Provisions of Prevention of Money Laundering Act, Boon or a Bane?

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Prevention of Money Laundering Act, 2002 is an Act of the Parliament of India enacted by the NDA government to prevent money-laundering and to provide for confiscation of property derived from money-laundering. PMLA and the Rules that are notified came into force with effect from July 1, 2005. The Act and Rules that are notified impose obligation on banking companies, financial institutions and intermediaries to verify identity of clients, maintain records and furnish information in prescribed form to Financial Intelligence Unit - India.

At the time of drafting any law, it is important to insert enough checks and balances within the statute to avoid arbitrary and excessive abuse of power by using that law. This intention is well reflected in the Prevention of Money Laundering Act, 2002 (PMLA).

It secures the 'proceeds of crime' by virtue of which the Enforcement Directorate (ED) has the power to attach any property during the pendency of a trial, irrespective of whether the owner of such property himself was involved in any crime or not.

Much caution was taken with regard to the PMLA imposing conditions on the authorities. The officer should form an opinion; apply his mind based on facts regarding the property being prima facie reflective of the 'proceeds of crime' before attaching such a property. He should also gauge whether there is any imminent danger that the owner may distance himself from the property frustrating the entire investigative or trial proceedings.

But are the officials implementing the statute while remaining within its limitations? The ED, rightly, throws a net to catch sharks. But more often than not ED also catches innocent fish that get entangled in this. Despite no fault of their own, the latter is subjected to an expensive and time-consuming litigation process. However the act has come under a lot of heat lately for being arbitrary and downright unconstitutional.

Certain sections of PMLA have been questioned wherein the enforcement directorate basically acts as a whiplash on offenders, where in the offenders may not be given bails. SC of India clamped down on arbitrary rule of not providing bail to the offenders.

However, the recent judgement of the appellate tribunal of the Money Laundering Act headed by Justice Manmohan Singh in the 'State Bank of India vs. The Joint Director, ED' case comes as a big respite for the banking sector that, more often than not, gets caught in the crossfire between the accused and the ED.

In recent cases, the ED started attaching a lot of properties that had been mortgaged to the banks to procure loans. This was done on the pretext of these properties being representative of 'proceeds of crime'. On the one hand, in most such cases, banks had advanced loans, and

continue to do so, after conducting proper due diligence and in compliance with RBI guidelines and regulations.

FUGITIVE ECONOMIC OFFENDER

The government has said action has been initiated against seven fugitives involved in economic offences involving Rs 27,969 Crore in competent court.

All possible channels, including legal, are being explored to get the economic offenders repatriated, said Minister of State for Finance Shiv Pratap Shukla in a written reply to the Sabha. The Fugitive Economic Offenders Act, 2018 got President's assent in August in 2018. A fugitive economic offender is any individual against whom warrant for arrest is issued for his involvement in select economic offences involving amount of at least Rs 100 Crore or more and has left India so as to avoid criminal prosecution. In reply to another question related to chit fund and ponzy schemes scam in West Bengal, the minister said the government has taken cognizance of various such schemes.

Shukla said the CBI has registered 42 cases relating to chit fund and ponzy schemes scams which took place in West Bengal during the last four years. Of these, 24 cases were registered in 2017 and 18 in 2018 (till November 30). He further said the Enforcement Directorate has informed that attachments for the value of Rs 274.62 Crore have been issued and prosecution complaints filed against 10 persons in the case of Saradha Group of Companies.

The Fugitive Economic Offenders Act, 2018 is an Act of the Parliament of India that seeks to confiscate properties and assets of economic offenders that evade prosecution by remaining outside the jurisdiction of Indian courts. Economic offences with a value of more than Rs 100 Crores, which are listed in the schedule of the Fugitive Economic Offenders Act, come under the purview of this law. As per the Act, a court ('Special Court' under the Prevention of Money Laundering Act, 2002) has to declare a person as a Fugitive Economic Offender. The bill for the act was introduced in the Lok Sabha, the lower house of the Parliament of India, on 12 March 2018. On 25 July 2018, the Parliament passed the bill.

Recently, on 5 January 2019, Special Prevention of Money Laundering Act (PMLA) court has declared Vijay Malya a fugitive economic offender. His properties can now be confiscated by the government.

