



16th AMITY NATIONAL MOOT COURT COMPETITION 2017

2017

MOOT PROPOSITION

1. Viscara¹ is a Democratic country located in South East Asia. Viscara is flanked by the Kingdom of Marzipan on its eastern side. The Kingdom of Marzipan is known as a tax haven due to its regulatory regime where offshore companies are not taxed at all. Marzipan also promises complete privacy to persons having bank accounts in their country.
2. In October 2016, an unprecedented leak occurred from the database of an offshore law firm revealing the names of about 12 million people who had their account in the Kingdom of Marzipan. The documents leaked were popularly termed as the “Marzipan Diaries”. Several persons in the country of Viscara too had their names in the Marzipan Diaries.
3. Evert Gullberg is a citizen of Viscara, residing in the State of Ollsen which shares its borders with the Marzipan. Mr. Gullberg is a successful businessman, owning a tea estate in Ollsen as well as a Jewellery Business called “GullbergJewellers” spread across the country. Apart from these two primary businesses, Mr. Gullberg also has investments in businesses across the country, and some investments in Marzipan as well. Although he does not have a past criminal record, his name was one of the several names listed in the Marzipan Diaries.
4. In 2005, Mr. Gullberg had married Ms. Olive Bennett. Unfortunately, their relations strained over the years, and in 2009 they obtained a divorce by mutual consent. Although no formal complaint was ever filed, Ms. Bennett had alleged in her divorce petition that she had been assaulted by Mr. Gullberg several times and also alleged that Mr. Gullberg was involved in several illegal activities in his businesses. Although the divorce was largely peaceful, dispute arose with regard to a painting by the renowned artist Jasper Johns titled ‘Periscope’, worth USD 1 Million, which both Mr. Gullberg and Ms. Bennett were fond of. In the end, Mr. Gullberg was forced to give up his claim for the painting when Ms. Bennett threatened to initiate criminal proceedings against him. However, he swore to Ms. Bennett that he would get back the painting which rightfully belonged to him.
5. In 2010, Mr. Gullberg married Ms. Jane Doe and had two sons in 2011 and 2012 respectively. They are currently living a happy married life.

¹ All laws of Viscara are in pari-materia to the laws of India, including precedents.

6. On 1st February 2016, 3 armed men entered the residence of Ms. Olive Bennett and at gunpoint stole the painting Periscope. They did not steal any other valuable item from her residence. She immediately filed an FIR under Sections 378, 379, 382-386, 390 and 392 of the Viscara Penal Code, 1860² and named Mr. Gullberg as her suspect in the FIR.
7. On 12th February 2016, the Ollsen police intercepted the vehicle on Mr. Gullberg suspecting him of having stolen the painting Periscope. As soon as Mr. Gullberg's vehicle was stopped they noticed a man get out of the car and run off. Since it was not Mr. Gullberg, they did not pursue the man but went on to search the car of Mr. Gullberg. The police did not find the painting in the car, however, incidentally, they found 2 bags containing 100 Kgs of gold in the car. They immediately arrested Mr. Gullberg. While in custody, Mr. Gullberg gave a statement to the police that the Gold did not belong to him and the bag was in fact owned by one Mr. HenrickLarrson who he had given a lift while on his way to work from his home. He further stated that Mr. Larrson had fled the car when it was intercepted by the police but the police had failed to pursue him. The police registered an FIR against Mr. Gullberg under Sections 135 of the Customs Act, 1962 and the matter was thereafter transferred to the authorities under the customs act.
8. On 13th February 2016, Mr. Gullberg was presented before the Chief Metropolitan Magistrate, Boutel ("CMM") in Ollsen who remanded him to judicial custody till 16th February 2016. In the meanwhile, the police conducted raids in the residence and offices of Mr. Gullberg. During such raid, they also recovered the painting Periscope from one of Mr. Gullberg's offices.
9. On 16th February 2016, Mr. Gullberg applied for bail before the CMM, Boutel who was pleased to grant bail on the condition that he would fully cooperate with the investigation authorities.
10. During the pendency of such proceedings, based on the information provided by the police, the Enforcement Directorate, Prevention of Money Laundering ("ED") initiated investigation under the Prevention of Money Laundering Act, 2002 by registering an Enforcement Case Information Report ("ECIR") being

² In pari material to the Indian Penal Code, 1860.

