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SUPREME COURT EXPLAINS THE TERRITORIAL JURISDICTION OF SPECIAL COURTS UNDER THE PMLA

15 February 2023 The Supreme Court of India (**SC**) in its judgment dated 7 February 2023 in "**Rana Ayyub v. Directorate of Enforcement through its Assistant Director**", 2023 SCC OnLine SC 109, interpreted the manner in which territorial jurisdiction of courts in respect of an offence under the Prevention of Money Laundering Act, 2002 (**PMLA**) is to be determined.

FACTS

The Petitioner initiated three crowdfunding campaigns during the pandemic using an online platform, Ketto. The Mumbai Zonal Office of the Enforcement Directorate (**Mumbai ED**) initiated an investigation against her on 3 August 2021. Contemporaneously, a private complaint was filed against her in Ghaziabad on 7 September, 2021 which was registered as a first information report (**FIR**). Pending the investigation by the Mumbai ED, the Delhi office of the Enforcement Directorate (**Delhi ED**), on the basis of the FIR registered in Ghaziabad, registered a case against the Petitioner under the PMLA before the Special Judge at Ghaziabad (**Special Court**). In the midst of this, the bank account of the Petitioner based in Navi Mumbai came to be attached under the provisions of the PMLA. When matters stood thus, the Special Court, on 29 November 2022 issued a summons to the Petitioner to be present before it on 13 December 2022.

CONTENTIONS

The Petitioner challenged the issuance of summons by the Special Court on the premise that it had no territorial jurisdiction to do so since, in terms of Section 44 of the PMLA,

"...the Special Court constituted for the area in which the offence has been committed..."

would have to be the court which would take cognizance of the case, which in the present facts would have been a court based in Navi Mumbai, where the attached bank account of the Petitioner was located. The Petitioner contended that no part of the offence was committed within the jurisdiction of the Special Court.

The Delhi ED, the Respondent, amongst other things, countered by arguing that the court where cognizance of the scheduled offence had been taken would be the court that would have to take cognizance of the case under the PMLA, in this case the Special Court.

ISSUES

The SC framed two questions, firstly whether the court where the scheduled offence is to be heard is where the PMLA case is also to be heard or vice versa, and secondly whether the Special Court had exceeded its territorial jurisdiction.

FINDINGS

To answer the first question the SC scrutinized Section 43, the provision under which courts to hear cases under the PMLA were constituted and Section 44, the provision under which the territorial jurisdiction of the courts constituted under Section 43 of the PMLA could take cognizance of offences under the PMLA. The SC noted two broad distinctions, in that Section 44 contemplated cases (i) where the scheduled offence and the PMLA offence were committed within the territorial jurisdiction of the same court, and (ii) where the scheduled offence and the PMLA offence were committed within the jurisdiction of different courts. Section 44 of the PMLA used the terms "offence" and "scheduled offence" with a very clear intention so as to not be used interchangeably. Based on a reading of Section 44, the SC observed that the "scheduled offence" would have to follow the "offence" of money laundering and therefore, insofar as territorial jurisdiction is concerned, the court which takes cognizance of the PMLA offence would have to be the court that takes cognizance of the scheduled offence, and not vice versa. The SC observed that the general provisions of the Code of Criminal Procedure, 1973 (CrPC) would apply to proceedings under the PMLA, except where they were specifically excluded, such as in Section 44 of the PMLA. The CrPC which would otherwise determine the territorial jurisdiction of criminal courts would have to yield to the provisions of the PMLA.

For the second question the SC noted that a criminal court could exercise territorial jurisdiction in six circumstances, (i) where an offence is committed, (ii) where the consequence of the offence is felt, (iii) where the accused is located, (iv) where the victim of the offence is located, (v) where the property which was subject matter of the offence was found or (vi) where the property which formed part of the offence was required to be returned. The SC juxtaposed this with the circumstances under Section 3 of the PMLA that held money laundering occurred in (i) concealing, (ii) possessing, (iii) acquiring, (iv) using, (v) projecting as untainted or (vi) claiming as untainted, proceeds of crime. The SC held that the mere existence of a bank account at Navi Mumbai would not alone be sufficient for determining where a case of money laundering had been committed under the PMLA, since the other actions enumerated above could have been undertaken at any other location, including within the jurisdiction of the Special Court. The SC was particularly persuaded by the fact that the Petitioner was running the crowdfunding campaigns through an online platform and consequently, the issues of possession, acquisition and use would be matters to be determined by the Special Court and could not be decided summarily in proceedings before it, given that there were factual issues with regard to the location of the commission of the offence under the PMLA.

Consequently, the SC dismissed the petition and directed the Petitioner to raise these contentions before the Special Judge.

COMMENT

The judgement of the SC has given clarity to the issue as to the court's jurisdiction in relation to a scheduled offence and an offence under the PMLA. Having said that, the SC has very broadly explained the scope in respect of in which a proceeding under the PMLA could be commenced. This will open up the possibility of a case being filed in a place even before determining whether any part of an offence actually occurred in that location.

- Thriyambak J. Kannan (Partner)

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