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### INTERPRETATION OF THE SCHEDULED OFFENCE OF CRIMINAL CONSPIRACY UNDER PMLA – KEY TAKEAWAYS FROM PAVANA DIBBUR

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#### **Introduction**

The Supreme Court of India (Supreme Court) in *Pavana Dibbur v The Directorate of Enforcement*, 2023 SCC OnLine SC 1586, held that the offence of criminal conspiracy will be categorised as a scheduled offence under the Prevention of Money Laundering Act 2002 (PMLA) only if the alleged conspiracy is for commission of an offence that is listed as a scheduled offence under PMLA. Further, in *Alliance University v Pavana Dibbur*, 2024 SCC OnLine SC 424, the Supreme Court rejected the Review Petitions filed against the judgment. Notably, this issue was not before the Supreme Court in *Vijay Madanlal Choudhury v Union of India*, 2022 SCC Online SC 929 where the Supreme Court upheld the constitutional validity of PMLA and which judgment is presently pending in review before a three-judge bench of the Supreme Court.

#### **Brief facts**

In 2013, Pavana Dibbur (Appellant) purchased a property (First Property) from Alliance Business School for INR 13.5 Crores. Thereafter, in 2019, the Appellant purchased another property (Second Property) from one Madhukar Angur for INR 2.47 Crores.

In 2017, a First Information Report (FIR) was registered against Madhukar Angur and others basis a complaint filed by the Registrar of Alliance University alleging that Madhukar Angur collected a sum of INR 107 crore from the students of Alliance University in 2017 and transferred the funds to his own account. It was further alleged that the said amount was deposited in the account of one Srivari Education Services which was later transferred to the account of Madhukar Angur.

Subsequent to the registration of the FIR, in 2020, an Enforcement Case Information Report was registered by the Enforcement Directorate (ED) against Madhukar Angur and others. Subsequently, in 2021 the Enforcement Directorate attached the First Property and Second Property. The Enforcement Directorate also filed a complaint under PMLA naming the Appellant as one of the Defendants and alleging that the Appellant had committed the offence of criminal conspiracy as she conspired with Madhukar Angur to execute nominal sale deeds for the purchase of the First Property and Second Property in her name, intending to benefit Madhukar Angur. It was a PMLA Special Court at Bengaluru that took cognizance of the Complaint in 2022 and the Appellant applied to the Karnataka High Court to quash the PMLA Complaint, which quashing petition was dismissed by the High Court in 2022. Therefore, the Appellant preferred a Criminal Appeal before the Supreme Court.

## *Issue involved*

Whether an offence of criminal conspiracy can be treated as a scheduled offence under PMLA where the purported criminal conspiracy involves committing an offence which is not listed as a scheduled offence under PMLA?

## *Submissions on behalf of the Appellant*

- The Appellant acquired the First Property in 2013 much prior to the commission of the alleged offences in 2017 by Madhukar Angur. Further the Appellant had money to acquire the Second Property and therefore, the purchase of the First Property and Second Property by the Appellant had no connection with the alleged proceeds of crime.
- The Appellant was not named as accused in the Chargesheets filed for the alleged predicate offences committed by Madhukar Angur and others and hence the Appellant could not be named as an accused for the alleged offence of money laundering.
- The offence of criminal conspiracy alone, without another scheduled offence, cannot sustain a charge under PMLA i.e. the offence of criminal conspiracy cannot be treated as a standalone offence in the absence of any other scheduled offence being committed.

## *Submissions on behalf of the Respondents*

- The Appellant acquired the First Property in 2013 much prior to the commission of the alleged offences in 2017 by Madhukar Angur. Further the Appellant had money to acquire the Second Property and therefore, the purchase of the First Property and Second Property by the Appellant had no connection with the alleged proceeds of crime.
- The definition of the offence of money laundering under PMLA suggests that a person who is not accused of the predicate offence can be held guilty of the offence of the money laundering.
- The offence of criminal conspiracy is listed in Part A of the Schedule and therefore, even if the allegation is of conspiracy to commit an offence which is not listed in the Schedule, the offence of criminal conspiracy becomes a scheduled offence.

## *Findings of the Supreme Court*

The Supreme Court observed that if the offence of criminal conspiracy listed in the Schedule was interpreted so broadly, the Schedule would be redundant as a conspiracy to commit any offence under any law, which can generate proceeds of crime, would become a scheduled offence alleging the offence of criminal conspiracy even though the actual offence may not be listed as a scheduled offence under PMLA.

The Court observed that the offence of criminal conspiracy listed in Part-A of the Schedule becomes a scheduled offence only if the conspiracy is to commit an offence which also listed in Parts A or B or C of the Schedule.

The Court also observed that the offence of money laundering may be committed after a scheduled offence is committed. A person may not have committed an offence resulting in generation of proceeds of crime, but he may have assisted a person accused of committing a scheduled offence by concealing the proceeds of crime or transferring the proceeds of crime.

Thus, it is not necessary for a person accused of money laundering to be specifically named as an accused in the underlying scheduled offence. Such an accused can still be prosecuted under PMLA as long as there is a scheduled offence and there are proceeds of crime in relation to the scheduled offence. In such a case, if the prosecution for the scheduled offence ultimately ends in acquittal or discharge or the prosecution for scheduled offences are quashed, then no one can be prosecuted for the offence of money laundering as there will be no proceeds of crime.

In the present case, the Court observed that there was no allegation of conspiracy to commit a scheduled offence and as a scheduled offence does not exist at all, the Appellant cannot be prosecuted for the offence of money laundering under PMLA. Hence the Court set aside the Karnataka High Court Order and quashed the PMLA Complaint against the Appellant.

### **Significance**

This is the first view expressed by the Supreme Court on the issue of interpretation of the offence of criminal conspiracy which is listed as a scheduled offence under PMLA. This is a critical view in the emerging money laundering jurisprudence as a money laundering offence typically involves various persons, hence prima facie attracting the ingredients of the offence of criminal conspiracy which is listed as a scheduled offence under PMLA. The Court has laid down the circumstances in which the offence of criminal conspiracy can form the basis of a money laundering prosecution under PMLA.

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