ECIR No. KLZO/80/2016 on 30th February 2016. The proceedings were initiated based on the fact that Section 135 of the Customs Act, 1962 and Section 384-386 and 392 of the Viscara Penal Code were scheduled offences.

11. On 1st March 2016, Mr. Gullberg filed a petition under Section 482 of the Code of Criminal Procedure, 1973 before the High Court of Ollsen, being CrI. M.C. 3298/2016 seeking quashing of FIR dated 12th February 2016 on the ground that the search and seizure was not proper and that the FIR should have been filed against Mr. Larrison and not himself since the seized goods did not belong to him. The High Court of Ollsen dismissed the petition finding no ground to quash the FIR. Against such dismissal, Mr. Gullberg preferred a Special Leave Petition, being SLP (CrI) No. 2431 of 2016 dated 15th April 2016.
12. During the investigation by the ED, it was discovered that Mr. Gullberg had opened and operated several bank accounts in his name and in the names of his wife and children. More particularly, he had opened and closed 11 bank accounts between the period of 1st January 2014 and 30th March 2016 depositing and withdrawing a total amount of VNR 100 Crore in cash. Only 3 of these accounts were in his own name while the rest were in the names of his wife, children and companies. However, against all accounts, it was Mr. Gullberg's personal mobile number which was listed.
13. Based on the investigation, on 1st June 2016, a provisional attachment order under Section 5 of the PMLA was issued against Mr. Gullberg attaching all his assets, bank accounts and properties, including those of his companies, amounting to VNR 400 Crore. The order further attached the painting Periscope as well. On the very same day, the ED also issued an order under Section 17 (1-A) of the PMLA freezing all bank accounts of Mr. Gullberg, including the ones in Marzipan. This was despite the fact that the ED did not know any details of the accounts held by Mr. Gullberg in Marzipan.
14. Aggrieved by the said attachment order and the freezing order, Mr. Gullberg, on 15th June 2016, filed a Writ Petition, being W.P. (CrI) No. 2222 of 2016 challenging the validity of the provisional attachment order and the freezing order on the ground that he had not been heard before passing of the orders in violation of the principles of natural justice and that there was no nexus between the offence alleged and the attachment. He also argued that the ED

was acting beyond its jurisdiction by attaching his bank accounts held in Marzipan and he could not be forced to disclose the same. He further argued that since there was a petition for quashing of the FIR dated 12th February 2016 pending in the Supreme Court, the proceedings under PMLA should also be stayed. The Hon'ble High Court refused to interfere in the proceedings on the ground that for a provisional attachment order and a freezing order, no hearing is necessary and since these were only temporary measures, they need not be interfered with. Aggrieved by this, Mr. Gullberg filed a Special Leave Petition before the High Court of Visnava, being SLP (CrI) 9999 of 2016 on 1st August 2016. The said SLP came up for hearing on subsequent dates but no substantive order was passed.

15. On 1st September 2015, the Adjudicating Authority issued a show cause notice under Section 8 of the PMLA against Mr. Gullberg calling upon him to disclose the source of income, earning or assets out of which he has acquired the properties attached under the Provisional Attachment order and Freezing order dated 1st June 2016, and why the said properties should not be declared to be involved in money-laundering and consequently why the attachment order should not be confirmed.
16. During the pendency of these matters, Ms. Bennett approached the ED to return the painting stolen from her possession. However, the ED refused to return the painting on the ground that the painting is a "proceeds of crime" as defined under Section 2(u) of the PMLA and had therefore been confiscated. She was told that it would only be returned to her once the proceedings are concluded.
17. Appalled by such a legal procedure, Ms. Bennett challenged the vires of Section 2(u) of the PMLA by filing W.P. (CrI) No. 3393 of 2016 before the High Court of Ollsen on the ground that it was arbitrary and in fact punished the victim of the crime along with the accused. The Petition was filed on 31st September 2016 and was admitted on the very same day.
18. On 1st October 2016, Mr. Gullberg filed his reply to the show cause notice dated 1st September 2016. However, he only raised preliminary objections to the issuance of the show cause notice and no reply was given on the merits. Mr. Gullberg also pleaded that the matter should be stayed till the outcome of

the petitions pending before the courts against the FIR and the provisional attachment order.