- The Bill allows for a person to be declared as a fugitive economic offender (FEO) if: (i) an arrest warrant has been issued against him for any specified offences where the value involved is over Rs 100 Crore, and (ii) he has left the country and refuses to

return to face prosecution.

- To declare a person an FEO, an application will be filed in a Special Court (designated under the Prevention of Money-Laundering Act, 2002) containing details of the properties to be confiscated, and any information about the person's whereabouts. The Special Court will require the person to appear at a specified place at least six weeks from issue of notice. Proceedings will be terminated if the person appears.

- The Bill allows authorities to provisionally attach properties of an accused, while the application is pending before the Special Court.

- Upon declaration as an FEO, properties of a person may be confiscated and vested in the central government, free of encumbrances (rights and claims in the property). Further, the FEO or any company associated with him may be barred from filing or defending civil claims.

Key Issues and Analysis of FEO.

- Under the Bill, any court or tribunal may bar an FEO or an associated company from filing or defending civil claims before it. Barring these persons from filing or defending civil claims may violate Article 21 of the Constitution i.e. the right to life. Article 21 has been interpreted to include the right to access justice.

- Under the Bill, an FEO's property may be confiscated and vested in the central government. The Bill allows the Special Court to exempt properties where certain persons may have an interest in such property (e.g., secured creditors). However, it does not specify whether the central government will share sale proceeds with any other claimants who do not have such an interest (e.g., unsecured creditors).

- The Bill does not require the authorities to obtain a search warrant or ensure the presence of witnesses before a search. This differs from other laws, such as the Code of Criminal Procedure (CrPC), 1973, which contain such safeguards. These safeguards protect against harassment and planting of evidence.

- The Bill provides for confiscation of property upon a person being declared an FEO. This differs from other laws, such as CrPC, 1973, where confiscation is final two years after proclamation as absconder.

The Delhi high court has set aside five orders that prevented the Enforcement Directorate from attaching the assets of those suspected of violating the Prevention of Money Laundering Act (PMLA) in response to a plea by the central probe agency.

The orders were passed by the appellate PMLA tribunal after four banks – State Bank of India, Axis BankNSE -1.32 %, IDBINSE -3.21 % and Punjab National Bank – complained that the ED had attached properties over which the banks had liens, compromising their ability to sell the assets and recover loans that had been granted to the suspected criminals.

Judgements

In the case before the High Court of Delhi, titled Himachal Emta Power Limited Vs. Union of India and Ors. (W.P. (C) 5537/2018, CM Nos. 21583/2018 and 33487/2018) (, the primary issue before the court was "What is Proceeds of Crime?" Another issue also related to the rule of forum non conveniens- common law legal doctrine whereby courts may refuse to take jurisdiction over matters where there is a more appropriate forum available to the parties.In this case the impugned order founded on the basis of an FIR registered by Central Bureau of Investigation (CBI) on 07.08.2014 alleging offences under Section 120-B read with Section 420 IPC against HEPL, its promoters/directors, members of the 35th Screening Committee and other unknown persons. It was alleged that the said persons have cheated the Government of India by securing allocation of Gaurangdih ABC Coal Block in favour of HEPL. It was alleged that HEPL had misrepresented the status of land in question and the investment made by it in the project and had secured the allocation of the coal block based on such misrepresentations.

In this case the impugned order of provisional attachment was founded on the allegation that the property sought to be attached has been used in commission of a scheduled offence and, therefore, is liable to be attached as proceeds of crime. However, the Court observed that merely because a property used in commission of crime, the same cannot be construed as proceeds of that crime.

At this stage, it would be relevant to refer to Section 5(1) of the PML Act, the relevant extract of which is set out below:

"Section 5 (1)-Where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section, 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."

A plain reading of Section 5(1) of the PML Act indicates that an order of provisional attachment can be passed only where the concerned officer has reasons to believe on the basis of material in his possession that: (a) any person is in possession of proceeds of crime; and (b) such proceeds are likely to be concealed, transferred, or dealt with any manner which would result in frustrating any proceedings relating to confiscation of such proceeds of crime. The expression "proceeds of crime" is defined under clause (u) of Section 2 (1) of the PML Act as under:

"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)."

