

JSA Prism

Anti-Corruption, White Collar Crimes & Investigations Practice

May 2023

The scheduled offence should be tried before the Special Court which has taken cognizance of the offence of money laundering

The Supreme Court of India in the case¹ of journalist Rana Ayyub's writ petition challenging the Ghaziabad Special Court's ("**Special Court**") jurisdiction to take cognizance of money laundering has held as follows:

1. The trial court of the scheduled offence should commit the case to the Special Court which has taken cognizance of the offence of money laundering.
2. The trial of the scheduled offence should follow the trial of the offence of money-laundering, and not *vice versa*.
3. Insofar as territorial jurisdiction is concerned, the area in which the property is derived or obtained or even held or concealed, will be the area in which the offence of money-laundering is committed.

The Supreme Court also clarified that the provisions of the Code of Criminal Procedure, 1973 ("**CrPC**") are applicable to all proceedings under the Prevention of Money Laundering Act, 2002 ("**PMLA**"), including the proceedings before the Special Court, except to the extent they are specifically excluded.

Scheduled Offence and Offence of Money Laundering

Under the PMLA an "offence of money laundering" under Section 3 of the PMLA constitutes involvement in any any process or activity connected with the proceeds of crime. The PMLA defines "proceeds of crime" under Section 2(u) means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a "scheduled offence".

Therefore, a scheduled offence is an independent prior offence, and it is on the basis of the proceeds of this crime (under the scheduled offence) that an offence of money laundering may be registered.

Brief Facts

Ms. Rana Ayyub (the "**Petitioner**") ran online crowdfunding campaigns on a platform called "Ketto" from April 2020 to September 2021. These campaigns came under the scanner for misappropriation of charitable donations and the receipt of foreign donations was subject of enquiry under the Foreign Exchange Management Act, 1999 and the Foreign Contribution (Regulation) Act, 2010.

Accordingly, on September 7, 2021, the Indirapuram Police Station, Ghaziabad registered FIR No. 2049/2021 on September 7, 2021 for offences under the IPC, Information Technology Act, 2000 and the Black Money Act, 2015.

¹ Rana Ayyub v. Directorate of Enforcement (2023 SCC Online SC 109).

On November 11, 2021, Enforcement Directorate ("ED"), the Delhi Zone-II registered a complaint in ECIR No. DLZO-II/58/2021. It was stated in the said complaint that the FIR dated September 7, 2021 on the file of the Indirapuram Police Station, Ghaziabad formed the basis for the complaint of the ED. After the registration of the complaint of the ED, the Petitioner was summoned and her assets were attached.

Thereafter, on November 29, 2022, the Court of Special Judge, Anti-Corruption, CBI Court No. 1, Ghaziabad passed an order taking cognizance of the complaint and summoning the Petitioner for appearance on December 13, 2022.

Aggrieved, the Petitioner filed a writ petition under Article 32 of the Constitution of India before the Supreme Court challenging the territorial jurisdiction of the summons on the ground that under Section 44(1) of the PMLA, an offence punishable under the PMLA, will be triable only by the Special Court constituted for the area in which the offence has been committed.

Issues

The Supreme Court decided the following issues:

1. Whether the trial of the offence of money-laundering should follow the trial of the scheduled/predicate offence, or vice versa?
2. Whether an offence punishable under the PMLA will be triable only by the Special Court constituted for the (territorial) area in which the offence has been committed?
3. Whether the provisions of the CrPC are applicable to all proceedings before the PMLA including proceedings before the Special Court?

Findings of the Supreme Court

1. The Special Court constituted under Section 43(1) of the PMLA will be empowered to try even the scheduled offence connected to the same:
 - a) Section 44(1)(a) of the PMLA provides that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same must be tried by the Special Court constituted for the area in which the offence has been committed.
 - b) However, if the court which has taken cognizance of the scheduled offence is different from the Special Court which has taken cognizance of the offence of money-laundering, then under Section 44(1)(c), the authority authorised to file a complaint under PMLA should make an application to the Court which has taken cognizance of the scheduled offence. On the application so filed, the Court which has taken cognizance of the scheduled offence, should commit the case relating to the scheduled offence to the Special Court which has taken cognizance of the complaint of money laundering.
 - c) Therefore, the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not vice versa.
 - d) The explanation (i) of Section 44(1) clarifies that the trial of both sets of offences by the same court will not be construed as joint trial.

In view of Section 44(1)(a) and (c), it is the Special Court constituted under the PMLA that would have jurisdiction to try even the scheduled offence. Even if the scheduled offence is taken cognizance of by any other court, that court will commit the same, on an application by the concerned authority, to the Special Court which has taken cognizance of the offence of money laundering.

2. The offence of money-laundering is triable only by the Special Court constituted for the area in which the offence of money laundering has been committed.

- a) The area in which the place of acquisition of the proceeds of crime is located or the place of keeping it in possession is located or the place in which it is concealed is located or the place in which it is used is located, will be the area in which the offence has been committed.
 - b) In addition, the definition of the words “proceeds of crime” focuses on “deriving or obtaining property” as a result of criminal activity relating to a scheduled offence. Therefore, the area in which the property is derived or obtained or even held or concealed will be the area in which the offence of money-laundering is committed.
3. The provisions of the CrPC are applicable to all proceedings under the PMLA including proceedings before the Special Court, except to the extent they are specifically excluded.
- a) Though the PMLA contains a non-obstante clause in relation to the CrPC, both in Section 44(1) and in Section 45(1) of the PMLA, there are 2(two) other provisions where the CrPC is specifically declared to apply to the proceedings before a Special Court.
 - b) Section 46(1) of the PMLA specifically makes the provisions of the CrPC applicable to proceedings before a Special Court. Similarly, Section 65 of the PMLA makes the provisions of CrPC apply to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the PMLA.
 - c) Hence, Section 71 of the PMLA providing an overriding effect, has to be construed in tune with Section 46(1) and Section 65 of the PMLA.

JSA Comment

This judgement brings the much-needed clarity on the jurisdiction (including the territorial jurisdiction) of courts trying the scheduled offence and the offence of money laundering. This is a significant judgement which goes a long way to prevent delays and impediments in the trials of these offences and ensures effective and expedited adjudication of offences of money laundering.

Anti-Corruption, White Collar Crimes & Investigations Practice

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We also assist in compliance diligence as part of M&A and PE transactions and vet corporate entities for compliance with anti-corruption laws and best practices. We conduct internal investigations into claims of misconduct, fraud and other such matters. Having worked on diverse matters related to compliance investigations under the (Indian) Companies Act, 2013, India leg of FCPA and UKBA matters, whistle blower investigations and advisory solutions to implement a comprehensive ethics framework, we have both an in-depth understanding of the sector as well as the skills required to deliver effective and regulation specific legal counsel. JSA also conducts training programs and sessions on anti-corruption laws and whistle-blower policies, code of conduct and ethics, internal controls for the board of directors, key managerial personnel, executives, managers, employees, agents, and other appropriate third parties, in diverse formats such as one-on-one training, seminars, workshops, and off-sites.

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