19. The provisional attachment order dated 1st June 2016 was due to expire on 29th November. Considering the fact that the hearing in the proceedings under Section 8 had not concluded, on 29th November 2016, the ED passed a second attachment order under Section 5 of the PMLA on the same lines as the order dated 1st June 2016.
20. Considering the circumstances, and the fact that he had been harassed by the authorities for nearly a year, Mr. Gullberg filed a Writ Petition before the High Court of Ollsen, being W.P. (CrI) 5421 of 2016 on 10th December 2016 challenging the Constitutional validity of the PMLA Act, more specifically Sections 2(u), 2(v), 3 and 5 on the ground that they were arbitrary and violated Articles 14 and 300-A of the Constitution of Viscara, 1950³ and provided powers to the ED with no safeguards. In the same Petition, he also filed an application for stay of the provisional attachment order dated 19th November 2016. On 15th December 2016, the High Court passed an order admitting the Writ Petition but refused to stay the provisional attachment.
21. Against the interim order refusing stay dated 15th December 2016 of the High Court of Ollsen, Mr. Gullberg filed a Special Leave Petition on 20th December 2016 before the Supreme Court of Viscara, being S.L.P. (CrI) No. 29232 of 2016.
22. Considering the importance of the legal issues involved, the Hon'ble Supreme Court transferred W.P. (CrI) 5421 of 2016, W.P. (CrI) No. 3393 of 2016 to be heard with SLP (CrI) No. 29232 of 2016. At the instance of Mr. Gullberg, the Supreme Court agreed to tag the matters with SLP (CrI) 9999 of 2016 and SLP (CrI) No. 2431 of 2016 to be heard and disposed off together. This was not opposed by any of the parties to the proceedings. It was mutually agreed between Mr. Gullberg and Ms. Bennett that since Ms. Bennett was only concerned with the constitutional validity of one provision of the PMLA, the issue would be addressed by a mutually agreed Counsel whereas the other issues would be dealt with by the Counsel of Mr. Gullberg.
23. The Court directed that the lead petition would be SLP (CrI) No. 29232 of

³ In parimateria with the Constitution of India, 1950.

2016, which has henceforth been renumbered as Criminal Appeal 1234 of 2017. Vide order dated 21st February 2017⁴, the Supreme Court framed the issues in the matter and has listed the matter for final hearing and disposal on March 2017.



⁴ See Annexure A

SUPREME COURT OF VISCARA RECORD OF PROCEEDINGS

Criminal Appeal No.1234/2017

EVERT GULLBERG VERSUS

APPELLANT

ENFORCEMENT DIRECTORATE AND ORS.

RESPONDENT(S)

With

SLP (Crl) 9999 of 2015 SLP (Crl) 2431 of 2014 TC (Crl) 313 of 2016 TC (Crl) 314 of 2016

Date : 21/02/2017 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PATRICK STEWART

HON'BLE MR. JUSTICE JIM PARSONS

UPON hearing the counsel the Court made the following

ORDER

All these petitions arise out of the same cause of action and raise common issues. It is therefore necessary to hear and dispose of these matters at the earliest. After hearing the parties, the common issues raised in the petitions are:

1. Whether the FIR dated 12th February 2016 ought to be quashed?
2. Whether the Provisional Attachment and freezing order dated 1st March 2015 is valid?
3. If the second issue is answered in the affirmative, then is the second Provisional Attachment order dated 1st September 2015 valid and permissible under law?
4. Whether Sections 2(u), 2(v), 3 and 5 of the PMLA are arbitrary and violative of Articles 14 and 300-A of the Constitution and liable to be struck down?

Let the matter be for final disposal on_ March 2017. The Parties are free to file theirWritten Submissions, if any by___ January 2017.