The Court held that it is clear from the language of Section 2(u) of the PML Act that the expression "proceeds of crime" refers to a property, which is "derived or obtained" by any person as a result of criminal activity. Therefore, in order to pass an order of provisional attachment, it was necessary for the ED to have reasons to believe that the property sought to be attached was "derived or obtained" from any scheduled crime.

The Court further held that the assumption that any amount used in commission of a scheduled offence would fall within the expression "proceeds of crime" as defined under Section 2(1) (u) of the PML Act is fundamentally flawed.

Section 65 of the Prevention of Money Laundering Act, 2002 (hereinafter, PMLA) has been under scrutiny for long, it being one of the means of exploitation by the authorities. It gives them the opportunity to pick and choose the provisions they want to apply in case a certain aspect is covered by both the Criminal Procedure Code, 1973 (CrPC) and PMLA ,S 65 of PMLA states that:

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

Although the legislators have included the word 'inconsistent' to create a demarcation as to when will the provisions of CrPC be used to supplement PMLA the authorities under the Enforcement Directorate (*hereinafter*, ED) have become blatantly ignorant towards it.

Hon'ble High Court of Delhi in W.P. (Crl.) 856/2016 in Virbhadra Singh & Anr VS Enforcement Directorate & Anr.

In this matter common questions of law was raised, of general interest involving provisions of Prevention of Money Laundering Act, 2002 (for short, "PMLA") in the context of a case under investigation with Enforcement Directorate of Ministry of Finance in the Government of India. It is claimed in the petition that summons were issued under Section 50(2) and (3)

PMLA requiring presence of the petitioners for questioning. Detailed averments were made with regard to the response of the petitioners pursuant to said summons, facts pertaining which may be elaborated a little later. The trigger for filing the petition is indicated to be the denial of extension of time for compliance with the summons on the ground that the legislative assembly of the State of Himachal Pradesh was in session till 06.04.2016 in spite of which, through the summons issued by the respondents. It is clear, that the Enforcement officers under PMLA do not require the powers of police for investigation as granted by the general law contained in Chapter XII of the Code of Criminal Procedure. On the contrary, to hold that the said part of Code of Criminal Procedure applies to PMLA investigations or proceedings would bring in inconsistency - in breach of the mandate of Section 65 PMLA. There is nothing in PMLA to indicate that the power to arrest conferred on the Director or the other specified officers are contingent upon formal authorisation by the court. Further, the law does not contain any clause from which it could be deduced that the authorization to the Director or other specified officers to take up the investigation or exercise any of the powers thereby conferred requires prior approval from the court in each case. In view of the above, it must be concluded that notwithstanding the deletion of clause (a) of the then existing sub-section (1) of Section 45 PMLA, by the amendment of 2005, the offences under PMLA continue to be "cognizable" in the sense that a person respecting whom there is a reason to believe to be guilty for such offence may be arrested by the officer empowered by the law in terms of Section 19 without the need of obtaining warrant of arrest from the court. Thus, the use of the expression "cognizable" in relation to PMLA offences would be different from the one applied for general law offences (say, IPC offences) and consequently, the definition of the expressions "cognizable offence" and "cognizable case" as appearing in Section 2(c) Cr. P.C. would have to be read and applied mutatis mutandis with suitable modification - that is to say, by substituting the words "a police officer" and instead referring to the officers mentioned in Section 19 PMLA.

Hon'ble High Court of Delhi in Crl. A. No. 143/2018 in The Deputy Director Directorate vs. Axis Bank & Ors

In this matter the Delhi High Court said, that on the issue of, the measure of attachment of property involved in "money laundering", it essentially representing "proceeds of crime" (as defined in law), is provided to ensure that the ultimate objective of "confiscation" of such ill-gotten property be not frustrated, the power and jurisdiction to order confiscation being vested in the Special Court. As would be seen at length in later part of this judgment, the provisions for attachment (followed by adjudication) leading to confiscation are sanctions in addition to the criminal sanction rendering the act of "money laundering" a penal offence (by virtue of section 4). The order of "confiscation" of property attached under PMLA takes away the right and title of its owner and vests it "absolutely in the Central Government free from all

encumbrances" The appeals at hand relate to claims of entities other than the persons in whose name the attached properties are held - to be referred hereinafter as "third party" - such claims of the third party emanating from charge, lien or encumbrances legitimately created.

