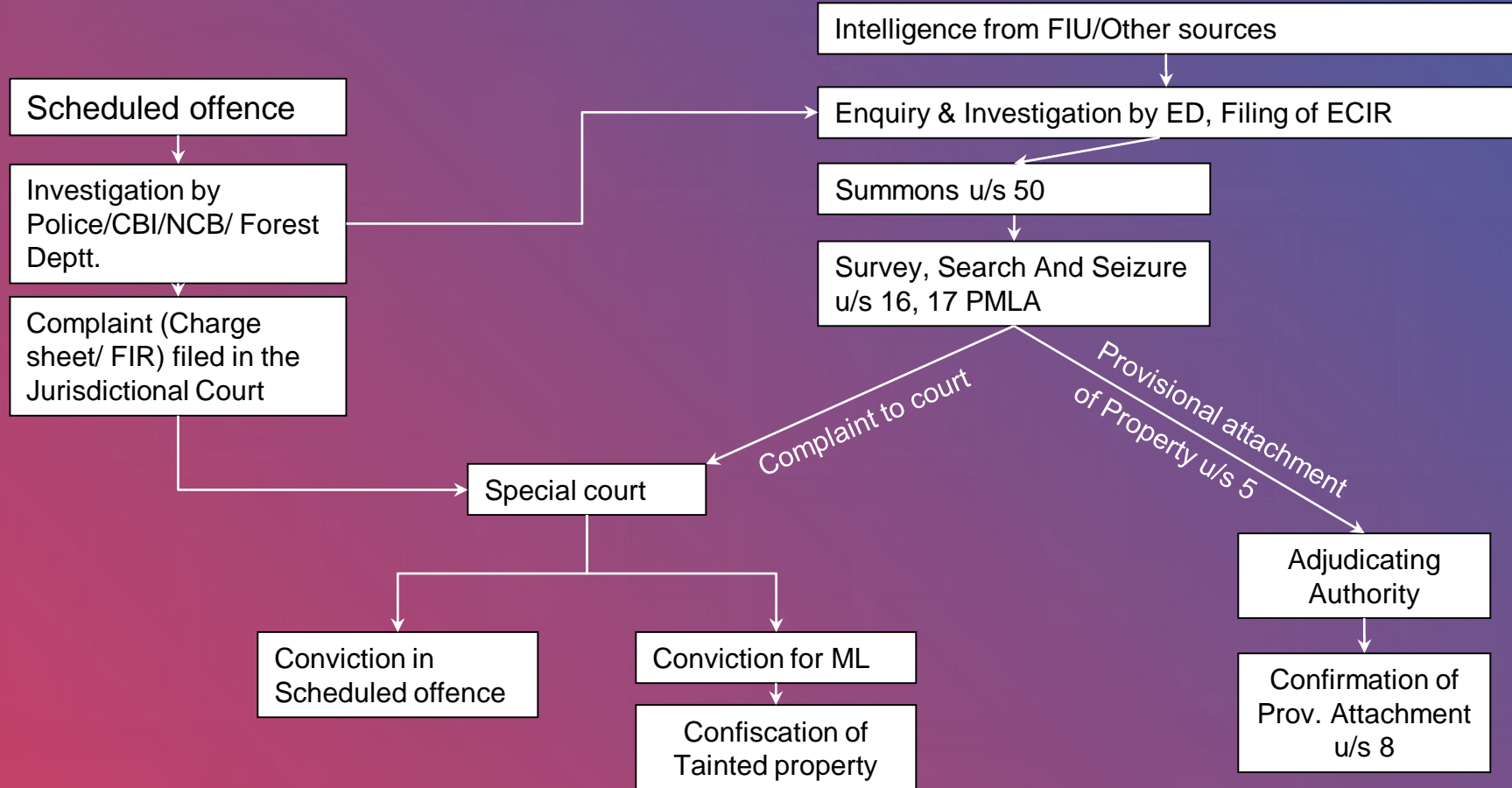
BEWARE OF FAKE COMPANIES

Creating Bogus Companies



Property Markets

PROCEDURE UNDER LAW



Appeal to Higher Authorities

Adjudicating Authority

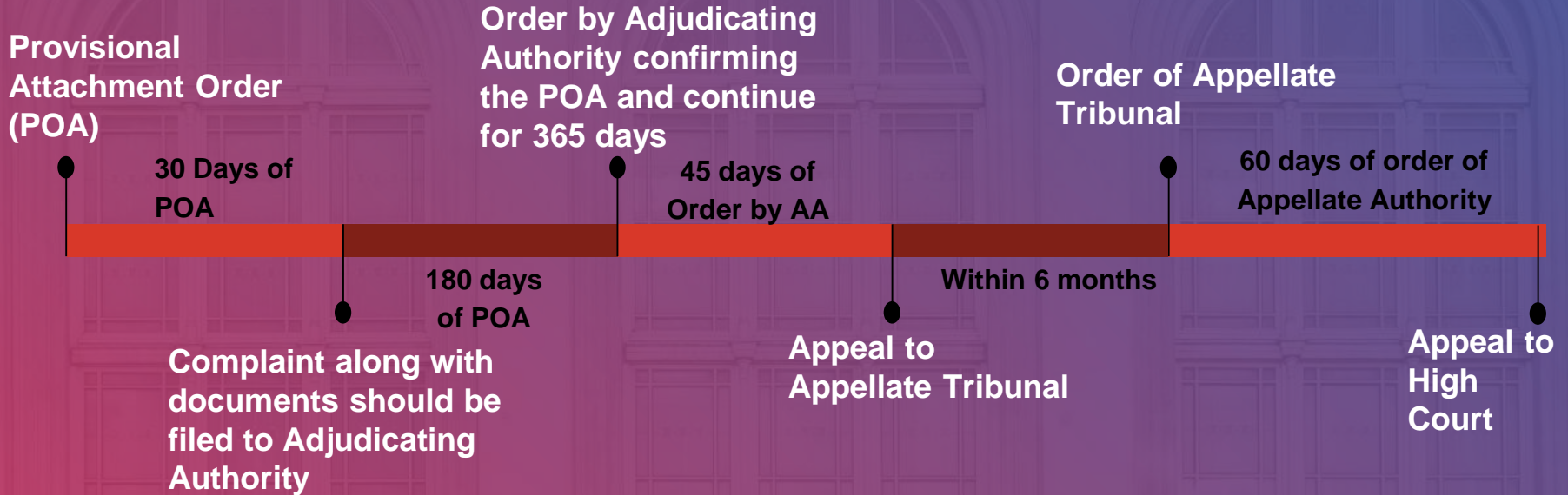
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graph TD; A[Adjudicating Authority] --> B[Appellate Tribunal]; B --> C[High Court]; C --> D[Supreme Court];
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Appellate Tribunal

High Court

Supreme Court

TIMELINE Under PMLA, 2002



Parallel Proceedings of Criminal Prosecution against the accused person for offence u/s 3 would continue triable by Special Court.



Important Sections

Section 2(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;]

Section 3- Offences 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.

Supreme court held in the matter of VIJAY MADANLAL CHOUDHARY & ORS. VERSUS UNION OF INDIA & ORS. that the 'and' must be read as or to give full effect of Section 3.

Section 3- Offences of Money Laundering (Contd.)

EXPLANATION:

(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.]

Section 3- Offences of Money Laundering (Contd.)

The explanation to Section-3 has been held by the Supreme Court in case of VIJAY MADANLAL CHOUDHARY & ORS. VERSUS UNION OF INDIA & ORS that projecting the proceeds of crime is itself a offence under section 3. That means that any person who acquires or possesses or uses the proceeds of crime as well as a person who is projecting the proceeds of crime as untainted property or claiming the proceeds of crime as untainted property is a offender u/s 3 of PMLA

This is done to give full effect to the provisions of PMLA otherwise one person will acquire proceeds of crime and another person will project or claim the proceeds of crime as untainted property and both the persons would have been outside the ambit of Section 3

Section 4: Punishment

Any person found guilty of Money Laundering

Rigorous Imprisonment from 3 years to 7 years

AND

Fine up to Rs.5 lakh

If Proceeds of Crime involve any offence under paragraph 2 of Part A of Schedule Offences (i.e. under the **Narcotic Drugs and Psychotropic Substance Act, 1985**)

Rigorous Imprisonment from 3 years to 10 years,

AND

Fine up to Rs.5 lakh

In addition, the tainted property shall be confiscated by the Central Government u/s 8(5).

Section 5- Attachment of property involved in money-laundering

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed.

Section 5- Attachment of property involved in money-laundering (Contd.)

