

LEGAL SPECTRA 2019
5thAll India Law School Meet

MOOT COURT COMPETITION

DISCLAIMER

All the characters depicted herein and the events described in the moot proposition are truly fictitious, resemblance of any kind and magnitude, whatsoever, to any individual, place, organization, institution, association or event is purely co-incidental. This is a fictitious problem / case with the under-given fact matrix and therefore, the counsels are expected to operate within the circumference of the facts contented and the issues raised herein below. However, the counsels shall have the freedom to frame any other relevant issue within the ambit of the facts purported hereinafter.

MOOT PROPOSITION

Modisha, an eastern Scindian state on the Bay of Raingol, is known for its tribal cultures and its many ancient monuments. The capital, Hindueswar, which is home to hundreds of temples, has recently been titled as the smartest city of the nation by the Union Government. In 2002, the Union Parliament enacted the Prevention of Money Laundering Act, 2002 (hereinafter “the PML Act”) acknowledging the urgent need for a comprehensive legislation to prevent money-laundering and connected activities, confiscation of proceeds of crime and setting up of agencies and mechanisms for coordinating measures to combat money-laundering.

Background of the case

A case was recorded for investigation about alleged commission of offence of money-laundering under Section 3 of the PML Act against Mr. Rahul Sindhey, Mr. Joseph Roy, Mr. Nikhil Rajput and Mr. Deepak Singhal. Upon perusal of materials/evidences placed before Joint Director, Enforcement Directorate (ED), Hindueswar following facts emerged:-

1. On 06.03.2016, Hindueswar Sub-zonal Office of ED recorded an Enforcement Case Information Report vide ECIR No. 22/HDS/2016 against the aforesaid persons for initiating action under the PML Act on the basis of FIR no. 34 dated 03.12.2015 registered u/s 364/326/307/302/120-B/506/201/34 Scindian Penal Code, 1860 [SPC] and FIR no. 09 dated 06.01.2016 u/s 25/27 Arms Act registered by City Square Police Station, Hindueswar.
2. The forenamed persons were also charged jointly and severally on allegations u/Ss 387/384/489(B)/489(C)/294/419/420/458/467/471 of the Scindian Penal Code, 1860 [SPC] in multiple cases but only one FIR bearing FIR No. 16 has been registered by the College Road Police Station, Hindueswar.
3. The said FIRs against the forenamed persons were registered on the basis of allegation of perpetration of various crimes such as abduction, murder, criminal conspiracy, criminal intimidation,

extortion, cheating, tender-fixing, possession of illegal arms and ammunitions, running illegal trade of arms and ammunitions, possession of counterfeit currencies, forgery etc.,

4. On the basis of the complaints, the police conducted searches in various places including the residential houses, offices of the Individual accused persons and the forenamed persons were arrested on different dates by the Commissionerate Police, Hindueswar from several places. During the search police seized various items from different places such as arms & ammunition, counterfeit currencies, documents relating to transaction of crypto currency, currency counting machines, premium high class vehicles, huge amount of cash and various incriminating documents like fake voter ID, fake PAN card, fake Driving License in the name of non-existing persons were recovered from the premises which belong to Mr. Rahul Sindhey and other arrested suspects.
5. It has been alleged that these arms and ammunitions were illegally kept for extortion, murder etc. and other connected activities, and that Mr. Rahul Sindhey and his associates (other suspects) were selling these illegal arms and ammunitions. It has also been alleged that Mr. Rahul Sindhey along with his associates were collecting huge amount of money by fixing tenders with different government establishments and from extortions.

6. During the investigation, the police recorded statement of 89 persons who were allegedly victimized, over the years, by Mr. Rahul Sindhey and his associates by way of extortions and other illegal activities.
7. Subsequently, Final form was submitted by the police bearing Nos. 88/18.05.2016, 68/22.05.2016, 67/23.06.2016, where in 85 numbers of charge sheeted witnesses were shown and their statements recorded U/s 161 Cr.P.C. was also filed along with the seizure list of the above mentioned articles.
8. So far as the charges are concerned, the charges were made under Section 120(B), 302, 307, 364-A, 384, 386, 387, 411, 419, 420, 467, 471, 489(B) of SPC, 1860 and Sections 25 & 27 of Scindia Arms Acts, 1959, which are scheduled offences under the provisions of the PML Act. The trial in the aforesaid scheduled offences, however, are *sub judice* till date before the competent criminal courts.
9. The magnitude of the alleged offences involved was so high and on the other hand there were allegations of involvement of high profile persons in the case, which attracted the attention of the Department of Revenue and Department of Finance. It was realized that the issue poses serious threat not only to the financial systems of the country but also the integrity and sovereignty, and thus, the aforesaid departments started looking into it.
10. However, in the light of above alleged criminal activities of the accused persons, recoveries made and statements recorded by

