

Hdfc Bank Limited & Ors Vs Director, Fiu & Ors

Court: Appellate Tribunal Under Prevention Of Money Laundering Act

Date of Decision: June 28, 2017

Acts Referred: Prevention Of Money Laundering (Maintenance Of Records) Rules, 2005 – Rule 2, 2(ca), 2(cb), 2(cc), 2(1)(g), 2(g), 2(1)(h), 2(h), 3, 3(d), 4, 5, 7, 7(3), 8, 8(3), 9
 Prevention Of Money Laundering Act, 2002 – Section 2(g), 2(h), 3, 12, 12A, 12(1), 12(1)(a), 12(b), 13, 13(2), 13(2)(a), 13(2)(b), 13(2)(d), 45A, 73(h)
 Indian Penal Code, 1860 – Section 122, 399, 511
 Evidence Act, 1872 – Section 63, 65, 65A, 65B, 65B(2), 65B(4)

Hon'ble Judges: Manmohan Singh, J; Kaushal Srivastava, Member; Anand Kishore, Member

Bench: Full Bench

Advocate: Dayan Krishnan, Smarika Singh, Ayush Sharma, Neeraj Kishan Kaul, Satish Aggarwal, Vikas Pahwa, E.R. Kumar, Ritesh Isaac, B.P. Singh, Satish Aggarwala, Sonia

Final Decision: Disposed Of

Judgement

”

1. By this common judgment, we propose to decide the above mentioned fifteen appeals filed by the respective Banks as the broad facts and legal”,

issues involved in the matters are same.,

2. Admittedly during the year 2012-2013, a sting operation purportedly named as “Operation Red Spider”, was conducted on a number of financial”,

institutions/banks by an online media portal Cobrapost (hereinafter referred to as the “Sting Operation”). The videos containing interactions of the”,

undercover reporter with the employees of the Appellant and transcripts of such meetings were publicly released during a press release on 14th,,

March 2013 and 05 April 2013, and were also posted on the website of Cobrapost. The Sting Operation allegedly disclosed violation of various Anti-”,

Money Laundering (hereinafter referred as “AML” norms by the financial institutions captured therein, including the Appellants.”,,

3. By its letter dated 08th May 2013, the FIU-IND posed several questions to the financial institution /banks who are the appellants before us, in”,

relation to its AML system and the Appellant's policy to raise alarm for any suspicion transactions. The FIU-IND specifically sought information from,,

the Appellants on whether “any STR reported for 'Attempted Suspicious Transactions' was filed by the Appellants with the FIU-IND in relation to the”,

Sting Operation. The same would be discussed at the later part of our order.,,

4. The brief facts of individual appeals are mentioned separately, the main facts are taken from appeal no. FPA-PMLA-826/DLI/2015 filed by HDFC",,,

Bank Ltd. and appeal no. FPA-PMLA-865/DLI/2015 by ICICI Bank Ltd.,,

5. FPA-PMLA-826/DLI/2015 filed by HDFC Bank Ltd.,,

In appeal filed by HDFC Bank, after the receipt of letter dated 8th May, 2013 from the respondent/FIU-IND, the Appellant responded to the",,,

aforesaid letter vide its letter of 31 May 2013. To the query in relation to reporting of 'Attempted Suspicious Transactions' the Appellant furnished the,,

following response to FIU-IND:As mentioned above, the concerned bank official have submitted that the video footage and transcript",,,

released by Cobrapost is not completely accurate since they do not set forth the complete sequence of events and discussion that took place,,

during the interaction with Cobrapost report However, pendine the outcome of the independent forensic fact fmdine review by DTTIPL",,,

[Deloitte Touche Tohmatsu India Private Limited], the Bank has suspended the concerned employees featured in the Cobrapost stins",,,

operation as a special interim measure, DTTIPL has also performed forensic data analytical on various data files of the concerned",,,

employees, conducted a review of banking accounts of the concerned employees, performed forensic data preservation techniques by",,,

imaging the laptops, computers and other telecommunications devices, reviewed e- mails of the concerned employees to identify any",,,

apparent breaches of the Bank's AML policy. Once, DTTIPL completes its report with its comprehensive findings, the Bank will take",,,

appropriate action as deemed necessary. The senior management of the Bank is deeply concerned with the, allegations raised by Cobrapost",,,

and has treated the allegation of money laundering with utmost urgency and priority. The Bank has also constituted an internal committee to,,

prepare a special audit report to examine if the Bank has adequate controls/procedures in place to prevent/detect the nature and type of,,

alleged transaction from an AML/KYC perspective. The Bank will initiate immediate action to further strengthen and monitor its systems and,,

procedures from an AML and KYC perspective based on the findings and recommendations of the special audit report.,,

5.1 It is also stated that the Bank has communicated to the entire front desk/at branch level the indicative alert indicators of suspicious,,

transaction and has in place a system of reporting ""Attempted suspicious Transactions*1 by customers as STRs. However, with reference to",,,

the Cobrapost sting \ operation, the Cobrapost reporter was merely inquiring through verbal conversations with the Bank employees about",,,

openings of bank accounts, investment in insurance products, etc. without actually undertaking such transaction to its logical end and more",,,

importantly, the identity of the person opening the account/ or making the investment was also not clear from the conversation. Since, there",,,

was no consequent action or follow up by the Cobrapost sting reporter to in fact and actually carry forward or complete or attempt to open",,,

a bank account, invest in insurance products, etc and also provide an identity of the person who would have opened the bank account/or",,,

made the investment, there was no occasion to report or file an STR in such instance, since no transaction in fact went through. An STR",,,

would have been filed for attempted suspicious transaction, in the event the Cobrapost reporter returned to the Bank/Branch to initiate or",,,

complete an account opening process and carry forward and complete the transaction.,,,

(Emphasis Supplied),,,

5.2 The Appellant also engaged external legal counsels for seeking legal advice in relation to the Sting Operation, who in turn engaged an independent",,,

forensic expert Deloitte Touche Tohmatsu India Private Limited (hereinafter referred to as the ""Forensic Expert""), for an unbiased investigation of the",,,

Sting Operation (hereinafter referred to as the ""Investigation""). However, pending the outcome of the independent forensic fact finding review by the",,,

Forensic Expert, the Appellant had suspended the concerned employees featured in the Sting Operation (hereinafter referred to as the ""Featured",,,

Employees"")) as a special interim measure. During the Investigation, the Forensic Expert as well as the external legal counsels separately interviewed",,,

each of the Featured Employees. These discussions were held in the presence of the representatives from the Appellant, including their human",,,

resource representatives.,,,

5.3 The Forensic Expert submitted a detailed final report dated 25 July, 2013 (hereinafter referred to as the "Report"). The key observations of",,,

the Report inter alia states that the sting video footage and the transcripts available did not provide the complete conversation or complete record of",,,

events as the same has been possibly rearranged and edited to provide a misleading picture. Basis their discussion with the Featured Employees, the",,,

Forensic Expert has recorded the following pertinent findings on the video footage and transcripts recorded as a part of the Sting Operation:,,

"The sting video footage and the transcripts available do not provide the complete conversation or complete record of events as the same",,,

has been possibly rearranged and edited to provide a misleading picture.,,,

5.7. By letter dated 16th January 2014, the Appellant furnished a detailed response to all the queries raised by FIU-IND in its letter of 18 December",.