- ▣ The authorised officer can immediately attach the property (even without any complaint with competent authority) if he has reason to believe that immediate attachment of such property is necessary to avoid frustrating the proceedings under this Act.
- ▣ The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority [Sub Section 5] And also forward a copy of the order, along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority[Sub Section 3].
- ▣ Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment [Section 4]

Section 6- Adjudicating Authorities, composition, powers, etc.

- ▣ Appointed by Central Government.
- ▣ Adjudicating Authority consist of a Chairperson and two other Members:
- ▣ Having experience in the field of law, administration, finance or accountancy.
- ▣ The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority.
- ▣ A Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit.

Section 6- Adjudicating Authorities, composition, powers, etc.

(Contd.)

- ▣ **The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure**

Section 8- Adjudication.

- ▣ If the Adjudicating Authority has reason to believe that any person has committed an [offence under section 3 or is in possession of proceeds of crime] it may serve a Show Cause Notice and Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property and such attachment will continue for a period not exceeding [three hundred and sixty-five days] or the pendency of the proceedings before the competent court.
- ▣ Adjudicating Authority shall also consider the claims of any third party and any beneficiaries.

Section 8- Adjudication (Contd.)

- ▣ Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property shall stand confiscated to the Central Government.
- ▣ Any person aggrieved by the order passed by Adjudicating Authority can file an appeal to the Appellate Tribunal constituted under this Act.
- ▣ Any person aggrieved by the order passed by Appellate Tribunal can file an appeal to the High Court. [and after that can appeal to Supreme Court]

Section 11- Power regarding summons, production of documents and evidence, etc.

- ▣ Adjudicating Authority has same power as of Civil Court in Code of Civil Procedure:
 - (a) discovery and inspection;
 - (b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;
 - (c) compelling the production of records;
 - (d) receiving evidence on affidavits;
 - (e) issuing commissions for examination of witnesses and documents; and
 - (f) any other matter which may be prescribed.



Survey & Search

Section 16- Power of survey

- Reasons to believe (written) that offence is committed, he (authority) may enter the area (with due authorization) and inspect records, enquire employees and other concerned persons and other such information as required.
- He can place marks on documents, ,make copies, make inventory, record the statement of people present.
- Immediately after the completion of survey, fwd copy of material and reasons to Adjudicating Authority.

Section 16- Power of survey (Contd.)

May require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so as to, -

- (i) afford him the necessary facility to inspect such records as he may require and which may be available at such place;
- (ii) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and
- (iii) furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

Section 17- Search and seizure

- By Deputy Director or above (with authorization of Director)
- Reasons to believe (written) that committed ML or has property or records or proceeds of crime is present
- He may enter the area, break open any lock, and inspect records, enquire employees and other concerned persons under oath, place marks on documents, ,make copies, make inventory, seize such documents and property found
- Immediately after the completion of search and seizure, fwd copy of material and reasons to Adjudicating Authority.

Section 17- Search and seizure (Contd.)

- ▣ If during the search, upon information gathered, the authority has RTB that evidence shall be or is likely to be concealed or tampered with, he may enter and search the building or place where such evidence is located and seize that evidence without prior authorization.
- ▣ After seizure/ freezing , file an application before Adjudicating Authority within 30 days requesting retention of such seized records/ proceeds.

Section 18- Search of persons

- ▣ With Reasons to believe (written), any authority (authorized by CG) may search that person and seize such record or property.
- ▣ Immediately after the completion of search and seizure, fwd copy of material and reasons to Adjudicating Authority.
- ▣ Where an authority is about to search any person, if such person so requires, take the person within 24 hours to the nearest superior Gazetted Officer or a Magistrate.(Sub section 3)
- ▣ If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the superior Gazetted Officer or the Magistrate .
- ▣ Twenty-four hours shall exclude the time necessary for the journey.

Section 18- Search of persons (Contd.)

- ▣ The superior Gazetted Officer or Magistrate, shall allow or disallow such search as he may seem fit.
- ▣ Two or more persons to attend and witness the search, No female shall be searched by any one except a female.
- ▣ The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list and record the statement of person searched.
- ▣ After seizure/ freezing , file an application before Adjudicating Authority within 30 days requesting retention of such seized records/ proceeds

Section 19- Power to arrest

- ▣ Director, Deputy or Assistant Director or other, with authorization by CG, has Reasons to believe (written) that person is guilty of offence , may arrest the person as soon as he informs the person about the same.
- ▣ Immediately after the arrest, forward copy of material and reasons to Adjudicating - Authority.
- ▣ Arrested person shall be taken to Special Court or Judicial Magistrate within 24 hours of the arrest.