the Police Authorities during the investigations, Enforcement Directorate (Hereinafter ED) on the alleged basis of having a reason to believe that the movable and immovable properties (as mentioned herein above) are proceeds of crimes committed by the accused persons. Therefore, on the basis of the information/document(s) as mentioned hereinabove, a case of an offence of money laundering under Section 3 of the Prevention of Money Laundering Act, 2002 and punishable under Section 4 of the said Act was initiated against the above named persons. Accordingly Hindueswar Sub-zonal Office of ED registered a case vide ECIR No. 22/HDS/2016 against the aforesaid persons and the case was taken up for investigation under the provisions of the PML Act (as amended) and the Rules framed thereunder.

11. During the investigation, ED issued notices to the respective accused directing them to submit a detail note and make a disclosure of the properties both movable and immovable available in their name and in the name of their family members. In response to the said notices the accused persons submitted the detailed property lists, bank accounts details and other valuables registered in their names and in the names of family members, and also recorded their statements u/S. 50 of the PML Act.
12. Subsequently, in exercise of the powers conferred under Sub-section (1) of Section 5 of the PML Act and in terms of Authorization issued by the Directorate of Enforcement, New Belhi, the Joint Director, Hindueswar Sub-zonal Office,

Enforcement Directorate ordered provisional attachment, vide Provisional Attachment Order No. 03/2017, of movable and immovable properties worth Rs. 19,76,55,288/- (Rupees Nineteen Crore Seventy Six Lakhs Fifty Five Thousand Two Hundred and Eighty Eight only) that belongs to Mr. Rahul Sindhey and his other associates.

13. The attachment order captioned the exact and the entire list of property that has been submitted by the respective accused and the said list of properties were attached. After some days of the provisional attachment, the accused persons received notices u/s 8 of the Act from the Adjudicating Authority (PMLA), New Belhi to show cause as to why the provisional attachment shall not be confirmed. In the show cause notice u/s 8 of the Act, the authority has only mentioned to appear on a given date and to file reply.
14. While pendency of these cases the Directorate of Enforcement has also filed another case before the special court under PMLA under section 45 of the Act against the above named persons. Notices were issued and the accused persons have filed petitions for dispensing the personal appearances. The matter is posted for framing of charges after hearing on the petitions for dispensing of the personal appearance.

The Challenge:

Aggrieved by the aforesaid “provisional attachment order”, all the four accused individually approached the Hon’ble High Court of Modisha by filing four separate writ petitions under Article 226 and 227 of the Constitution of Scindia challenging thereby the constitutional validity of second proviso to Section 5 (1) of the PML Act on the grounds that the same is ultra vires Article 14, Article 20 (3) and other important provisions of the Constitution, and also on the ground that there could not have been any “reason to believe” to satisfy the preconditions for making a provisional attachment. The petitioners also challenged the Original Complaints (OC) filed under Section 5 (5) of the PML Act and the Show Cause Notices (SCNs) issued to them under Section 8 of the PML Act by the Adjudicating Authority. The petitioners have also challenged the initiation of criminal trial Under Section 45 of the PMLA Act and prayed for stay of further proceeding by way of an interim prayer attached to the same writ petition. The challenge in these petitions was, therefore, to the OCs, the SCNs, and the provisional attachment orders and to all further proceedings in the aforementioned ECIR.

As a matter of practice, the above mentioned prayers in the petitions (*other than the prayer concerning the challenge to the constitutional validity of the second proviso to Section 5 (1) of the PML Act*) were to be dealt with by learned Single Judges of the Hon’ble High Court of Modisha, but since the first prayer concerns the constitutional validity

of a statutory provision, these writ petitions were consolidated before the Division Bench of the Hon'ble Court. The division bench referred the matter to a Larger Bench of the said High Court to hear the entire case. Hence the Writ petition before the larger bench is listed for final hearing

Notwithstanding, any issues mentioned herein above, participants are free to frame any other issue of prime importance.

The Constitution and other laws of Union of Scindia are very similar to that of Union of India and the applicable state laws (if any) of Modisha are very similar to that of State of Odisha.