2013. The Appellant, in particular, explained various active mechanisms such as Unique Customer identification Number (CustID), AML System and",,,

other robust processes to identify suspicious transactions. The Appellant on 24 January 2014, furnished a detailed response to the Show Cause Notice",,,

issued to it by FIU-IND. In the said response, the Appellant provided both factual and legal reasons for not filing STR in relation to the Sting",,,

Operation, as the same could not be termed as an Attempted Suspicious Transaction. The Appellant, for the reasons so furnished, also requested the",,,

FIU-IND to close the present action by discharging the Show Cause Notice and not proceed against the Appellant under Section 13(2) of the PMLA.,,,

The Appellant, in its response, also requested FIU-IND that in the event it contemplated further proceedings in the matter, an opportunity for a",,,

personal hearing along with an authorized representative/counsel be granted to the Appellant for further discussing the matter. The respondent FIU-,,,

IND, vide its letter dated 14 February 2014, informed the Appellant that an opportunity for a personal hearing was being granted to the Appellant on",,,

24 February 2014, at the office of the FIU-IND. A personal hearing was granted to the Appellant on 24 February 2014 at the office of the FIU-IND",,,

in the presence of the Ld. Director, wherein detailed factual and legal submissions were made in support of the Appellant not having filed STRs for",,,

the Sting Operation as the same did not qualify as an Attempted Suspicious Transaction"". On 05 March 2014, the Appellant placed additional",,,

submissions on record, wherein it further elaborated the factual submissions made.",,,

5.8. On 17 April 2014, the Appellant received from the FIU-IND, the transcripts of conversations (as available on the Cobrapost website), which the",,,

Cobrapost reporter allegedly had with the Appellant's officials for their response. The Appellant submitted a detailed response to the Ld. Director on",,,

6th May 2014 providing reasons as to why such transcripts should not be taken to constitute a conclusive reflection of the actual conversation which",,,

the Cobrapost reporter had with the Appellant's officials since the authenticity and veracity of the evidence itself was questionable as the camera",,,

originals, i.e., unedited raw footage has neither been seen by the FIU-IND nor have copies of the same been given to the Appellant, /it is also an",,,

admitted position that whatever electronic footage has been furnished is without the backing of a Section 65B Certificate.,,,

5.9. On 15 January 2015, the Ld. Director passed the Impugned Order, concluding that in all twenty six cases reported in the Sting Operation, and",,,

reporting Attempted Suspicious Transactions, in terms of Section 12 of the PMLA read with Rules 2, 3, 5 and 7 of the PML Rules. Accordingly, the",,,

Ld. Director in exercise of powers conferred under Section 13(2) of the PMLA imposed a penalty of Rupees Twenty Six Lakhs (Rs. 26,00,000) for",,,

twenty six (26) instances of alleged failure in compliance with the Appellant's obligations under the PMLA.,,

Aggrieved by the Impugned Order passed by the Ld. Director, the Appellant has filed the present appeal before the inter-alia on various grounds",,,

Appellate Tribunal.,,

6. FPA-PMLA-865/DLI/2015 filed by ICICI Bank Ltd.,,

In the appeal filed by ICICI bank, the facts are that the appellant Bank vide E-Mail dated 14.03.2013 wrote to the Director, FIU-IND informing them",,,

of the Constitution of a Senior Level Committee by the Appellant Bank to ascertain the allegations made against the Appellant Bank. The Appellant,,

Bank vide E-mail dated 15.03.2013 wrote to the Additional Director, FIU-IND informing them of the list of Employees identified and suspended. The",,,

respondent FIU-India, vide Letter dated 03.04.2013 requested the Appellant Bank to furnish the copy of the report of the Senior Level Committee, and",,,

a copy of the report of the External Agency to ascertain the allegations upon the Appellant Bank.,,

6.1 The Appellant Bank replied on 4/4/2013 to the above notice of FIU-India. The Appellant also furnished an interim report of Senior Level,,

Committee and the report of the External agency to the Additional Director, FIU - IND. The Additional Director, FIU-IND vide letter dated",,,

08.05.2013 sought for additional information from the Appellant Bank.,,

6.2. The Appellant Bank replied on 28.05.2013 to the FIU-India's letter dated 08.05.2013 wherein it stated that:,,

i) various steps including undertaking internal inquiry committee review/interim review by an independent external consultant were done;,,

ii) the committee found no instances of money laundering, (in) That certain steps for strengthening internal process are noticeable,",,

(iv) the Appellant Bank has taken up the observations made by the Committee for implementation.,,

6.3. The Appellant Bank vide its letter dated 11.07.2013 furnished the final report of internal inquiry Committee as also the final report of External,,

Auditor (Deloitte) to FIU-India.,,

6.4. The Director, FIU India issued 05.12.2013 notice to the Appellant Bank stating therein that Cobra Post attempted transactions at all 14 branches",,,

of the Appellant Bank visited by the alleged Cobra Post qualified under the definition of suspicious transaction and as such the Appellant Bank should,,

have filed STRs for attempted suspicious transactions but no STR was filed by the appellant Bank. It was stated that, the appellant Bank had",,,

contravened the provisions of Sec. 12(b) of Prevention of Money laundering Act, 2002 read with Rules 2(g), 7(3) and 8(3) of PML (Maintenance of",,,

Records) Rules and as such the Appellant Bank was liable for penal action under Section 13(2) of the said Act and called upon the Appellant Bank to,,

show cause as to why action should not be taken against the Appellant Bank for the above mentioned violation.,,

6.5. The Appellant Bank replied on 10.01.2014 to the letter/notice of the additional Director, FIU letter No.F.No.25-1/2013-FIU-IND dated",,,

05.12.2013 inter alia submitting as follows;,,

(i) The media sting incidents were in nature of enquiries and there was no actual attempt to put through the transaction and hence did not,,

qualify as attempted suspicious transaction.,,

(ii) The media sting incidents did not pertain to customers and therefore did not amount to attempted suspicious transactions.,,

(iii) Although no transaction was executed, prompt action has been taken against concerned officials for violation of the group code of",,,

conduct.,,

(iv) The Appellant Bank has put in place an effective AML framework including systems/processes for reporting of suspicious transaction.,,

(v) The Appellant Bank has also demonstrated its intent by proactively improving the control framework further by instituting additional,,

processes, training programs and campaigns on regular basis.",,,

In view of the submissions made in the reply, the Appellant Bank prayed that no penal action be initiated against the Appellant Bank under section",,,

13(2) of PML Act. The Appellant Bank also requested for being granted hearing in person or through authorized representative.,,

6.6. By Vide letter dated 11.02.2014 the Additional Director, FIU-IND replied to Appellants reply dated 10.01.2014 thereby informing the Appellant",,,

Bank that personal hearing is granted and the authorized representative can make his submissions on 24.02.2014 at 15:00 hrs.,,

6.7. The Appellant Bank on 12.02.2014 sent an e-mail and also made a telephonic call to the Additional Director, FIU-IND requesting for personal",,,

hearing on 10.03.2014 instead of 24.02.2014. On request made by the Appellant Bank, the Additional Director, FIU-IND vide letter dated 14.02.2014",,,

conveyed that the personal hearing was rescheduled on 10.03.2014 at 3:00pm instead of earlier date i.e. 24.02.2014.,,

6.8. The Appellant Bank on 10.03.2014 submitted its oral arguments and thereafter prayed for permission to file written submissions which would also,,

include the oral arguments made. Further the Appellant Bank was also furnished copies of transcripts of employees in the edited video during the,,

hearing. The Director, FIU-IND was pleased to grant permission to file written submissions.",,,