To put it simply, the conflict meriting resolve here concerns the sovereign authority of the State to take away and confiscate the property which has been acquired by a person through criminal activity as against the lawful claim of a third party to reach out to such property to recover, in accordance with law, what is due by attachment and sale of same very property. The special legislation against money-laundering (PMLA) seeks to enforce the sanction of confiscation (initiated by attachment) against ill-gotten assets expecting to ensnare them in a net wider than under most of the existing laws germane to the issue of economic well-being, security and integrity of India as a sovereign State. It is vivid that the legislature has made provision for "provisional attachment" bearing in mind the possibility of circumstances of urgency that might necessitate such power to be resorted to. A person engaged in criminal activity intending to convert the proceeds of crime into assets that can be projected as legitimate (or untainted) would generally be in a hurry to render the same unavailable. The entire contours of the crime may not be known when it comes to light and the enforcement authority embarks upon a probe. In view of the above conclusions, the impugned decisions of the appellate tribunal will have to be set aside.

There is a need for further scrutiny particularly on facts, of the claims of the respondents, in their appeals which were presented before the said forum to challenge the orders of attachment, as confirmed by the adjudicating authority in the five cases. It does appear that the assets which have been the subject matter of attachment in the appeals at hand are not "tainted property", the same having been seemingly acquired prior to the criminal activity giving rise to accusations of money-laundering. But, they are sought to be attached and subjected to eventual confiscation on account of they being the alternative attachable properties or deemed tainted properties, which is permissible in law. The Audi car (subject matter of first appeal) was acquired by a transaction which has no direct connection with the case of money-laundering. However, there is no clarity as to the value of proceeds of crime which are to be confiscated as against value of the attached property as indeed the extent of the debt yet to be recovered by the secured creditor. The monetary gains made by the transactions which are subject matter of the accusations of money-laundering on account of illicit foreign exchange transactions (third appeal) or the case of cheating by use of fabricated defence supply orders (fourth appeal), both involving public servants, require closer scrutiny as to the claim of the respondent banks of bonafide action. Though there is no such element of complicity on part of any of the officials of the respondent banks in the case relating to fictitious hospital equipment (second appeal) or the one involving consortium of banks (fifth appeal), scrutiny respecting legitimacy and bonafide of the claim on the touchstone, inter alia, of the subsisting value of the secured interest and chronology of events leading to attachment would be necessary. It will be appropriate that such further scrutiny as is necessary on the touchstone of above principles is undertaken by the appellate tribunal after calling for further responses (and inputs) from each side.

The crime of such nature is generally executed in stealth and secrecy, multiple transactions (seemingly legitimate) creating a web lifting the veil whereof is not an easy task. The truth of the matter is expected to be uncovered by a detailed probe which may take long time to undertake and conclude. The total wrongful gain from the criminal activity cannot be computed till the investigation is completed. The authority for "provisional" attachment of suspect assets is to ensure that the same remain within the reach of the law.

Having regard to the above scheme of the law in PMLA, it is clear that if a bonafide third party claimant had acquired interest in the property which is being subjected to attachment at a time anterior to the commission of the criminal activity, the product whereof is suspected as proceeds of crime, the acquisition of such interest in such property (otherwise assumably untainted) by such third party cannot conceivably be on account of intent to defeat or frustrate this law. In this view, it can be concluded that the date or period of the commission of criminal activity which is the basis of such action under PMLA can be safely treated as the cut-off. From this, it naturally follows that an interest in the property of an accused, vesting in a third party acting bona fide, for lawful and adequate consideration, acquired prior to the commission of the proscribed offence evincing illicit pecuniary benefit to the former, cannot be defeated or frustrated by attachment of such property to such extent by the enforcement authority in exercise of its power under Section 8 PMLA.

Though the sequitur to the above conclusion is that the bonafide third party claimant has a legitimate right to proceed ahead with enforcement of its claim in accordance with law, notwithstanding the order of attachment under PMLA, the latter action is not rendered irrelevant or unenforceable. To put it clearly, in such situations as above (third party interest being prior to criminal activity) the order of attachment under PMLA would remain valid and operative, even though the charge or encumbrance of such third party subsists but the State action would be restricted to such part of the value of the property as exceeds the claim of the third party.

