

Chennai Dr. Ambedkar Govt. Law College, Pudupakkam

Clinical Paper – Final Year

1. Three moot problems have been uploaded in accordance with the pattern prescribed in the syllabus.
2. Students whose register number ends with an odd number will have to prepare memorials for Petitioner and those with register number ending with even number will have to prepare memorials for the Respondent side, for all the three cases.
E.g., 518XXXX2 – Respondent
518XXXX3 - Petitioner
3. Details of the last date of submission and presentation will be uploaded in the college website.
4. The Memorials shall be typed on A4 size page in Font type: Times New Roman, Font size: 12, 1.5 line spacing & 1 inch margin on each side. The memorials shall not exceed 40 pages.
5. The Cover Page of the Memorials must follow the following color scheme, Blue for the Applicant/Petitioner/Appellant Cover Page and Red for the Respondent Cover Page. The Memorials must be spiral bound ONLY.
6. The Memorials must fulfill all the following specifications;
 - i. Cover page / Cause title
 - ii. Index
 - iii. Index of Authorities
 - iv. Statement of Jurisdiction
 - v. Synopsis of Facts
 - vi. Statement of Issues
 - vii. Summary of Arguments / Pleadings
 - viii. Arguments Advanced / Pleadings
 - ix. Conclusion / Prayer

Constitutional Law – Moot Proposition 1

Hindistan, officially known as the Republic of Hindistan is a South Asian country with diverse terrain, several religious cultures and a history dating back to the fifth millennia. It is the seventh largest country by area and the second most populous democracy in the world. The constitution of Hindistan envisaged a secular and democratic republic taking into account the diverse cultural heritage and the religious groups that reside in the sub-continent. The majority of the population comprise of Hindus, followed by Muslims, Christians, Buddhists, Jains, Sikhs, Parsis, Jews, etc. Hindistan's sustained democratic freedoms are unique among the world's younger nations; however in spite of economic and social advancements, there is seemingly unyielding poverty, religious and caste related incidents of violence, separatism and other social evils still prevalent in the country. The Government of Hindistan ("**Government**") through the Ministry of Environment Forests and Climatic Change ("**Ministry**"), in exercise of its powers conferred under sub sections (1) and (2) of Section 38 of the Prevention of Cruelty to Animals Act, 1960 notified in the official gazette on the 23rd of May, 2017, the Prevention of Cruelty to Animals (Regulation of Livestock Market) Rules, 2017 ("**Rules**"), which came into force on the same date.

The notification was received with widespread criticism on political as well as legal grounds by many who fear it to be a deceptive lawmaking practice by the government to effectively neutralize bovine meat trade in Hindistan. However, the notification was also lauded from many quarters to be in keeping with the cultural heritage of the country's populace the majority of which comprise of Hindus. To address the concerns over it the Ministry issued a press release dated 27th May, 2017, which read as follows:

"The basic purpose of the Rules is to ensure welfare of the animals in the cattle market and ensure adequate facilities of housing, feeding, ramps and enclosures for sick animals, veterinary care and proper drainage, prohibition of illegal and abusive transport of animals, etc. The prime focus of the regulation is to protect the animals from cruelty and to create a regulatory regime all over the country. Due to the sparse availability of legally sanctioned slaughterhouses of cattle, the majority of cattle being transported for slaughter are transported over extremely long distances during which they are severely abused due to poor practices such as transport times, abusive conditions, inadequate stunning procedures, overcrowding, cruel and painful slaughter and bleeding techniques, etc.

Even though laws existed which regulated the illegal transport and abuse of cattle to slaughterhouses, several animal welfare organizations in Indistan have reported that in defiance of the law, many animals are crammed into severely crowded trucks, which caused suffocation and broken bones, on their way to the slaughter houses. Those who collapse have their tails broken and their eyes smeared with chilli peppers and tobacco to keep them from moving. At most slaughterhouses, workers hack at animals' throats with dull blades, and in some, workers hit the animals on their heads repeatedly with a hammer before they are stabbed. Skinning and dismembering often begin while animals are still alive and in full view of other animals. It was thus evident that the existing regulations were ineffective and lenient in treating the matter with the severity it deserves.