6.9. The Appellant Bank on 14.03.2014 filed its written submissions before the Director, FIU-IND which included the oral submissions made during",,,

personal hearing on 10.03.2013 and also prayed that submissions made vide Appellant Bank's letter dated 10.01.2014 may also be referred and the,,

same may also be considered to be part of the written submissions being filed.,,

6.10. The Additional Director FIU - IND on 28.05.2014 asked the Appellant Bank to make additional submissions in regard to the contents of the,,

transcript (of the sting operation), if the Appellant Bank considered it necessary within 7 working days from the date of receipt of the letter. The Bank",,,

on 14.6.2014 furnished its response to FIU letter dated 28.5.2014 In the meanwhile, stringent action has been taken against such employees and 14",,,

employees have been removed from service, and monetary penalty was imposed on 11 while a caution letter was sent to 2, following an internal",,,

process and enquiry.,,,

6.11. By the Impugned Order dated 20.02.2015, the Director, FIU-IND held that while the Appellant Bank had designed an exemplary system which",,,

makes it possible for all employees to raise an alert in a seamless manner, the Appellant Bank has implementation challenges in its internal mechanism",,,

which leaves the Appellant Bank vulnerable. The Ld. Adjudicating authority went on to hold that there was failure in Appellant Bank's internal,,

mechanism for detecting and reporting attempted suspicious transactions. The Ld. Authority imposed maximum fine of Rs.14 lakhs (one lac per,,

instance) on the Appellant Bank for having failed to comply with the provisions of section 12 of the PML Act read with Rules 2, 3, 5 and 7 of the",,,

PML Rules, 2005.",,,

Being aggrieved by the impugned order dated 20.02.2015 passed by the Ld. Adjudicating Authority FIU-IND, the Appellant has filed the Appeal on",,,

the inter-alia on various grounds.,,,

7. FPA-PMLA-1032/DLI/2015 filed by Bank of Maharashtra.,,,

After the sting operation by Cobrapost, the bank was asked vide letter dated 10.07.2013, whether any alerts in respect of the sting operation were",,,

generated in its branches at Sushant Lok, Gurgaon, Haryana and G.K., South Delhi which were covered in the sting operation and whether any STR",,,

was reported for attempted transactions for the incidents reported by the Cobrapost. The appellant replied vide letter dated 28.08.2013 enclosing the,,

information required by the FIU-IND in the prescribed format as required by FIU-IND. It was brought to the notice of FIU-IND that authenticity of,,

the dialogues attributed to Mr. A.C. Beg and Mr. V.D. Kolhatkar is doubtful. It was also brought to the notice of FIU-IND that the branches involved,,

in the said Cobrapost sting had not opened any account of the person who allegedly visited the branch on behalf of the Cobrapost reporter. It was,,

informed to FIU-IND that all the norms put in place to regulate money laundering have been followed including the KYC norms.,,,

7.1 The respondent FIU-IND gave a notice under Section 13 of the Prevention of Money Laundering Act, 2002 for non compliance with the",,,

provisions of Section 12 of the PMLA 2002.,,

7.2 The Appellant replied vide letter dated 13.01.2014 informing the FIU-IND that the appellant bank had always complied with the provisions under,,

the PML Act and Rules by having suitable mechanism in place. It was also submitted by the Appellant Bank that neither any account whatsoever, nor,,

any banking facility whatsoever was opened or availed by the Cobrapost representatives at either of the Appellant's Branches. Thus in the absence of,,

account and/or banking facilities the relationship between Bank and Cobrapost representative cannot be termed as client-banker relationship. The said,,

PMLA Act and Rules envisages that the relationship of "Client and Bank" is sine qua non for bestowing obligation of Banking Companies. In the,,

absence of which no "Transaction" or "Attempted Transaction" within the ambit of Rules has taken place.,,

7.3 The Appellant Bank again wrote a letter to FIU-IND informing that the two branches viz 0794 Greater Kailash Branch, New Delhi and 1295-",,

Sushant Lok Branch- Gurgaon where Cobra Post sting operation took place, have not utilized the sundry/suspense/internal accounts to route cash",,

transactions in respect of the customers/walk-in customers. The Appellant Bank also sent a letter dated 07.07.2014 bearing No.,,

AXI/INSP/AML/2014-2015/118 mentioning that the authenticity of the Transcript is doubtful and denied as the concerned officials of Bank have also,,

specifically submitted that the Transcript is highly edited. The FIU-IND thus passed the impugned judgment and order No. Original-In Original No.6/,,

DIR/ FIU-IND/2015 Dated 03.07.2015.,,

8. FPA-PMLA-1125/DLI/2015 filed by Dena Bank.,,

Cobrapost conducted sting operation in two branches of the Appellant i.e. Kalkaji-Okhla, New Delhi and Vasant Vihar, New Delhi and one circle",,

office, Agra of the Appellant. On 06.05.2013, the videotape was made public which was allegedly suggesting violations of statutory obligations under",,

the PMLA, 2002. When the Appellant became aware of sting operation, the appellant, immediately conducted investigation/auditing in all three places.",,

Further, the Appellant also initiated disciplinary action against the concerned officials and they were also placed under suspension. .",,

8.1. On 17.05.2013, the Appellant reported FIU-India with regard to its investigations/actions taken in response to the said media report vide its letter",,

INSW KYC F-RBI 086 2013 dated 17.05.2013. However, FIU-India vide its letter dated 10.07.2013 asked the Appellant if any alert in respect of the",,

sting operation were generated in its concern branches and whether any STR was reported for any attempts transaction.,,

8.2. The Appellant in its reply to the aforesaid letter confirmed that no STR have been failed as there was no transaction or attempted transaction had,,

taken place at those particular offices within the meaning as prescribed under Rule 2(1) (g) of PMLA Rules. Despite the confirmation from the,,

Appellant of compliance of PMLA, 2002 as well PMLA Rules and without independently confirming the factual accuracy and authenticity of the",,,

media report, the FIU-India solely acted on the basis of the said media report and issued a Show Cause Notice vide its letter no. F. No.- 25-",,,

1/2013/FIU-IND dated 17.12.2013 under Section 13 of PMLA, 2002 for non-compliance with the provisions of section 12 of PMLA 2002. In reply to",,,

the said show cause notice the Appellant apprised in detail with regard to the investigation conducted by the Appellant pursuant to sting operation,,

conducted by the reporter of Cobrapost in those three offices of the Appellant and confirmed that there was some business enquiries from the,,

Cobrapost reporter which had not resulted in to any transaction/attempted transaction warranting filing of an STR.,,

8.3. The appellant further highlighted action taken by them in respect of procedure for processing Anti Money Laundering (AML) alerts and,,

escalation/filing of suspicious transaction reports (STRs) vide its submission dated 19.04.2014. The appellant further submitted its representation vide,,

its letter dated 10.06.2014 and reiterated its commitment to take all the possible Anti Money Laundering preventive measures and expressly denied the,,

allegation as alleged in the said sitting operation and indicated its suspicion that the report/video as aired by Cobrapost might be edited version and,,

requested for authenticity confirmation of the same.,,

8.4. However, the Learned Director, Financial Intelligence Unit-India vide its order dated 29.10.2015 held that there was a failure in the Appellant's",,,

internal mechanism for detecting and reporting attempted suspicious transactions in terms of section 12 of PMLA, 2002 read with Rules 2, 3, 5 and 7",,,

of Rules, 2005 and imposed a fine of Rs. 3, 00, 000/-",,,

9. FPA-PMLA-1076/DLI/2015 filed by The Federal Bank Limited.,,

Cobra Post conducted sting operation in two branches of the Federal Bank Limited, viz. Ghaziabad branch and Moradabad branch and alleged",,,

violation of AML/CFT measures. It is reported that the reporters of the Cobra Post visited in disguise, the officials of the Bank at these branches and",,,

it is said that the branch officials offered schemes that could enable them to deal with the black money.,,

9.1 The Director, FIU India sought clarifications thereon and the Bank Clarified the position vide letter dated 30.07.2013. However, it appeared to",,,

the Director that there was a failure in the Bank's internal mechanism for filing suspicious transaction reports and show cause dated 4th February",,,

2014 was issued calling upon the bank to show cause as to why action should not be taken against violation against it for violation of section 12(b) of,,

the PMLA read with Rules 2(1) (g), 3 (d), 7(3) and 8(3) of the Rules.",,,

9.2. Bank, vide letter dated March 08, 2014 submitted its reply clarifying various steps that has taken to prevent any sort of actions under PML Act. It",,,

was also submitted that the enquiry by the reporter which took place with the branch officials which did not culminate to any transactions. The details,,

of the parties were not known /available to the branches to transaction. No commitments were made by the parties. No transactions in the nature of,,

cash, suspicion or counterfeit currency took place. On account of these facts, STR was not filed.",,,

