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THE BURDEN OF PROOF UNDER PMLA: A SHIFT FROM CRIMINAL JURISPRUDENCE?

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I. INTRODUCTION-

Should it be the prosecution that proves the accused committed the crime, or should the accused bear the burden of proving their innocence? The principle that “the burden of proof rests upon the one who asserts, not on the one who denies,” rooted in the Latin maxim *Ei incumbit probatio qui dicit, non qui negat*, has traditionally shaped criminal law. In principle, it is the State, through its instrumentalities like the police and prosecution, that initiates criminal proceedings by filing FIRs, charge sheets, and framing charges. Therefore, it is also the State that carries the burden to prove its case beyond reasonable doubt.

The Supreme Court in *Japani Sahoo v. Chandra Sekhar Mohanty*¹, emphasized that criminal offences, though committed against individuals, are essentially wrongs against the State and society, thereby making the State the master of litigation in criminal cases.² This core tenet is embodied in Section 226 of the Code of Criminal Procedure, which requires the prosecutor to begin the trial by presenting the charges and the supporting evidence to establish the guilt of the accused. The accused, on the other hand, is presumed innocent unless the prosecution discharges this burden except in cases where the accused pleads general or special exceptions, as governed by Section 105 of the Indian Evidence Act, 1872.³

¹ *Japani Sahoo v. Chandra Sekhar Mohanty*, (2007) 7 SCC 394.

² *Sheo Nandan Paswan v State of Bihar*, 1987 AIR 877 : 1987 SCR (1) 702.

³ Section 229: Sessions case; section 241: Warrant case by Magistrate; section 246 (3): Warrant case otherwise than on police report; Section 252: Summons case by Magistrate.

In conventional criminal jurisprudence, the accused is not required to prove their innocence, as the presumption of innocence remains a foundational norm. However, this principle is seemingly altered by certain special laws like the Prevention of Money Laundering Act (PMLA) and the Narcotic Drugs and Psychotropic Substances Act (NDPS), which introduce deviations from the standard legal doctrine. These laws introduce provisions that shift the burden of proof onto the accused, effectively reversing the standard approach followed in criminal trials. This article aims to critically examine whether the burden of proof under the PMLA, particularly as outlined in Section 24, constitutes a legislative shift from established principles of criminal jurisprudence, and whether such a reversal is justified, constitutional, and procedurally fair.

II. BURDEN OF PROOF UNDER PMLA

Section 24 of the Prevention of Money Laundering Act, 2002 (PMLA), introduces a significant deviation from the conventional criminal law principle that the prosecution bears the burden to prove guilt beyond reasonable doubt. It states:

“When a person is accused of having committed the offence under Section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.”⁴

This statutory presumption reflects a legislative departure from the principle of presumption of innocence, shifting the evidentiary burden onto the accused. The 2012 amendment substituted Section 24 to clarify that this reverse burden arises only after the person is formally charged with an offence under Section 3 of the Act.⁵ Parliament, through ministerial speech during debate, emphasized that presumption applies only to the fact of money-laundering, not to the commission of the offence itself.⁶

The provision distinguishes between:

- **Section 24(a)** – A **mandatory presumption** ("shall presume") applies when the person is **charged**.

⁴ Prevention of Money Laundering Act, No. 15 of 2003, § 24, India Code (2003).

⁵ The Prevention of Money-laundering (Amendment) Act, No. 2 of 2013, § 19, Gazette of India, Extraordinary, Part II, § 1 (Feb. 15, 2013).

⁶ Finance Bill, No. 2 of 2019, Lok Sabha, 17th Lok Sabha (2019).

- **Section 24(b)** – A **discretionary presumption** ("may presume") applies in proceedings against **non-accused persons**, offering no guidance for when such a presumption should be invoked.

This structure, critics argue, removes the requirement to establish foundational facts, thereby shifting the burden to the accused immediately after charges are framed. Unlike in statutes such as the NDPS Act, where the courts (e.g., *Noor Aga v. State of Punjab*) read in a requirement for the prosecution to first establish a prima facie case, the PMLA does not expressly require such preliminary evidentiary proof.

Another point of contention is that the term "Authority" used in Section 24 refers not only to courts but also to investigative and adjudicatory bodies, potentially empowering investigators to presume guilt, which many consider arbitrary and beyond legal logic.

Furthermore, this reverse burden is not confined to criminal trials before the Special Court. The language of Section 24 applies to "any proceeding"—civil or criminal—thus extending its effect even before the Adjudicating Authority under Section 6 of the PMLA. In such proceedings, the standard of proof is lower, and the presumption can be applied without invoking the doctrine of proof beyond reasonable doubt.

Nonetheless, supporters of the provision argue that in cases involving money-laundering—a complex, transnational financial crime—there is justification for placing some burden on the accused, especially when facts are within their special knowledge, as reflected under Section 106 of the Indian Evidence Act, 1872.

III. FOUNDATIONAL FACTS REQUIREMENT UNDER SECTION 24: JUDICIAL CLARIFICATION

In *Vijay Madanlal Choudhary v. Union of India*⁷, the Supreme Court interpreted Section 24 of the PMLA to preserve an essential safeguard: that the presumption under Section 24(a) can be invoked only after the prosecution establishes three foundational facts, namely:

1. *That a scheduled offence has been committed;*
2. *That the property in question is derived or obtained directly or indirectly as a result of that criminal activity; and*
3. *That the accused person is involved in any process or activity connected with such property being proceeds of crime.*

Only after these foundational facts are prima facie established, does the reverse burden of proof under Section 24 arise, shifting the onus onto the accused to prove that the property is untainted.