The Government expects the new Rules to encourage cattle farming for agricultural purposes and

to stimulate rural livestock markets since the Rules envisage animals for slaughter to be bought from the farmers at farms and with a prohibition on transport, the animals be slaughtered and their meat processed at close proximity to the breeding locations. This would also considerably reduce the risk of rapid spread of infectious diseases over large distances through the long distance transport of live animals for the purpose of slaughter. The specific provisions apply only to animals which are bought and sold in the notified live stock markets and animals that are seized as case properties and do not cover other areas including the sale and purchase of meat. It is the Ministry's intention to subsequently issue guidelines regulating the conditions for slaughter to ensure hygienic and humane culling of animals.

The Rules also aim at preventing transport of cattle for ritualistic and religious slaughter, practices which have seen the unrestrained culling of millions of milch animals and have no place in a modern and progressive society. The Animal Welfare Board has drafted the Rules incorporating the suggestions of various Ministries, Animal welfare organizations and most importantly, the guidelines laid down by the apex court in various instances.”

As an impact of the Rules of the Government, there were wide ranging unrests throughout the country from both political and religious quarters. Protests were seen mainly in those areas where the majority of the population consumes bovine meat and related products and the economy depends on the trade and farming of livestock. The state governments of Malanadu, Indivar Puri and Kamal Pradesh contend that the states were not taken into confidence and even went to the extent of denouncing the Government's decision, claiming it to be undemocratic and unconstitutional.

Objecting to this act of the Government, the National Exporters of Meat and Livestock Association of Indistan (NEMLAI) has filed a writ petition before the Supreme Court of Hindistan contending that it would drastically impact the bovine meat trade in Hindistan. The apex court has denied the petitioner's plea for a stay on the notification and has issued a notice to the Government on the plea challenging the notification banning sale and purchase of cattle at animal markets for slaughter as “unconstitutional” and “discriminatory”. The Supreme Court has allowed for the pleas of State Governments of Malanadu, Indivar Puri and Kamal Pradesh and several religious groups to become intervenors in the matter widening its scope. The matter is now posted for hearing final arguments.

1. Following are the issues framed:
 - a) Whether the notification issued by the Centre infringes upon the federal structure envisaged by the Constitution of Hindistan?
 - b) Whether the Rules are prejudiced against the bovine meat trade in Hindistan?
 - c) Whether the Rules violate the Fundamental Rights?
 - d) Whether the Rules are ultra vires the parent act?
 - e) Whether the restrictions imposed on the interstate sale and export of cattle are unreasonable?

Note: Hindistan's social, political, economic and religious characteristics are identical to that of India. The Constitution and Laws of Hindistan are in pari materia with those of the Republic of India. The legal system of Hindistan is based on Common Law and the judicial precedents of the Supreme Court and High Courts of India have the same binding value as they would in India. The participants are directed to restrict themselves to the issues herewith.

CIVIL LAW - Moot Proposition 2

Shreya and Sathish (a Major in Indian Army), both resident of Jalandhar, belonging to Ravidasia community of Punjab, who are Hindus by religion, got married in 2007 in Anand Karaj form of marriage, which is the marriage ceremony of Sikhs. The couple got their marriage registered as per the provisions of The Hindu Marriage Act, 1955 and in effect a marriage certificate was issued by the authorities. Out of this wedlock two children were born in the year 2008 and 2011 respectively.

In 2008, after taking retirement from Indian Army, Sathish went to England for higher studies and stayed there for two years. Then in April 2010, he moved to Canada and called his wife to join him there along with their first child. In January 2011, their second child was born in Canada. In February 2011, he went to New York. Thereafter he asked Shreya to go back to India. In March 2011, Shreya along with her children came back to Punjab (India).

After moving to New York, Sathish severed all his contacts with Shreya. He had developed an extra marital affair with a lady named Margaret. In January 2012, Shreya wrote a letter to Sathish expressing her willingness to join Sathish in New York. Sathish in reply wrote to Shreya that she should not come to New York, as he was interested in getting their marriage dissolved. In April 2012, he filed a petition for divorce in Trial Court of New York on the ground that his marriage has irretrievably broken down.