9.3. The guidelines in respect of monitoring of transactions are meticulously followed by us, and the field level functionaries are made aware of the",,,

requirement of submitting suspicious transactions by way of several internal communications, repeatedly. Training sessions on KYC/AML covering",,,

the entire branches are conducted regularly at regional level. Sessions on KYC/AML are incorporated in the training programmes conducted at,,

Bank's training college. The KYC/AML sessions are given more importance in the training programme for the fresh recruits.,,,

9.4. A personal hearing was also given to the team of the Bank and the team was represented by Shri Shyam Srinivasan, MD & CEO and other top",,,

executives. The Bank also made additional submissions on 17th of April, 2014 placing on record various internal circulars to ward off any sort of AML",,,

activities through the branches of the bank.,,,

9.5. The Director after considering various aspects imposed a penalty of Rs. 2 lakhs on the bank vide its order No. 10/DIR/FIU / IND/2015 dated,,

28.08.2015.,,,

10. FPA-PMLA-1160/DLI/2015 filed by Bank of India.,,,

By Notice dated 16.05.2013, Shri.A.Y. Gokhale, Dy. Director advised the Appellant to submit the Preliminary Report. Accordingly the Appellant had",,,

vide Letter No.HO.CMPL.TM.102 dated 28.05.2014 submitted its preliminary report inter-alia informing that pursuant to the alleged sting operation by,,

Cobrapost, the appellant had carried out special audit on 10.05.2013 and 11.05.2013 of the two branches allegedly involved in the sting operation and",,,

the special audit team so appointed by the Appellant concluded the report stating that during the period 01.04.2012 to 09.05.2013, no transaction which",,,

violated the AML/KYC guidelines were observed. By notice dated 10.07.2013 Shri.A.Y.Gokhale, Dy. Director of HU-IND advised the appellant to",,,

provide certain clarification in respect of the Computer Assisted Audit Techniques.,,,

10.1. Thereafter, Director of FIU issued notice u/s. 13 of PML Act to the Appellant on 21.01.2014 inter alia alleging that ""as the appellant failed to file",,,

suspicious transactions report in respect of violating the provisions of section 12(b) of PMLA, 2002, it is liable for penal action under section 13(2) of",,,

the said Act"". The Appellant had vide its letters dated 14.02.2014, 24.03.2014 given its reply inter-alia denying the charge against the Bank, copies of",,,

the said replies were enclosed with the reply.,,,

10.2. The Consultant (DD). FIU-IND issued hearing notice on 03.06.2014 Bank had by its letter dated 06.06.2014 submitted its reply inter-alia,,

denying the alleged charge against the Appellant and explaining the instructions issued by/steps taken by the appellant.,,,

10.3. The Director of the FIU-IND thus passed the impugned order -In Original No. 14/ DK/FIU-IND/2015 Dated 16.09.2015.directing the Bank to,,

pay fine of Rs. 2,00,000/- for two instances of Bank to pay fine of Rs. 2,00,000/- for two instances of failure in its Chhattarpur and Greater Kailash- II",,,

Branches to comply with its obligations as laid down in Section 12 of the PMIA read with Rules 2.3, 5 and 7 of the PML Rules framed thereunder.",,,

11. FPA-PMLA-1161/DLI/2015 filed by Allahabad Bank.,,,

Pursuant to the news reports of sting operation by the Cobrapost Reporter at three branches of Appellant Bank, the Deputy Director, Financial",,,

Intelligence Unit-India, vide letter cum questionnaire dated 10.07.2013, sought clarification from the Appellant as to certain questions.. Appellant Bank,",,

vide letter dated 26.09.2013, replied to the letter cum questionnaire dated 10.07.2013.",,

11.1. Show Cause notice dated 05.03.2014 was issued by the Respondent to the Appellant Bank as to why no action be taken against the Appellant,,

Bank for contravening the provisions of Section 13 read with Section 12 of PMLA and rules of Ruies,2005.",,

11.2. The Appellant Bank, vide letter dated 04.04.2014, replied to the show cause notice dated 05.03.2014 stating that the visit and conversation of the",,,

Reporter of Cobrapost in three branches of the Appellant Bank were only inconclusive discussion and were having nature of general queries.,,,

11.3. The Respondent, vide order dated 19.10.2015, returned finding that the employees of three branches of the Appellant Bank were involved in",,,

conversation/discussion with the Cobrapost Reporter who made explicit conversation in the said branches that he was attempting to launder through,,

the Bank huge amount of black money belonging to a minister, and holds the Appellant Bank responsible for failure in its obligation under provisions of" ,,,

PMLA read with Rules, 2005, and imposes fine of Rs. 3,00,000/-." ,,,

12 FPA-PMLA-1118/DLI/2015 filed by Indian Bank.,,,

A notice dated 16.05.2013 was issued by Sh. A.Y. Gokhale, Dy. Director, Financial Intelligence Unit, Ministry of Finance whereby the appellant bank",,,

was asked to forward a preliminary report in the matter with reference to the above noted sting operation. The said notice was duly replied by the,,

appellant bank vide its reply dated 20.05.2013 wherein it was submitted that the sting operation did not result in any violation of KYC norms and that,,

the officer in question has been suspended and special audit of the branch is ordered. That subsequently vide its letter dated 10.07.2013, Dy. Director,",,

Financial Intelligence Unit, Ministry of Finance sought further information from the appellant bank through its form for survey of computer systems",,,

and sought details and responsibilities assigned to the officials identified in the Cobrapost.com. The appellant bank duly supplied the said letter and,,

furnished the desired information vide its letter dated 06.08.2013 It is stated that despite clarifying the bank's cooperating in the investigation the,,

appellant bank was issued a show cause notice u/s 13 of the Prevention of Money Laundering Act by the respondent wherein it was alleged that the,,

appellant bank failed to file suspicious transactions report in respect of above incident thereby violating the provisions of Section 12(b) of the Act and,,

is therefore liable for penal action under Section 13(2) of the said Act. The said show cause notice was duly replied to by the appellant bank vide its,,

reply dated 20.02.2014 wherein it was stated as under:-,,

77. Bank on verification of the transcript of conversation reportedly Taken place between the bank official and the Cobrapost representative,,

found that the sting operation did not result in any of the attempted Transactions violating the KYC/AMUCFT guidelines.,",,

12.1. In pursuant to the said reply a personal hearing was held in the matter wherein the appellant bank was asked to confirm if the instructions were,,

in place at the material point of time to report attempted suspicious transactions. At the time of hearing, relevant details were furnished to the",,,

respondent by the appellant bank vide letter dated 02.04.2014. The said letter was followed by the other letter dated 30.05.2014 issued by the,,

respondent seeking further submissions, which was duly replied by the appellant bank vide its letter dated 12.06.2014.",,,

12.2 The respondent vide the impugned order dated 03.09.2015 has held the appellant bank is guilty of violating its obligations u/s 12 of PMLA read,,

with rules 2, 3, 7 & 8 of the Prevention of Money Laundering (Rules).",,,

13. FPA-PMLA-1164/DLI/2015 filed by State Bank of India.,,

The sting operation was allegedly carried out by a website called Cobrapost on 5 branches of the Appellant bank. In the said sting operation, the",,,

reporter and the officials of the bank were allegedly having a conversation/discussion regarding opening of some account. The said,,

discussion/conversation has been labelled as an attempted suspicious transaction. It was alleged that the bank failed to report this attempted suspicious,,

transaction. It was also alleged that there was a violation of AML/CFT measures in all the 5 branches.,,

