SC Mandates Prior Sanction to Prosecute Public Servants under PMLA

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What's in today's article?

Why in the News?

- The Supreme Court, in its ruling on November 6th, for the very first time mandated that the Enforcement Directorate (ED) need to obtain prior sanction to prosecute public servants on money laundering charges.

About Prevention of Money Laundering Act, 2002

- The Prevention of Money Laundering Act (PMLA), 2002 was enacted in January, 2003.
- **The Act seeks to combat money laundering in India and has three main objectives**:

    - To prevent and control money laundering
    - To confiscate and seize the property obtained from the laundered money; and
    - To deal with any other issue connected with money laundering in India.
- **Sec. 3** of the Act defines offence of money laundering as:
    - *whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering*.
- The Act was amended by the **Prevention of Money Laundering (Amendment) Act, 2009** and by the **Prevention of Money Laundering (Amendment) Act, 2012**.

Major Provisions of the Act

- The Act prescribes obligation of banking companies, financial institutions and intermediaries for verification and maintenance of records of the identity of all its clients and also of all transactions.
- PMLA empowers the **Directorate of Enforcement** (ED) to carry out investigations in cases involving offence of money laundering and also to attach the property involved in money laundering.
    - ED is a law enforcement agency and economic intelligence agency responsible for enforcing economic laws and fighting economic crime in India.
    - It was formed as an Enforcement Unit, in the Department of Economic Affairs, for handling Exchange Control Laws violations under **Foreign Exchange Regulation Act, 1947**.
- PMLA envisages setting up of an **Adjudicating Authority** to exercise jurisdiction, power and authority conferred by it essentially to confirm attachment or order confiscation of attached properties.
- It also envisages setting up of an **Appellate Tribunal** to hear appeals against the order of the Adjudicating Authority
- PMLA envisages designation of one or more courts of sessions as **Special Court** or Special Courts to try the offences punishable under the Act.
- ***PMLA also allows Central Government to enter into an agreement with Government of any country outside India for enforcing the provisions of the PMLA***.

News Summary

- Delhi's former Chief Minister **Arvind Kejriwal** and Congress MP **P. Chidambaram** have sought relief from their respective trials, citing a **recent Supreme Court ruling** as precedent.
- While the Delhi High Court is yet to decide on Kejriwal's plea related to the **excise policy scam**, Chidambaram's trial in the Aircel-Maxis case was stayed on **November 20**.
- **Supreme Court Precedent (November 6, 2023):**
    - The SC ruled for the first time that **prior government sanction** is mandatory for prosecuting public servants under the **Prevention of Money Laundering Act** if the alleged offenses are linked to their official duties.
    - This is based on **Section 197** of the **Criminal Procedure Code (CrPC)**.
- **Understanding the Legal Framework:**
    - **Prior Sanction Provision:**

        - **CrPC Section 197**: Courts cannot take cognizance of offenses committed by public servants in their official capacity unless prior government approval is obtained.
        - **Exceptions**: No sanction is required for certain grave offenses like sexual harassment, trafficking, or rape.
        - **Landmark Case**: In ***Devinder Singh v. State of Punjab (2016)***, the SC clarified that this provision does not shield corrupt activities disguised as official duties.
- **Supreme Court's Recent Decision:**
    - The SC upheld the 2019 Telangana High Court ruling, which overturned the trial court's cognizance of charges against IAS officers Bibhu Prasad Acharya and Adityanath Das in a money laundering case linked to former Andhra Pradesh CM **Jagan Mohan Reddy**.
    - **PMLA Provisions and CrPC Compatibility**: Section 65 of the PMLA aligns with CrPC Section 197, requiring prior sanction for public servants.
    - **Link to Official Duty**: The accused's duties and alleged criminal acts were connected, necessitating prior sanction.
- **Application to Current Cases:**
    - **Chidambaram's Case**: He argued that the trial court's cognizance of chargesheets filed by the Enforcement Directorate (ED) violated this precedent, as no prior sanction was obtained.
    - **Kejriwal's Case**: He similarly challenged the cognizance of an ED chargesheet in the **liquor policy scam**, citing that even the CBI obtained prior sanction for similar allegations.
- **Impact of the Prior Sanction Requirement:**
    - **Implications for ED Cases**:
        - Investigations under the PMLA remain valid, but trial courts cannot take cognizance of chargesheets against public servants without prior sanction.
        - Convictions could be overturned on appeal if the absence of prior sanction is established.
        - Public servants can raise this argument at any stage of the trial, even post-conviction (***P K Pradhan v. State of Sikkim*, 2001**).
    - **Challenges to Prosecution**:
        - Prosecution agencies may face delays as they must secure government approvals before moving forward with cases.
- **Significance of the Ruling:**
    - **Shield for Public Servants**:
        - The provision **aims to protect honest officials performing their duties from frivolous prosecutions** while ensuring accountability for misconduct.
- **Political and Administrative Ramifications**:
    - High-profile figures like Kejriwal and Chidambaram are leveraging this provision to contest trial proceedings.
    - The ruling sets a critical precedent for cases involving public servants under the PMLA.

Q1. What is Money Laundering?

Money laundering is the process of illegally concealing the origin of money obtained from illicit activities such as drug trafficking, underground sex work, terrorism, corruption, embezzlement, and gambling, and converting the funds into a seemingly legitimate source, usually through a front organization.

Q2. What is Hawala?

Hawala is an informal funds transfer system that allows for the shifting of money from one person to another without the actual movement of money. It is a simple process that requires no documentation and, therefore, is an anonymous system of moving money.

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