Judicial interpretation has reaffirmed that the accused cannot be deemed guilty at the initial stage and that it is the prosecution's duty to first present a basic evidentiary framework before any burden shifts. This interpretation preserves harmony with the principle of fairness and the doctrine of presumption of innocence, which continues to operate in the preliminary stage before the Section 24 presumption is triggered.

In practice, especially in bail proceedings, courts have emphasized that the counter affidavit filed by the prosecution must clearly articulate these foundational facts. The Supreme Court's

The Supreme Court, in its recent ruling in *Prem Prakash v. Directorate of Enforcement*⁸, underscored the importance of presenting foundational material to enable the Court to assess whether a prima facie offence under Section 3 of the PMLA has been established. It

⁷ *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.*, (2022) 10 SCC 1.

⁸ *Prem Prakash v. Union of India through the Directorate of Enforcement*, 2024 LiveLaw (SC) 617.

is only after this threshold is met that the burden shifts to the accused in accordance with Section 24.

IV. CONSTITUTIONALITY OF SEC.24 PMLA

The constitutionality of Section 24 of the Prevention of Money Laundering Act (PMLA) has been a subject of legal scrutiny, particularly on the grounds that it violates Articles 14 and 21 of the Constitution by reversing the burden of proof without sufficient safeguards. However, the jurisprudence of Indian courts has consistently upheld reverse burden clauses under special laws, especially in matters concerning grave economic or national interest.

To evaluate the constitutional validity of such a shift in burden, guidance can be drawn from the decision in *Noor Aga v. State of Punjab*⁹, where the Supreme Court upheld the reverse burden provisions under Sections 35 and 54 of the NDPS Act. These sections also incorporate reverse burden provisions, much like Section 24 of PMLA. The principle reaffirmed in *Seema Silk & Sarees v. Directorate of Enforcement*¹⁰ was that the existence of a reverse burden does not ipso facto render a provision unconstitutional. Similarly, in *Sodhi Transport Co. v. State of U.P.*¹¹, it was held that rebuttable presumptions, being rules of evidence, do not offend constitutional norms as long as the accused has a fair opportunity to rebut them.

Section 24 is not an isolated anomaly but reflects a broader legal principle enshrined in Section 106 of the Indian Evidence Act. This section places the burden of proof on the person with special knowledge of a fact. For example, if funds are found in a person's account, it is within their knowledge to prove the legitimacy of those funds. This was upheld in *Sarbananda Sonowal v. Union of India*¹² and *Shambhu Nath Mehra v. State of Ajmer*¹³, the latter clarifying that such presumptions do not relieve the prosecution of its initial burden, but allow courts to draw logical inferences when the accused remains silent or fails to explain incriminating circumstances.

⁹ *Noor Aga v. State of Punjab* (2008) 16 SCC 417.

¹⁰ *Seema Silk & Sarees v. Directorate of Enforcement*, (2008) 5 SCC 580.

¹¹ *Sodhi Transport Co. v. State of U.P.*, (1986) 2 SCC 486.

¹² *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665.

¹³ *Shambhu Nath Mehra v. State of Ajmer*, AIR 1956 SC 404.

In *State of W.B. v. Mir Mohammad Omar*¹⁴, the Court highlighted that the principle of burden on the prosecution should not become a “*fossilised doctrine*”, incapable of intelligent evolution. This approach was later echoed in *Sucha Singh v. State of Punjab*¹⁵, which emphasized that procedural innovation, like presumption of fact, is not unconstitutional when it serves the larger interest of justice and addresses serious offences.

Most importantly, in *Vijay Madanlal Choudhary*, the Court reiterated the need for foundational facts before invoking the reverse burden, thereby ensuring procedural fairness.

The discussion culminates in *Prem Prakash v. Directorate of Enforcement*, where the Court reaffirmed that even under PMLA, “*bail is the rule and jail is the exception*”. It held that Section 45 must be read harmoniously with Article 21, which guarantees liberty unless deprivation is sanctioned by a just, fair, and reasonable procedure. Rulings in *Manish Sisodia, Ramkripal Meena, and Javed Gulam Nabi*¹⁶ further cement this position, where prolonged incarceration and lack of trial progress led to relaxation of stringent bail conditions under PMLA.

Thus, Section 24, while representing a departure from traditional criminal jurisprudence, is constitutionally valid, rooted in judicial precedent, supported by rules of evidence, and tempered with procedural safeguards. When read with decisions like *Vijay Madanlal Choudhary and Prem Prakash*, the provision reflects a balanced and proportionate legal tool in combating complex financial crimes without undermining the individual’s right to liberty under the Constitution.

V. CONCLUSION

¹⁴ *State of W.B. v. Mir Mohammad Omar*, (2000) 8 SCC 382.

¹⁵ *Sucha Singh v. State of Punjab*, (2001) 4 SCC 375.

¹⁶ **Manish Sisodia v. Directorate of Enforcement**, 2024 SCC OnLine SC 1393.

The burden of proof under Section 24 of the PMLA signals a paradigm shift in criminal jurisprudence—tilting the scale from the prosecution toward the accused in cases of economic crime. While this reverse burden challenges the conventional presumption of innocence, the judiciary has stepped in to preserve constitutional balance by mandating foundational safeguards. Landmark rulings such as *Vijay Madanlal Choudhary and Prem Prakash* reaffirm that statutory presumptions must operate within the bounds of fairness and due process. In a landscape where financial crimes are cloaked in complexity and secrecy, Section 24 stands as a calibrated tool of deterrence—one that must be wielded with precision, oversight, and an unwavering commitment to constitutional liberty.