13.1. Subsequently, clarification was sought from the appellant bank vide letter dated 10.07.2013 on the matter. The appellant bank replied to the",,,

above, vide its letter dated 10.08.2013. On 04.02.2014 a show cause notice was issued to the appellant bank. In the said notice the bank was asked to",,,

show cause as to why action should not be taken against it for violation of section 12 (b) of the Prevention of Money Laundering Act read with Rules,,

2[1) (g), 3(D), 7(3)] and 8(3) of the Rules. The appellant bank replied to the above show cause notice, vide its letter dated 04.03.2014. In the said",,,

letter, the bank denied all the allegations.",,,

13.2. Personal hearing was also granted to the bank on 05.05.2014 which was attended by 4 senior officials of the bank. On 19.05.2014, the appellant",,,

bank placed on record its revised submissions in which the internal circulars relating to the KYC/AML guidelines of the bank were enclosed.,,,

13.3. On 27.10.2015, the final order was passed by the Director, Financial Intelligence Unit, which held that there was failure in the Appellant Bank's",,,

internal mechanism for detecting and reporting attempted suspicious transactions in terms of section 12 of the Act, read with Rule 2,3,5 and 7 of the",,,

Rules. As a result of this finding a fine of Rs. 5,00,000/- has been imposed on the Appellant bank for 5 instances of failure to comply with obligations",,,

laid down in section 12 of the Prevention of Money Laundering Act read with Rules 2,3,5 and 7 of the Rules.",,,

14. FPA-PMLA-1146/DLI/2015 filed by Punjab National Bank.,,,

The videos and transcripts of the "Sting Operations" held at three branches of the Appellant bank. Appellant bank herein submitted its reply dated,,

17.05.2013 to the Deputy Director of Financial Intelligence Unit-India informing that the 3 incumbents from the respective branches have been,,

suspended and investigation going on.,,,

14.1. An internal enquiry was conducted by the Appellant Bank on 22.05.2013 at the said 3 branches and it was held inter-alia:,,

..5. From the findings of the inspecting Officials, it has been found that KYC compliance in these branches has been found satisfactory by the",,,

inspecting officials. The Lockers have been issued to the customers having their SF accounts after observation of KYC norms and no case of money,,

laundering has been reported in foreign remittance. Financial Intelligence Unit-India sent a letter dated 10.07.2013 the Appellant bank herein asking,,

for answers to the Questionnaires enclosed. Appellant bank herein submitted its detailed point-wise reply on 02.08.2013 to the said Questionnaires.,,,

Appellant Bank also submitted with the Director of Financial Intelligence Unit "India, detailed status of generation alerts of the said 3 branches on",,,

18.10.2013.,,,

14.2. A show-cause notice was issued on 24.02.2014 by the Department of Revenue, Ministry of Finance, Financial Intelligence Unit-India under S.13",,,

of the Act of 2002 stating inter-alia: "...As the bank failed to file suspicious transactions report in respect of above violating the provisions of Sec 12(b)",,,

of PMLA, 2002, it is liable for penal action under S.13(2) of the said Act . You are, therefore, called upon to show cause as to why action should not",,,

be taken against Punjab National Bank for the above mentioned violation.Ã¢â€â€,,

14.3. Additional Director, FIU-IND sent a letter dt. 27.02.2014 to the CMD of the Appellant Bank asking for certain transaction details viz. the",,,

number of cash transactions in respect of customers/ walk-in customers etc., the number and details of transactions involving multiple DDs/POs",,,

current status of the implementation of alert indicators . In response to the same, the Appellant bank on 12.03.2014 submitted its detailed reply and",,,

stating that the Appellant Bank has always complied with KYC norms as well as the provisions of the Act of 2002 and that:,,

i) Bank has not opened any sundry account relating to cash of and only one STR was submitted of one Ms. Nirupama Jain and Mr. Ashok Jain at,,

Kalakaji Branch;,,

ii) That none of the multiple transactions of multiple DDs/POs qualified for STR;,,

iii) Out of 61 alert indicators given by IBA working group on risk based transaction monitoring, 49 alert indicators have been incorporated and rest 12",,,

will be uploaded latest by 14.08.14.Ã¢â€â€,,

14.4. Appellant bank submitted its reply dated 21.03.2014 to the said show-cause notice stating inter-alia: "...since, details of so called prospective",,,

depositor were unavailable with the concerned branches. STRs could not be submitted based on attempted transactions, by the bank."""",,,

14.5. A personal hearing was held on 07.05.2014 to give an opportunity to the Appellant Bank herein to reply further and was also served with the,,

transcripts obtained in the said sting-operation.,,,

14.6. Appellant Bank herein was informed by letter dated 30.05.2014 by the Financial Intelligence Unit-India to submit further response if any to the,,

contents of the transcript. Appellant bank herein sent its reply vide letter dated 10.06.2014 stating inter-alia that the contents of the transcript. were,,

general in nature and there was no attempt to execute any transaction in cash or in any form as referred to Sec.2(h) of PML Act, 2002. Further the",,,

entire conversation was more in the nature of business queries, leaving little scope for suspicion. Appellant bank herein through its KYC Cell",,,

submitted the reply dt. 14.06.2014 concurring with the reply dated 10.06.2014 submitted by the CMD of the Appellant bank herein.,,,

14.7. By the impugned order passed by the Director, Financial Intelligence Unit- India it as held inter-alia that there was a failure in the Punjab",,,

National bank's internal mechanism for detecting and reporting attempted suspicious transactions, in terms of Section 12 of PMLA read with Rules",,,

2,3,5 and 7 of the PML Rules. Also under the powers conferred on the director under Section 13(2) of the PMLA, there was a fine of Rs. 3,00,000",,,

(Rupees Three lakh) imposed on the bank for three instances of failure in its branches and to comply with its obligations as laid down in Section 12 of,,

PMLA read with Rules 2,3,5 and 7 of the PML Rules framed there under.",,,

15. FPA-PMLA-900/DLI/2015 filed by Axis Bank.,,,

Pursuant to the said recordings being posted on the said website, the Appellant bank received a letter dated 23.05.2013 from the Financial Intelligence",,,

Unit " India (hereinafter referred to as the "FIU-IND") seeking certain information from the appellant with reference to the said sting,,

operations conducted by Cobrapost website. All the 13 cases referred to by FIU in its Notice.,,,

15.1. By letter dated 24.05.2013, the Appellant furnished the information as required by the FIU-IND as aforesaid. In the month of June, 2013 the",,,

Appellant received a report dated 20.06.2013 submitted by M/s KPMG in terms of the scope of their appointment. The appellant thereafter received a,,

Show Cause Notice dated 17.12.2013 issued by the FIU-IND, under section 13 of the said Act for alleged non-compliance with the provisions of",,,

section 12 thereof. The said sting operations/conversations were referred in the said show cause notice as "attempted transactions" within the,,

meaning of Rule 2(g) of the said Rules, and it was alleged in the said show cause notice that the appellant had failed to file any Suspicious Transaction",,,

Reports (STRs) in respect of the alleged attempted transactions comprising the conversations reported on the Cobrapost website. As per the said,,

show cause notice, the said alleged failure of the Appellant resulted in violation of Section 12(b) of the said Act and rendered the Appellant liable for",,,

penal action under section 13(2) thereof.,,,

15.2. The appellant received another letter dated 18.02.2013 from the FIU-IND seeking certain further information. By its letter dated 24.01.2014, the",,,

appellant furnished its reply to the show cause notice dated 17.12.2013, issued by the FIU-IND denying any violation of section 12(b) of the said Act.",,,