Shreya could not contest these proceedings, she having no means to go to New York. Meanwhile in July 2012, the trial court of New York granted a divorce decree in favour of Sathish. Further, the court ordered that the husband would pay to the wife and children an amount of Rs. 50000 per month for their maintenance. Since Sathish failed to pay maintenance to wife and children, Shreya approached the Trial Court of New York through a letter and prayed that she be provided legal aid. Thereafter, proceedings were initiated and warrants of arrest were issued against Sathish. She further said that the ex parte decree of divorce obtained by the husband was not binding on her and was illegal and that she continues to be the wife of Sathish. She further asserted that as per the provisions of the Hindu Marriage Act, 1956, the grounds of divorce (on the basis of adultery, cruelty and desertion) under section 13 of the Act are available to the wife under the given set of circumstances. In fact, she is the actual victim, who was being further victimized by the order of the New York, Trial Court.

In April 2013, Shreya filed a petition under section 9 of the Hindu Marriage Act, 1955 for Restitution of Conjugal Rights in the District Court, Jalandhar. Sathish appeared in the Court and filed an application for dismissal of petition. He did not file any written statement and he referred to the decree of divorce granted by the Trial Court of New York and said that despite of notice, Shreya did not contest the same and by not raising any objection she is deemed to have accepted the jurisdiction of the Foreign Court in trying the petition and thus making the decree nisi-absolute by the Foreign Court. Further, by accepting the maintenance, Shreya again in-effect accepted the judgment of the foreign Court and is thus estopped from filing the present petition (Under Section 11 read with Section 151 of Civil Procedure code, 1908). The case is pending for adjudication in District Court, Jalandhar. Prepare memorials and argue from both sides.

Legal Issues –

1. Whether the marriage of Shreya and Sathish is valid as per the provisions of The Hindu Marriage Act, 1955?
2. Whether non-contest by the wife of divorce petition filed by the husband in a Foreign Court imply that she had conceded to the jurisdiction of the Foreign Court?
3. Whether the principle of Res-Judicata under Section 11 of the Civil Procedure Code, 1908 is applicable to the proceedings being initiated in District Court, Jalandhar?

Statutes to be referred

The Code of Civil Procedure, 1908

Hindu Marriage Act, 1955

International Comity of Courts

Criminal Law - Moot Proposition 3

Surya and Karthik are friends and each of them are renowned person in their own fields, respectively. Surya is a Commissioner of Income Tax, who qualified the UPSC examination in 1997 and was appointed into the Indian Revenue Services Cadre later in 1998 at the age of 29. Ever since his appointment, Surya, who hails from Uttarakhand, has been in the Income Tax Department in a number of states including Maharashtra, Gujarat and is currently in Tamil Nadu, where he is the Commissioner for the Chennai Region. Surya served as Asst. Commissioner of Income Tax for the Mumbai Circle from 1999 to 2004 and then was transferred to the Ahmedabad Circle, where he served as Asst. Commissioner of Income Tax till the year 2010. In 2011, he was promoted as Commissioner of Income Tax and transferred to the Chennai Circle, which post, he holds till today.

It is believed in all the offices where he has worked that, he is close to some of the top officials in the Income Tax Department in the country and also has strong political connections across party lines.

Karthik, is a chartered accountant, who hails from Uttarakhand, having practice in Mumbai through a Chartered Accountants firm, which runs by the name M/s Time Value Tax Consultant Services. Both, Karthik and Surya were classmates and roommates in their residential school and have been close friends ever since. In fact, one was the best man for the other, in each of their weddings. Karthik, had passed the CA (Chartered Account's) examinations in the year 1993 at the age of 24 and had commenced his practice as a Chartered Accountant in that year itself in Dehradun. Karthik's initial years were quite meek and his practice did not pick up until the year 2000, which was the year he shifted to Mumbai and started his Tax Consultancy Firm. Subsequent to his move to Mumbai, his growth was phenomenal and by the year 2007, he was one of the most popular Chartered Accountants in Mumbai. He subsequently decided to expand his firm and opened branch offices between the years 2006 and 2012 in Kolkata, Ahmedabad, Delhi, Chennai and Bangalore, wherein, he appointed a local Chartered Accounts to manage the affairs of each of these branches. Today, his firm is one of the top ranked firms in the country.