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Arrest

Hon'ble Supreme Court held in matter of Vijay Madanlal Choudhary held that-

- ▣ Authority u/s 19 (1) can arrest
- ▣ Material in his possession giving reason to believe that a person is guilty
- ▣ Material recorded in writing
- ▣ Grounds of arrest to be informed to the person being arrested
- ▣ Forward copy of order and material in possession to Adjudicating Authority
- ▣ Section 62 - Punishment for the authorised officer if he acted in vexatious manner

Section 20- Retention of property &

Section 21- Retention of Records

- ▣ Seized/ frozen property may remain so for max. 180 days if the officer (authorized by Director) has reasons to believe (written) that it is necessary for adjudication.
- ▣ Immediately after the order of retention, , forward copy of material and reasons to Adjudicating Authority.
- ▣ Adjudicating Authority may increase retention if, it believes that property is prima facie involved in ML, otherwise property will be released after expiry of term.
- ▣ Special Court, will order confiscation or release.
- ▣ If special court has released the property, even then the officer (authorized by Director) may withhold such release for 90 days if he thinks that it will be necessary for Appeal proceedings.

Section 24- Burden of proof

Reverse Burden Charge - On the person claiming that property is not involved in ML. Subject to review by the seven member Bench of Supreme Court **[in the matter of Rojer Matthew]**

Section 25- Appellate Tribunal

The Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

Section 26- Appeal to Appellate Tribunal.

- ▣ Against order passed by Adjudicating Authority
- ▣ Appeal within 45 days of order. Extension can be given if sufficient cause is there.
- ▣ Tribunal will dispose the case within 6 months.

Section 43- Special Courts

For trial of person involved in ML regarding penalty and imprisonment, CG designate Sessions Court as Special Court.

Section 44- Offences triable by Special Courts

- ❑ Scheduled Offences and ML
- ❑ Cognizance of offence under section 3, without the accused being committed to it for trial
- ❑ As per Code of Criminal Procedure
- ❑ Trial of Offence of ML is separate from the trial of Scheduled Offence (even if they are tried in the same Special Court)
- ❑ HC can give bail under section 439 of CrPC
- ❑ The complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.

Section 45- Offences to be cognizable and non-bailable

- ❑ Cognizable Offence means arrest can be done even **without a warrant**.
- ❑ Special Court shall not take cognizance of any ML offence unless a complaint has been filed by Director or any officer of CG or SG (with authorization of CG)
- ❑ No police officer shall investigate into an ML offence and cannot make an arrest (Only Director, Deputy Director and Assistant Director can arrest)
- ❑ Twin Conditions of Bail (these conditions are in addition to conditions specified in CrPC)
 - i. the Public Prosecutor has been given a opportunity to oppose the Bail
 - ii. the court has reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
- ❑ Persons that may be released on bail, if the Special Court so directs- under the age of sixteen years or a woman or sick or infirm or accused of money-laundering a sum of less than one crore rupees.
- ❑ Beneficial provision of Section 436A of CrPC are available. (SC)

**Section 46- Application of Code of Criminal Procedure, 1973 to
proceedings before Special Court.**

Section 47- Appeal and revision

Appeal can be made to High Court

Section 50- Powers of authorities regarding summons, production of documents and to give evidence,etc (as in Code of Civil Procedure

- i. Discovery and inspection;
- ii. Enforcing the attendance of any person, including any officer of a [reporting entity] and examining him on oath;
- iii. Compelling the production of records;
- iv. Receiving evidence on affidavits;
- v. Issuing commissions for examination of witnesses and documents; and
- vi. Any other matter which may be prescribed.

Authorities under this Act are not Police Officers.

Any officer may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act subject to 2 conditions and rules made by CG

- a) impound any records without recording his reasons for so doing; or
- b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the [Joint Director.]

Section 67- Bar of suits in civil courts

No prosecution or other proceeding against the Government or any officer done in good faith under this Act.