In its view, the said conversations between its staff and the personnel of Cobrapost website as contained in the sting operations would not qualify to be",,,

reported by a STR under the said Rules. It was pleaded that the meaning of both the terms "attempted transaction" and "suspicious",,,

transaction" referred to in Rule 2(g) of the said Rules were required to be understood in conjunction with the meaning of the terms "transaction",,,

defined in Rule 2(h), which required either deposit, withdrawal, exchange or transfer of funds as defined in the said Rule; however, none of the said",,,

events had taken place in any of the incidents whose recordings were posted on the Cobrapost website. A mere enquiry or discussion in the abstract,,

by a walk-in person would not amount to an "attempted transaction" and hence would not fall within the scope of a "suspicious transaction",,,

as defined in Rule 2(g) of the said Rules.,,,

15.3. The Appellant sought a personal hearing in the proceedings. By its letter dated 24.03.2014 and for the purposes of the hearing scheduled in the,,

matter on 25.03.2014, the appellant communicated its further and detailed submissions in respect of the show cause notice dated 07.12.2013. In the",,,

said letter/submissions dated 24.03.2014 the appellant placed reliance upon certain case laws in the field of criminal law pertaining to an "attempt",,,

in as much as the term "attempted transaction" is not defined either in the said Act or in the said Rules. The appellant also in the said,,

letter/submissions dated 24.03.2014, inter alia referred to and relied upon its Anti Money Laundering (AML) Policy in force at the time of the sting",,,

operations carried out by Cobrapost website.,,,

15.4. Personal hearing was granted to the Appellant by the Director, FIU-IND on 25.03.2014. Thereafter, the Appellant received another letter dated",,,

28.05.2014 from the FIU-IND referring to the transcripts of the conversations recorded in the sting operations which were provided to the Appellant,,

during the course of the personal hearing held on 25.03.2014, and directing /permitting the Appellant to file additional submissions, if any, on the",,,

contents of such transcripts. By its letter dated 10.06.2014, the Appellant submitted its response to the said letter dated 28.05.2014 stating that it had",,,

got prepared its own transcripts of the conversations in the video footage of the sting operations and though the two transcripts were generally aligned,,

some of the key conversations carried out as reported in the transcripts provided by the FIU-IND were not sound reflected in the transcripts got,,

prepared by the appellant. The appellant also submitted, along with the said letter, its comparative mapping of the conversations in the two transcripts",,,

as also a copy of the page-wise transcripts got prepared by the appellant.,,,

15.5. By the impugned order dated 23.03.2015, Director FIU held the appellant to be guilty of non-reporting of suspicious transactions and therefore",,,

held the appellant to be in breach of section 12 of the said Act read with rules 2, 3, 5, and 7 of the said Rules. As the sting operations pertained to",,,

thirteen branches of the appellant, the director imposed upon the appellant total fine of Rs. 13 lakhs in purported exercise of his powers under section",,,

13(2) of the said Act.,,,

16. FPA-PMLA-1245/DLI/2016 filed by Yes Bank Ltd.,,

After alleged sting operation was carried out by reporter of website Cobrapost in three branches of the appellant, viz., at Gurgaon, Delhi, and Jaipur. It",,

was alleged that an attempt was made to enter into suspicious transactions with the Appellant bank, however the Appellant failed to report the same",,

by way of a STR. By letter dated 10/07/2013 even, the Respondent sought clarification/information with respect to the alleged sting operation by",,

Cobrapost. In particular details of Computer Assisted Audit Techniques of the Appellant and details of roles and responsibilities assigned to all officials,,

identified in the alleged stings were sought,,

16.1. Vide reply dated 20/09/2013, the Appellant gave a detailed reply to the questionnaire sent by the Respondent alongwith relevant annexures.",,

Amongst other clarifications, the reason for not filing an STR was stated as under: ""While, YES Bank has these procedures in place to report",,

suspicious transactions 'Attempted Suspicious Transactions', please note that no actual transaction actually took place on the basis of the interactions",,

of the Cobrapost reporter with the six employees of the Bank. The Identity of the person proposing to open the bank account/ or making the,,

investment in insurance products was also not revealed clearly. Some employees also stated that they could not ascertain the identity of the politician,",,

after their interaction with the Cobrapost reporter, when they tried to search for such a person on the internet. Accordingly, since no actual transaction",,

took place in all these instances, there was no occasion to file an STR for suspicious or 'Attempted Suspicious Transaction' by YES Bank.""",,

16.2. The Respondent issued a Notice dated 21/02/2014 under Section 13 of the PMLA for contravention of provisions of Section 12 of the Act read,,

with the Rules. The specific allegation against the Appellant was of non-filing of STR for attempted suspicious transactions pursuant to visit by,,

Cobrapost reporter in the Jaipur, Gurgaon and Chhattarpur (Delhi) branches of the Appellant.",,

16.3. By reply dated 27/03/2014, the Appellant denied the allegations. A detailed explanation was filed on behalf of the Appellant. Amongst other",,

submissions, at para 2 of the said reply the Appellant explained as to how, in the absence of any specific definition of 'attempted transaction',,,

reliance could be placed on the definition of 'attempt' in judicial proceedings. It was pointed out in Ram Kripal Vs State of Madhya Pradesh,,

(2007) 11 SCC 265, it was held that 'an attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of'",,

offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act",,

in part execution of a criminal design, amounting to more than preparation but falling short of actual consummation and possessing, except for failure to",,,

consummate, all elements of the substantive crime.Ã¢â¬ Therefore, mere general inquiries by Cobrapost reporter were not enough to constitute a",,,

suspicious attempted transaction in terms of the Act and the Rules.,,

16.4. A personal hearing was granted to the Appellant on 06/05/2014, wherein the officer appearing on behalf of the appellant made submissions to",,,

demonstrate that the Appellant bank was not in violation of the provisions of the PMLA and the Rules. The appellant submitted its additional,,

submission vide letter dated 27/05/2014.,,

16.5. By Impugned Order 11/01/2016 dated even the Respondent, inter alia, held that the act of the reporter of Cobrapost of making known his",,,

intention to launder black money and the possible ways to do so was the penultimate act before initiating a transaction. Thus, it had all the ingredients",,,

of an attempt to do a transaction. Rejecting the contentions of the Appellant, the Respondent held that there was failure on part of the Appellant for",,,

detecting and reporting attempted suspicious transactions in terms of Section 12 of the Act read with the Rules 2, 3, 5 and 7 of the Rules and imposed",,,

a penalty of Rs.3 lakhs for the 3 instances of failure in compliance with its obligations laid down under Section 12 of the PMLA and the relevant,,

Rules.,,

17 FPA-PMLA-1018/DLI/2015 filed by Corporation Bank.,,

The Financial Intelligence Unit-India through E-Mail dated 16.05.2013 asked the Appellant Bank to forward a Preliminary Report in the matter of,,

media reports/ sting operation by Cobra Post. The Appellant Bank in response to the same submitted the report to FTU-Ind by E- Mail on 17.05.2013.,,

Thereafter the Appellant Bank also received a Letter No. F. No. 25-1/2013/FIU-IND/PT.I dated 10.07.2013 from the financial intelligence Unit-India.,,

In response to the same the Appellant Bank submitted the detailed report with certain annexure vide letter dated 25.07.2013. despite the entire facts,,

submitted by the Appellant Bank qua sting operation by Cobra Post the Respondent issued a Notice dated 17.12.13 under Section 13 of Prevention of,,

Money Laundering Act, 2002 for non compliance with the Provisions of Section 12 of the Act. The Appellant Bank sent the reply dated 30.12.2013 in",,,

detail to the Financial intelligence Unit-India. The Respondent again issued a Letter No. F.No. 25-1/2013/FIU-IND Pt. V, which was also replied in",,,

detail vide reply dated 06.06.2014 by the Appellant Bank.,,

17.1. The Appellant Bank in its reply dated 30.12.2013 specifically stated that ""There has been no transaction or attempted transaction in the branch.",,,