Situation may also arise, as seems to be the factual matrix of some of the cases at hand, wherein a secured creditor, it being a bonafide third party claimant vis-a-vis the alternative attachable property (or deemed tainted property) has initiated action in accordance with law for enforcement of such interest prior to the order of attachment under PMLA, the initiation of the latter action unwittingly having the effect of frustrating the former. Since both actions are in accord with law, in order to co-exist and be in harmony with each other, following the preceding prescription, it would be appropriate that the PMLA attachment, though remaining valid and operative, takes a back-seat allowing the secured creditor bonafide third party claimant to enforce its claim by disposal of the subject property, the remainder of its value, if any, thereafter to be made available for purposes of PMLA.

As already noted, the newly inserted provision contained in Sections 26-B to 26-E falling in Chapter (no. IV-A) on "registration by secured creditors and other creditors" of SARFEAESI Act is yet to be notified and brought into force. In the event of said statutory clauses coming into force, a creditor will not be entitled to exercise the right of enforcement, inter alia, of security interest over the property of borrower unless such "security interest" has been duly

registered under the said law. Upon such amended law being enforced, a bona fide third party claimant seeking relief against an order of attachment under PMLA will also be obliged to show due compliance with such statutory requirements.

As has been highlighted earlier, the provisional order of attachment is subject to confirmation by the adjudicating authority. The order of the adjudicating authority, in turn, is amenable to appeal to the appellate tribunal. The said forum (i.e. the appellate tribunal) may pass such orders as it thinks fit "confirming, modifying or setting aside the order appealed against" .Undoubtedly, an aggrieved party is entitled in law to invoke the said jurisdiction of the appellate tribunal to bring a challenge to the orders of attachment (as confirmed) but, the law in PMLA, at the same time, also confers jurisdiction on the special court to entertain such claim for purposes of restoration of the property during the trial of the case .The jurisdiction to entertain objections to attachment conferred on the appellate tribunal on one hand and, on the special court, on the other, thus, may be co-ordinate, to an extent.

Hon'ble Apex Court in Civil Appeal No. 8337-8338/2017,

Innoventive Industries Ltd. v. ICICI Bank

The Supreme Court in the case of **Innoventive Industries Ltd. v. ICICI Bank** laid down the test for determining if there is repugnancy between two statutes by finding out whether one of the statutes has adopted a plan or a scheme, which will be hindered or obstructed by giving effect to the other statute. In the case of *Abdullah Ali Balsharaf v. Directorate of Enforcement* a case arose in relation to an inconsistency between S. 109 of CrPC and S. 17(1A) of PMLA where the ED seized the assets of the petitioner u/s 102 of CrPC. The court while explaining how the provisions of CrPC were inapplicable for seizing the property for the offence of money laundering cited inconsistencies on two grounds: The power u/s 17(1) of PMLA to provisionally attach, seize or freeze a property can be exercised only (a) if the specified officer has material in his possession, which provides him 'reason to believe' that the property sought to be attached or seized is proceeds of crime or related to a crime; and (b) after recording the reasons in writing. Whereas the power under S. 102 of CrPC can be exercised without meeting any of the above mentioned requirements' u/s 20 of PMLA the orders of provisional attachment and/or seizure and/or freezing cannot extend beyond the period of 180 days. Whereas the property can be seized u/s 102 of CrPC for an indeterminate period.

The nature of the power of seizure contemplated under the provisions of CrPC is drastic and exercise of such power is likely to have adverse effects on the person concerned. The parliament in its wisdom did not confer upon the ED any powers to attach or freeze assets on a mere suspicion. The Authorities cannot bypass the legislative intent using the tool of arbitrary discretion and need to abide by the legislative wisdom behind a particular provision.The Delhi High Court in the case of Abdullah Ali Balsharaf v. Directorate of Enforcement dealt with the inconsistency between S. 109 of CrPC and S. 17(1A) of PMLA where the ED seized the assets of the petitioner u/s 102 of CrPC. S. 65 of PMLA states that. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as

they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

The nature of the power of seizure contemplated under the provisions of CrPC is drastic and exercise of such powers is likely to have severe adverse effects on the person concerned thus, the parliament in its wisdom did not confer upon the Enforcement Directorate, any powers to attach or freeze assets on a mere suspicion. The Authorities cannot bypass the legislative intent using the tool of arbitrary discretion, and need to abide by the legislative wisdom behind a particular provision.