Dhwani Real Estate Ltd (DREL) is an unlisted public company, which was incorporated in the year 1999, with its registered office in Uttarakhand, whose main objects of business is to develop real estate and to undertake government tenders in infrastructure areas. The company in the past has undertaken a number of successful projects in Dehradun, Delhi, Mumbai, Kolkata, Bangalore, Hyderabad and Kanchipuram. Most of the projects undertaken by the company have been in large scale and given its ability to deliver such big projects, the company is rated as one of the fastest growing real estate companies in the country. Financiers in the past have been readily forthcoming to fund the projects of the company, as the company is known for its commitment to deliver, be it on projects or in finances undertaken by them. Although an unlisted public company, the shares of the company have only been held by members of two families, namely, Ashok Malik's family and Siddanth's family. Ashok Malik is the brother-in-law of Surya and Siddanth, is the cousin of Karthik. Ashok's family, owns 60% of the shareholding in the company and the remaining 40% is owned by Siddanth's family. While the shareholding in the company is closely held, the management of the company is completely taken care of external personnel, who are hired from the top management schools in the country. The managing director and CEO of the company is Akshay, who is an MBA graduate from IIM – Ahmedabad of the year 1997, who coincidentally, is also the classmate of Surya and Karthik from their school days.

In and around September, 2015, there were multiple reports which were received in the Central Bureau of Investigation (CBI) Headquarters in New Delhi, regarding the increasing amount of corruption amongst revenue officials in India in general and in the Chennai Circle in particular. In

order to inquire into the same, the Director General of the CBI after following due procedures in law and after taking consent from the concerned state government, constituted a special team, which was given complete freedom to investigate into the matter. The team, led by Murugan, Inspector of Police, decided to collect information regarding the span and extent of corruption prevailing among the Revenue Officials in general and decided to start with the Chennai Circle first. In light of the decision taken in October, 2015, Mr. Murugan decided to tap the mobile phones of senior tax officials in the Chennai Circle, including that of Surya, and appropriate permissions required under law were sought. The file recording authorizing this telephone tapping reads that, it is "as per Section 5 of the Indian Telegraph Act and the Rules framed thereunder" beyond which, there is nothing on record, as such. The permission to tap telephones was given for the period commencing from 1st November, 2015 to 31st January, 2016.

During the period between 01.11.2015 and 31.01.2016, Surya received calls frequently from Karthik and Shivraj, who was the company secretary of DREL. While nothing really incriminating was found in any of the conversations during the said period, the officials of the CBI caught on to only one particular conversation arising out of a conference call, which was between Surya, Karthik and Shivraj at around 11: 55 P.M. on the 31st of January, 2016, which lasted for about 20 minutes. In the said phone conference, there was some talk about some transaction which was to take place in the Office of the Sub-Registrar Office, Kanchipuram, which was supposed to be a "big break in that area". There were also talks of some "first of its kind project" and of some amounts having to be paid in cash before registration. Subsequently, it was concluded in the call that, Shivraj should follow up on the transaction and should keep the other two informed.

On the basis of the aforesaid conversation, the CBI, after a detailed late night meeting held at 2AM in its headquarters, decided to send a team of its officers to the concerned Sub-Registrar Office, in disguise. When the officials deputed by the CBI arrived at the said office, it was informed by the Sub-Registrar that there was only one high value registration scheduled for the day, wherein a land admeasuring about 150 acres near Kanchipuram Town, was to be sold by one Raghu Chandran to the DREL. The papers had been put for the verification of the Sub-Registrar, who had, on the previous day itself, informally, found the papers for registration to be in order. After the same, at around 11:30 AM, the CBI officials present therein split into separate teams to observe what was going on in the Sub-Registrar office. At around 12:15 P.M, two cars arrived back to back into the sub-registrar office, in which one, Mr. Chandran and Siddanth arrived in one car and an unknown person came in another. It was subsequently found out that the unknown person was one Mr.Suresh. While Suresh waited out, Siddanth and Chandran went into the Sub-Registrar's Office and smoothly finished their registration. Subsequently, both the vehicles, left the Sub-Registrar's Office campus and entered into a building, which was situated two streets away. While the officials of the CBI followed them, until the gate, it could not enter the same and they decided to wait outside to see if there was a way to figure out what was happening inside. About ten minutes later, 3 cars

emerged out of the parking and left in different directions. The team of CBI officers split into three and stopped each of these cars, about 1 km away. Upon checking, it was found that in the car of Chandran, there was a sum of Rs.60,00,00,000/- in cash, but nothing was found in the vehicles of Siddanth or Suresh. The cash was found in 6 black suitcases, which were immediately seized by the CBI and Chandran was immediately arrested.