It was only a casual discussion on various business propositions and the scheme of the Bank without there being any attempt for doing the transactions,,

as such there was no reason to file STR. Further the Appellants in its reply dated 06.06.2014 has retreated above facts also Informed that though so,,

many claims are reported in the transcript, the internal audit of the said branch during the tenure of the manager concerned, conducted immediately",,,

after his removal, has not revealed any attempted transaction of such nature in the branch. No cash transactions were found to be routed through the",,,

General Ledger/Sub-GLA Accounts. Large Value cash deposit and withdrawal were found only in 2 SB & 3 Current Accounts and they were,,

reported to be genuine transactions. That concerned branch of the Appellant Bank had sold only 4 UC policies and the total premium collected was,,

Rs. 5.31 Lacs and this was paid by debit to SB-9115. Concerned Branch of the Appellant Bank has issued 241 cash drafts and out of this, only one",,,

DD for Rs. 350/- was issued favoring Insurance Company. Most of the drafts were found to be issued favoring School/College towards fees. Housing,,

Society & Business payments"". Consequently the Appellant Bank complied all the provisions In to as enumerated in Section 12 of the Act.",,,

17.2. The Appellant Bank has also submitted that the discussion of the Cobrapost reported with the concerned Branch manager of the Appellant Bank,,

was on various business propositions and the schemes of the Bank, and no attempted transaction took place, consequently no STR was filed by the",,,

Appellant Bank. However, the Appellant Bank has a policy to file STRs in case of attempted transaction and has also filed STRs in the past for such",,,

attempted transactions in line with Appendix D of IBA letter CIR/RB/KYC & AML/3208 dated 18.05.2011.,,

17.3. The Ld. Adjudicating Authority failed to appreciate the fact that reporter had only a casual discussion on the various business proposition and the,,

schemes of the Appellant Bank. There was neither any attempted transaction on the day of discussion or on subsequent days or there was any,,

intention on the part of the reporter to do any transaction with the Bank. The Ld. Adjudicating Authority has failed to appreciate that for any,,

attempted transaction, there have some action or advancement, which in this case was not there, a mere discussion cannot be formed as attempted",,,

transaction. The Appellant Bank denied the any such transcript/ discussion which transpired illegal activities in all their communications.,,

18. FPA-PMLA-1144/FIU/2016 appeal filed by Indusind Bank.,,

18.1. By a letter dated May 16, 2013, the FIU took cognizance of the News Report and sought a preliminary report from the Appellant Bank on the",,,

matter. The appellant Bank submitted the preliminary report sought by the FIU on May 28, 2013 (Ã¢â¬ÅPreliminary ReportÃ¢â¬Å). In its Preliminary",,,

Report, the Appellant Bank clarified its stand on the News Report.",,

18.2. In 2013, the Reserve Bank of India (RBI) carried out a thematic study to determine compliance of banking institutions with prescribed",,

Know Your Customer (KYC) and Anti-money Laundering (AML) norms (Thematic Study). The Thematic Study was part of an,,

exercise carried out by the RBI in respect of all banks regulated by its KYC/AML norms. The Appellant Bank was amongst the banks scrutinized as,,

part of the Thematic Study.,,

18.3. Pursuant to the Thematic Study, the RBI by its press releases dated June 10, 2013 and July 15, 2013 declared that it had penalized a total of 25",,

banks and cautioned 7 others. The Appellant Bank was not amongst the 25 banks fined by the RBI.,,

18.4. By its letter dated July 10, 2013, the FIU sought certain additional information from the Appellant Bank in the form of a questionnaire.",,

18.5. As part of its investigations stemming for the Thematic Study, on August 23, 2013, the RBI issued another press release penalizing an additional",,

six banks for breaches of the KYC/AML norms. The RBI's press release brought the total number banks penalized by RBI to thirty-one (31). The,,

appellant bank was amongst the eight entities on whom no penalty was imposed.,,

18.6. By its letter dated August 10, 2013 the Appellant Bank provided the additional information sought by the FIU.",,

18.7 By a letter dated January 21, 2014 bearing reference no. F.No.25-1/2013-14 FIU IND, the FIU sought the additional details and documents.",,

18.8. On the same day, the FIU vide their letter bearing reference no. F.No.25-1/2013/FIU IND signed by Director, Mr. Praveen Kumar Tiwari",,

issued a Show Cause Notice (SCN) to the Appellant Bank seeking reasons as to why no action should be taken against it for violating Section,,

12(b) of the Prevention of Money Laundering Act, 2002 (Act)",,

18.9. By its letter dated March 5, 2014 bearing reference no. CO: 555:2014, the Appellant Bank replied to the FIU's letter No. F.No. 25-1/2013 FIU",,

IND dated January 21, 2014 and provided the additional information.",,

18.10. The personal hearing in the case was completed on April 15, 2014. Thereafter the appellant Bank made further post hearing submission by their",,

letter dated April 30, 2014.",,

18.11 The FIU issued the impugned order on September 30, 2015 wherein it found that the Bank's employees were involved in discussions to",,

launder money by converting cash into demand drafts, opening various accounts, storing cash in big lockers, opening NRI accounts to remit money",,

outside India and not disclosing PAN number of investment.,,

19. FPA-PMLA-1167/DLI/2015 appeal filed by Canara Bank.,,

19.1. Cobrapost conducted sting operation in two branches of the Appellant i.e. Kalkaji-Okhla, New Delhi and Vasant Vihar, New Delhi and one",,,

circle office, Agra of the Appellant. On 06.05.2013, the videotape was made public which was allegedly suggesting violations of statutory obligations",,,

under the PMLA, 2002.",,,

19.2. On 17.05.2013, the Appellant reported FIU-India with regard to its investigations/actions taken in response to the said media report vide its letter",,,

INSW KYC F-RBI 086 2013 dated 17.05.2013.,,,

19.3 However, FIU-India vide its letter dated 10.07.2013 asked the Appellant if any alert in respect of the sting operation were generated in its",,,

concern branches and whether any STR was reported for any attempted transaction.,,,

19.4 The appellant in its reply to the aforesaid letter confirmed that no STR have been filed as there was no transaction or attempted transaction had,,

taken place at those particular offices within the meaning as prescribed under Rule 2(1) (g) of PMLA Rules.,,,

19.5. On the basis of the said media report, a show cause notice was issued vide FIUs letter no. F.No.-25-1/2013/FIU-IND dated 17.12.2013 under",,,

Section 13 of PMLA, 2002 for non-compliances with the provisions of section 12 of PMLA, 2002.",,,

19.6. The appellant submitted a detailed reply to the said show cause notice. On 16.04.2014, the Appellant was granted a personal hearing wherein the",,,

Appellant apprised the Respondent in details.,,,

19.7. The Appellant further highlighted action taken by them in respect to procedure for processing Anti Money Laundering (AML) alerts and,,

escalation/filing of suspicious transaction reports (STRs) vide its submission dated 19.04.2014.,,,

19.8. The Appellant further submitted its representation vide its letter dated 10.06.2014 and reiterated its commitment to take all the possible Anti,,

Money Laundering preventive measures.,,,

19.9. The FIU issued the impugned order dated 29.10.2015 in which the charges against the bank were upheld and penalty was imposed on the bank.,,,

Being aggrieved, the present appeal has been filed.",,,

20. The main case of the respondent,,

The case of the respondent is that under section 12 of the PMLA and the Prevention of Money Laundering (Maintenance of Records) Rules, 2005",,,

(hereinafter referred to as the "Rules", for short) framed under the PMLA impose on all reporting entities obligations that include maintaining",,,

prescribed records of specified transactions, appointing a Principal Officer and a Designated Director performing client due diligence and furnishing to",,,