Further in this particular case the Delhi High court dealt with two important questions as well.

1. Whether the instructions issued by the Officers of the Enforcement Directorate via an email, inter alia, restraining the transfer of shares in respect of a third party by the BSE. It was held that the ED cannot make such orders u/s 102 of CrPC and it was without authority of law. At best the court can restrain the transfer of money to the petitioners and not the transfer of shares to a third party.

2. Whether the shares purchased in the year 2003, which was prior to the PMLA coming into force and, therefore, the provisions of the PMLA are inapplicable to the said shares. This is so because shares were subscribed by remittances paid through banking channels much prior to commission of any alleged crime. It was held by the court that if any property is derived or obtained from any criminal activity relating to a scheduled offence is held outside India, then a property of an equivalent value held in India, would also fall within the scope of expression of 'proceeds of crime' u/s 2(u) of PMLA.

- **Hon'ble High Court of Karnataka at Bengaluru in W.P. 5962/2016,Joint Director, Enforcement Directorate and Others VS. M/s Obulapuram Mining Company Pvt Ltd.**

  It was held that the Enforcement Case Information Report and the order of attachment are without jurisdiction and are liable to be quashed since the offences alleged, are not scheduled offences under the PML Act rather being under Mines and Geology (Development and Regulation) Act, 1957, the Forest (Conservation) Act, 1980, the Indian Penal Code and the Prevention of Corruption Act, 1988 and were included in the PML Act w.e.f. June 1, 2009. Hence, the ED cannot invoke the provisions of the PML Act with retrospective effect.

- **Hon'ble High Court of Delhi in W.P. (C) 1925/2014 Mahanivesh Oils & Foods Private Limited Vs Directorate Of Enforcement**

  The central issue in the present case is not on whether the scheduled offence was committed, but whether the attachment under Section 5 of the Act can be sustained where the principal offence as well as the offence of using its proceeds is alleged to

have been committed prior to the Act coming into force. After Amendment to Section 3 in 2013, the words **"concealment, possession, acquisition or use"** appearing in Section 3 of the Act must be read in the context of the process or activity of money laundering and this is over once the money is laundered and integrated into the economy. Thus, a person concealing or coming into possession or bringing proceeds of crime to use would have committed the offence of money laundering when he came into possession or concealed or used the proceeds of crime. For any offence of money laundering to be alleged, such acts must have been done after the Act was brought in force. The proceeds of crime which had come into possession and projected and claimed as untainted prior to the Act coming into force, would be outside the sweep of the Act. In the circumstances, it cannot be readily accepted that any offence of money laundering had been committed after the Act coming into force. This Act cannot be read as to empower the authorities to initiate proceedings in respect of money laundering offences done prior to 1-7-2005 or prior to the related crime being included as a scheduled offence under the Act.

- **Hon'ble Apex Court in SLP Civil No. 28394/20112 B.Rama Raju vs. UOI &Ors**

On analysis of the provisions of Section 5, 8, 17 and 18, it is clear that provisions of the Second Amendment Act have carefully ironed out the creases and the latent ruckus in the texture of the provisions of the Act relating to attachment, adjudication and confiscation in Chapter-Ill. Attachment or confiscation of proceeds of crime in the possession of a person who is not accused or charged of an offence under Section 3 is thus not an incorporation for the first time by the provisions of the Second Amendment Act, 2009. The contention on behalf of the petitioners that the second proviso to Section 5(1) of the Act, applies only to property acquired/possessed prior to enforcement of this provision or if interpreted as being retrospective, the provision itself must be invalidated for arbitrary retrospective operation is therefore without substance or force. If the provisions of the second proviso to Section 5 are applicable to property acquired even prior to the coming into force of this and even so is not invalid for retrospective penalisation.

In view of the above discussed issues circling PMLA, it is for the reader to decide whether PMLA is a bane or boon.