A First Information Report (F.I.R.) was immediately lodged by the CBI stating offences under the Indian Penal Code against Chandran, who then was taken into custody and an investigation was conducted by the concerned authorities, wherein Chandran informed the CBI that he was only a seller of 150 acres of land, for a consideration of Rs.130 crores of which, the Rs.100 crores was the cash component, with the guideline value component having been paid via a cheque dated 1st February, 2016, for a sum of Rs.30 crores, which he produced. He further stated that he had already received a sum of Rs.40 crores in cash on the 30th of January, 2016. Further, when asked as to who had paid the sum of Rs.100 crores in cash, Chandran replied that, he thought it was the company he was dealing with, although he said, there were two conversations where he got a feeling that it was someone else, who was paying the sum. All of these were recorded as statements under Section 161, Code of Criminal Procedure 1973.

The CBI also sent the six suitcases to the forensic department, which upon verification found 5 sets of finger prints on the suitcases, which were not made more than 3 days ago. Out of the five sets, three sets were identified to be that of Suresh, Chandran and Siddanth. In order to identify the other two sets of finger prints, the forensic team, in light of the extreme gravity of the matter, decided to compare the two unknown sets of finger prints with the biometric data collected by the Government of India for the purposes of the Aadhar Card. Upon making such comparison, it was found that finger prints belonged to one of the most influential industrial couples in Tamil Nadu, Mrs. and Mr.Raju, who of late, had been reported to have had an Income Tax Survey conducted in their house, couple of months ago, where unaccounted money, to the tune of Rs.350 crores is said to have been found. While this was reported in local newspapers, the papers of the Income Tax Department on this regard are unclear and an Assessing Officer, one Mr. Ram had passed an assessment order by which, the amount of tax liability was fixed at Rs.35 crores. This assessing officer happens to be an immediate subordinate of Surya and the rumour goes that he is a close aide of Surya.

In view of the above, doubting a larger scam involved here, the CBI called in Siddanth, Shivraj and Suresh for investigation, recording their statements in its course. The CBI had reasons to believe that they were allies of the Raju family. Each of them, in their respective statements under Section 161 of Cr.P.C. mentioned, among others as follows:

Siddanth: "I am one of the shareholders of Dhvani Real Property Ltd and all decisions of the company are taken by a learned independent management team. Interference by the shareholders

is very limited. Yes, I am related to Surya and I am a good friend of Karthik as well.”

Shivraj: “I regularly visit Siddanth, who invariably has a strong say in all management decisions. The decision to buy these lands were also his only.”

Suresh: “I was informed that I had to settle this tax case of the Rajus somehow. Someone told me Siddanth could help. So we approached him. It worked.”

Further, the CBI also called for records of calls made by Siddanth and upon examining the same, it was found that Siddanth had received a lot of calls from Suresh and after every call from Suresh, within a span of 30 mins, Siddanth had time and again, called a specific number (about 57 such calls were seen), which was assigned in the name of the Personal Secretary to Karthik. Upon comparison, it was found that after every call to the said number, within a span of one hour, a call was made by Karthik to Surya’s wife’s (was made about 71 times). In particular, on the day prior the transaction in Kanchipuram took place, there were as many as 16 calls, where such a pattern could be observed. In fact, about 20 minutes prior to the CBI getting hold of the six suit cases of cash in Chandran’s car, a call had been made from Siddanth to Karthik’s Personal Secretary’s number, right after which, there had been a call from Karthik’s number to Surya’s wife’s number.

On the basis of the suspicion created through the aforesaid investigations, the CBI decided to conduct a search in Surya’s house in Chennai, on the 23rd of February, 2016 at 9 A.M. in the morning. The search was conducted after due permissions as required under law. During the course of the search, it was found that Surya lived with his parents and has an unmarried brother who however lived separately and visited on weekends, though had a room he used for himself. On enquiry he was found to be, very close to all the family members of Surya. During the course of the raid in Surya’s house, in a shelf in Surya’s brother’s room, three cartons were found, which contained, a large number of share certificates relating to DREL, fourteen dairies from the year 2000 to 2016 which had names of cartoon characters written on it on particular dates and certain numbers and alphabets written across it. For example, on 29th January 2016, the dairy read “Archie” and across it the number “600” along with alphabet “Pe” in Devanagiri script was written. Upon further enquiry it was found that the shares found in the room were all the shares that were retained by Surya’s family in DREL. Further, upon detailed analysis of the 16 dairies that were available, it was found that the names “Tom”, “Jerry”, “Archie”, “Olive”, “Scooby” and “Bravo” were repeated often. It was also observed that the entries in these dairies often fell within a 30 day gap, within which transactions took place in DREL. Thus, the CBI suspected that these dairies actually reflect the amounts that went from Surya to DREL, but the main issue that they faced in conclusively saying so was that the handwriting in these dairies did not match the handwriting of any of the family members of Surya.