Section 69- Recovery of fine or penalty

If not paid within **six months**, the Director or any authorised officer may proceed to recover the amount as per Schedule II of the Income-tax Act, 1961 (43 of 1961)

Section 71- Act to have overriding effect on any other law

Special Courts

- **Any offence under Section 3 [Money Laundering] and any Scheduled Offence will be triable by Special Court.**
- **Offences to be cognizable and non-bailable.**
- **Any person aggrieved by Decision of Special Court can appeal in High Court and then move to Supreme Court.**
- **There is a reverse burden of proof i.e. the accused person would have to prove that that the property is not involved in the offence of Money Laundering.**

Powers of Investigating Officers

- **Power of Survey [S. 16]**
- **Power to Search, Seize and Freeze [S. 17]**
- **Power to Search Persons [S. 18]**
- **Power to Arrest [S. 19]**
- **Power to summon, production of documents and give evidence [S. 50]**
- **Power of retention of property and records [Ss. 20 & 21]**
- **Power to Attach property [Section 5]**

After exercising the above powers, the authority shall forward the “reasons so recorded” or “order”, “alongwith material in his possession”, to the Adjudicating Authority.

The authority seizing any record or property shall file an application for retention thereof before the Adjudicating Authority within 30 days.



Important Judgements

Supreme Court Decision in Vijay Madanlal Choudhary Vs Union Of India

- ❖ **Section 3:** It was held that the the expression “and” occurring in Section 3 has to be construed as “or”, to give full play to the said provision so as to include “every” process or activity indulged into by anyone
- ❖ **ECIR not Mandatory:** Disclosing grounds and reasons before arrest is enough
- ❖ **Burden of Proof:** On the accused
- ❖ **Section 45:**
 - Offences are Cognisable and Non Bailable
 - Twin conditions : If bail plea is opposed, the court needs to be satisfied that the accused person is not guilty and will not commit any crime after release.
- ❖ ECIR (Enforcement Case Information Report): cannot be equated with FIR and is considered an “internal document” and not given to the accused.
- ❖ Accused-Bound to be a Witness: Section 63 of PMLA states that information must be given by the accused, false information or no information will constitute another offence.

Delhi High Court Decision in Deputy Director, ED v/s Axis Bank

- ❖ Value of property: The empowered enforcement officer has the authority of law in PMLA to attach not only a “tainted property” - that is to say a property acquired or obtained, directly or indirectly, from proceeds of criminal activity constituting a scheduled offence - but also any other asset or property of equivalent value of the offender of money-laundering, the latter not bearing any taint but being alternative attachable property (or deemed tainted property) on account of its link or nexus with the offence (or offender) of money-laundering.
- ❖ Burden of Proof: If the person accused of (or charged with) the offence of money-laundering objects to the attachment, his claim being that the property attached was not acquired or obtained (directly or indirectly) from criminal activity, the burden of proving facts in support of such claim is to be discharged by him.

Punjab & Haryana High Court Decision in Seema Garg v/s Deputy Director, ED

- ❖ Value of Property: The Court while dealing with the issue whether “value of such property” occurring in the definition of “proceeds of crime” includes any property of any person irrespective of source of property has held that the phrase “value of such property” does not mean and include any property which has no link direct or indirect with the property derived or obtained from commission of scheduled offence i.e. the alleged criminal activity.” The property derived from legitimate source cannot be attached on the ground that property derived from scheduled offence is not available
- ❖ Non-availability of property derived from scheduled offence does not immune an accused from offence of money laundering committed under Section 3 of the PMLA. As per scheme of the Act, there is criminal liability of an accused apart from civil liability of attachment of property, thus object of the Act is not defeated merely on the ground that property derived from crime is not available for attachment.

Double Jeopardy

- Trial : The trial of PMLA cases is basically a double trial. Because while trying a PMLA case, the case relating to the scheduled offences has to be tried simultaneously.
- Punishment : Punishment for Scheduled offence is separate and so is punishment for Money Laundered relating to that Scheduled Offence.



Scope of Work For Practising CA for the accused

- a. Advisory on all issues including inquiry under PMLA and the other Acts relating to the Scheduled Offences
- b. Handling adjudication of attachments before the PMLA Adjudicating Authority and Appellate Tribunals.
- c. Opinion on PMLA issues.
- d. Handling of responses to the ED in respect of inquiry.



Scope of Work For Practising CA for the Department

- a. Identifying the source of the attached properties and differentiating it with the alleged POC.
- b. Identifying Loan utilization in the attached property.
- c. Calculation of the correct value of any alleged POC.
- d. Valuation of the property attached and comparison with the alleged POC.
- e. Proper Financial Accounting and Analysis.
- f. Preparation of Money Trail for the attached properties to demarcate the source of fund.



THANK YOU

PRESENTED BY: CA HIMANSHU GOYAL

QUESTIONS?