Based on the aforesaid facts and information received from the three of them and upon further investigations, the CBI decided to file an altered FIR by adding Surya, Karthik, DREL, Siddanth,

Shivraj, Mr. & Mrs. Raju and the shareholders of DREL as accused persons under Sections 7, 8, 11, 12 and 13(1) (e) of the Prevention of Corruption Act, 1988 along with sections 120B and 420 of the Indian Penal Code. Also, violations of Section 3 of the Benami Transactions (Prohibition) Act, 1988 was also alleged. No FIR was registered against the employees of DREL. It was alleged in the FIR that the DREL was a vehicle for Surya and Karthik to engage in corruption activities, wherein, they purchased properties using money obtained by way of corruption, which they used for the "cash" component and used share capital money to fund the "white" part. It was alleged that through DREL, the money obtained by Surya through corruption, for which, Siddanth and Karthik were front men, was invested in properties, which were valued way far below market value, but were obtained at market value, by paying the difference in cash, which was obtained through bribes. Further, it is alleged that in the present case, Suresh, from some person, had heard that Siddanth could get the tax issues of Mr. and Mrs. Raju set right and as a part of the bribe to achieve the same, the Rs.60 crores was paid in cash to Chandran, who sold his property at a lesser price according to the registration papers, but received a far greater amount. However, while selling the properties after development, the entire property was sold at market value in "white", thus bringing illegal income to books. In other words, it was alleged that by buying properties using cash and then developing them and selling them in white at market

value, DREL had been used as a vehicle to convert black money into white money, which the shareholders in turn could take out as dividends from the company and others took out as salaries, loans or professional fees from the Company.

Based on the aforesaid, a separate E.C.I.R was registered by the Directorate of Enforcement (ED), for offences under Section 3 of the Prevention of Money Laundering Act, 2002 (PMLA) R/w Section 120-B of the Indian Penal Code 1860 Against Surya, Karthik, DREL, its directors and shareholders. The Enforcement Directorate then, in exercise of its powers under Section 5 of the PMLA Act, decided to provisionally attach all the properties of the company, its shareholders, Surya, Karthik, Siddanth and all their family members. The Order under Section 5 passed by the competent authority directed that, all accounts of the parties, who received monies from the company, either by way of dividends, salaries, loans amongst others were to be attached as proceeds of crime. The relevant parts of the order passed against all the shareholders of DREL, its employees and Surya and Karthik are as follows:

"...In exercise of the power under section 5 of the PMLA Act, this authority is authorised to pass an order attaching assets and amounts, which were acquired prior to the coming into force of this Act, so long as they are held with the concerned parties or parties directly claiming under them, on the date when the Act came into force.

...

As has been observed hereinabove, there is enough material to show that the monies received prior to the enforcement of certain provisions of the Act can still be traced into the hands of the concerned persons subsequent to its enforcement as well.

...

In light of the above, it is directed that the bank accounts of the parties and all assets of DREL is herewith provisionally attached in exercise of the powers under Section 5 of the Prevention of Money Laundering Act, 2002.”

Aggrieved by the said order, the employees of the company, DREL filed individual writ petitions before the Hon'ble High Court of Judicature at Madras, arguing that, they were not named in the FIR and as such, there can be no attachment of assets they possessed. Further, it was argued that the sums sought to be attached includes dividends paid by the company since its inception, which cannot be done under Section 5, which was notified much later.

During the pendency of these writ petitions, the criminal case against the accused proceeded and a charge sheet was filed by the CBI, alleging violations of Section 420 and 120B of the Indian Penal Code read with Section 7, 8, 11, 12 and 13(1) (e) of the Prevention of Corruption Act; and Section 3 of the Benami Transactions (Prohibition) Act, 1988. After due investigation, a report under section 173(2) of Cr.P.C was filed and charges were framed against all the accused under Sections 7, 8, 11, 12 and 13(1)(e) of the Prevention of Corruption Act, 1988; Section 3 of the Benami Transaction (Prohibition) Act, 1988; Section 420 and 120B of the Indian Penal Code. The aforesaid charges were framed against Surya, Karthik, Siddanth, Shivraj and all other shareholders of DREL. Independent charges were also framed against Mr. & Mrs. Raju as well as Chandran.

Against the aforesaid charge sheet, a Criminal Original Petition under Section 482 of Cr.P.C was preferred by Surya and Karthik, seeking to quash the proceedings, in which amongst several complicated issues, one particular issue of some difficulty was canvassed on behalf of the Petitioner. The Counsel who appeared for the Petitioner, argued that the charges against Surya under section 13(1)(e) of the Prevention of Corruption Act cannot be sustained, as the properties, alleged to belong to Surya were neither owned in his name nor “on his behalf”.

Per the learned Counsel appearing for the petitioner, for a property to be held “by or on behalf of”, by virtue of the Benami Transaction Prohibition Act, the holder of such property could only be a wife or an unmarried daughter. It was argued that the Prevention of Corruption Act, being a later legislation, the Parliament, in this respect, ought to be deemed to have noted this premise of the Benami Transaction Prohibition Act and hence, when the Prevention of Corruption Act uses the words “if he or any person on his behalf”, it only refers to the property in the name of the wife or the unmarried daughter.

The Ld. Single Judge, despite seeing considerable force in the arguments of the Counsel, felt bound by the decisions of the Hon'ble Supreme Court and held that the charge sheet framed, could not be quashed. With respect to the other issues that were raised, which concerned the scope of her powers under section 482, she held that while dealing with the issue of whether admissibility of evidence could be gone into in a petition under Section 482 Cr.PC, against framing of charges, the

Court does not have the power to do

so. Also, while dealing with the writ petitions of the employees separately, a Learned Single Judge of the High Court ruled that the Section 5 of the PMLA Act allowed the ED to attach properties that relate to alleged crimes that occurred prior to the enforcement of the Act. This was taken on appeal, wherein the order of the Ld. Single Judge was confirmed by the Division Bench. The writ petitions challenging the ECIR filed by the Enforcement Directorate, by the shareholders of DREL before the High Court and is however still pending, with the applications for interim stay dismissed, with no appeal being filed in respect of the same.

Aggrieved by the aforesaid orders of the Hon'ble Madras High Court in the Quash petition under Section 482 of Cr.P.C. and in the Writ Appeals pertaining to the issue of attachment of assets under Section 5 of the PMLA Act, separate Special Leave Petitions to the Hon'ble Supreme Court of India were preferred, challenging the Orders of the Madras High Court, on various grounds raising important issues of law which were undecided or required fresh consideration by the Supreme Court. The Hon'ble Supreme Court clubbed all the special leave petitions and after hearing all the parties, decided that substantial questions requiring interpretation of the Constitution were involved and further, doubting the correctness of the earlier decisions of the Hon'ble Supreme Court on the Benami issue, decided to refer the matter to a Bench of appropriate strength and directed the matter to be placed before the Hon'ble Chief Justice for appropriate orders. The Hon'ble Chief Justice of India posted the entire matter together before a Five-Judge Bench of the Hon'ble Supreme Court after framing the following issues:

- (i) What is the Scope of judicial review in a proceeding under Section 482 of the Criminal Procedure Code, after charges have been framed?
- (ii) Whether a transaction can be called a benami transaction, when the title to the property is not with the wife or an unmarried girl child? In other words, whether any transaction other than one in the name of a wife or an unmarried girl child can be called a benami transaction, in light of the specific sections provided for in the Benami Transactions (Prohibition) Act? If not, should these assets be taken into consideration while calculating assets for the purpose of section 13(1)(e) of the Prevention of Corruption Act?
- (iii) Whether properties of third parties can be attached under section 5 proceedings, when there is no FIR against them? Can it extend to sums which were earned prior to the notification of the relevant sections of the PMLA Act?
- (iv) If it extends to such, prior to the notification also, is section 5 of the Prevention of Money Laundering Act, 2002 constitutionally valid?
- (v) Can questions of admissibility of evidence be gone into at quashing stage, where charges have been framed?
- (vi) Whether the transcripts of the call made on the night of 31st January – 1st February, 2016 can be relied upon and whether the same are admissible in evidence?