Director, Financial Intelligence Unit-India (hereinafter referred to as "Director, FIU-IND") prescribed reports including reports on suspicious",,,

transactions (STRs).,,

20.1. It is submitted by the respondent that Rule 3 of the Rules specifies the transactions, the records of which are to be maintained; Rule 7 prescribes",,,

the procedure and manner of furnishing information including an obligation to evolve an internal mechanism for detecting the prescribed transactions.,,,

Rule 8 of the Rules prescribes the time of furnishing such information and Rule 9 of the Rules prescribes the procedure and manner of verification of,,

records of identity of clients. Rule 2 of the Rules defines a transaction to include any payment made or received in whole or in part of any contractual,,

or other legal obligation. The rules also specify- rule 2(g) the situations that could indicate the existence of suspicious transactions that would warrant,,

filing suspicious transaction reports (STR) under Rule 7 of the Rules.,,,

These situations are as follows:,,

a. Transaction which gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the schedule to,,

the PMLA regardless of the value involved.,,,

b. Appears to be made in circumstances of unusual or unjustified complexity.,,,

c. Appears to have no economic rationale or bonafide purpose; or,,

d. Gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.,,,

20.2 Section 12 of the PMLA 2002, obligates reporting entity to maintain records. Section 13 of PMLA empowers the Director to impose fine/penalty",,,

with regard to obligations of the reporting entity under the said Chapter. Section 13 of PMLA, 2002 read as under:-",,,

“ 13. Powers of Director to impose fine.”,,

(1) The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in",,,

sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit.",,,

(2) If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers",,,

has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any",,,

other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall",,,

not be less than ten thousand rupees but may extend to one lakh rupees for each failure.,,,

(3) The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or",,,

intermediary or person who is a party to the proceedings under that sub-section.”,,

21. We would now examine these issues as to whether the requirement for imposing the major penalty under section 13 (2)(d) has been established in,,

this case as per law or not. As mentioned herein above Rule 2(g) specifies the situations that could indicate the existence of suspicious transactions,,

that would warrant filing suspicious transaction reports (STR) under Rule 7 of the Rules. The situations are,,

(a) Gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in Schedule to the Act regardless of the value,,

involved; or,,

(b)Appears to be made in circumstances of unusual or unjustified complexity; or,,

(c) Appears to have no economic rationale or bona fide purpose; or,,

(d) Gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.,,

22. Section 12 of the Act cast an obligation on the reporting entity to maintain records and read as under:,,

12. Reporting entity to maintain records.-(1) Every reporting entity shall -,

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b) in such manner as to",

enable It to reconstruct individual transactions;,,

(b) furnish to the Director within such time as may be prescribed, information relating to transactions, whether attempted or executed, the",

nature and value of which may be prescribed;,,

(c) verify the identity of its clients in such manner and subject to such conditions as may prescribed;,,

(d) identify the beneficial owner, if nay, of such of its clients, as may be prescribed;,,

(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business,,

correspondence relating to its clients,",,

(2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept",

confidential.,,

(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction,,

between a client and the reporting entity.,,

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship a,,

client and the reporting entity has ended or the account has been closed, whichever is later.".,

(5) the Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this",

Chapter.,,

23. Rule 2 (g) of the PML Rules defines a ""suspicious transaction"" and Rule 2 (h) defines the term ""transaction"" and the same are reproduced as",

under:,,

“(g) “suspicious transaction” means a transaction referred to in clause (h) including an attempted transaction, whether or not made”,

in cash, which to a person acting in good faith -”,

(a) Gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule of the Act, ,,

regardless of the value involved; or,,

(b) Appears to be made in circumstances of unusual or unjustified complexity; or,,

(c) Appears to have no economic rationale or bona fide purpose; or,,

(d) Gives rise to a reasonable ground of suspicion that it may involved financing of the activities relating to terrorism;”,

“(h) “Transaction” means a purchase, sale, loan, pledge, gift, transfer, delivery or the arrangement therefore and includes -”,

(i) Opening of an account;,,

(ii) Deposits, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other”,

instruments or by electronic or other non-physical means;,,

(iii) The use of a safety deposit box or any other form of safe deposit;,,

(iv) Any payment made or received in whole or in part of any contractual or other legal obligation;,,

(v) Any payment made in respect of playing games of chance for cash or kind including such activities associated with casino; and,,

(vi) Establishing or creating a legal person or legal arrangement””,

24. S. 2 (1)(ha) of the Act defines the term Client, which reads as under:”,

“(the) “Client” means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on,,

whose behalf the person who engaged in the transaction or activity, is acting;””,

25. Rule 2(h) defines 'transaction' to inter alia mean a deposit, withdrawal, exchange or transfer etc. It implies that an actual transaction should have”,

taken place for any reporting requirement to set in. This is different from any roving inquiry or suspicious behavior which fails to leave any formal,,

imprint on the banking system. Similarly, in the present case, no actual transaction including deposit, withdrawal, exchange or transfer of funds (which”,

form a part of normal banking activities) took place which could have been the basis for reporting.,,

26. It is contended by all the financial institutions/banks that the obligation on the Appellants to report a suspicious transaction or attempted suspicious,,

transaction arises only when the act in question qualifies as a transaction; in view of mandatory provision of Section 12 of the Act.,,

27. It is submitted on behalf of the appellants that assuming, that the enquiry made by the Cobrapost Reporter falls under the definition of",,,

Ã¢â¬suspicious transactionÃ¢â¬, even then there was no obligation on the Appellant to report the same. Suspicious Transaction includes a transaction",,,

which gives a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act. In the present case the,,

alleged conversation between the reporter and the employees of the Appellant Bank is centered around ""converting black money into white"", which if",,,

at all an offence is an offence under the Income Tax Act, which is not a part of the Schedule given under the Prevention of Money Laundering Act",,,

2002.,,,

28. It is argued by them that for every crime there are four stages.,,,

Firstly, there is an intention to commit a crime, secondly, a preparation to commit the said crime, thirdly an attempt to commit the said crime",,,

and fourthly completion of the crime. Only once an attempt is successful can a crime be said to have been committed. Therefore every act,,

done in preparation to commit an offence cannot be considered an attempt to commit the offence.,,,

29. It is also argued that an offence cannot be said to be constituted in a case where there exists a mere intention for the commission of the offence,,

but has not been followed by any act. There are exceptions to the aforementioned rule, where even preparation to commit an offence has been made",,,

punishable, such as Sections 122 and 399 IPC. [See: Aman Kumar & Anr. V/s. State of Haryana reported in (2004) 4 SCC 379 wherein (Para nos. 8",,,

9, 10) held as under].",,,

Ã¢â¬The first step towards an 'attempt' is the 'intention' to do wrong. The aspect of intention has to be established from the point of view of,,

the person seeking to transact. The officials of the Appellant Bank could not have at any point of time forecasted the occurrence of such,,

transaction which might take place in future or in pursuance to the roving enquiries made by the Cobra-port Reporter. It cannot be said,,

that there was an actual intention on part of the reporter to commit any offence that could have been reported, since he was merely trying to",,,

trap and malign the reputation of the Appellant Bank and its officials as there was never an intention to enter into suspicious transaction,,

and therefore in absence of mens rea i.e. the main ingredient required under the law in the commission of any offence/crime was not,,

considered by the Respondent.Ã¢â¬",,,

30. Ã¢â¬transactionsÃ¢â¬ are concerned, reliance is also placed on Rule 2(g) which deals with a 'suspicious transaction' and means a transaction",,,

including attempted transaction whether or not made in cash, to a person acting in good faith gives rise to a reasonable ground of suspicion that it may",,,

involve proceeds of an offence mentioned in Schedule of the PMLA or made in circumstances of unusual or unjustified complexity or appears to have,,

no economic rationale or gives rise to suspicion that it may involve financing activities of terrorism. Thus, a conjoint reading of the definition of",,,

“transaction” and “attempted suspicious transaction” evidences that the sting operation to be termed as an ‘attempted suspicious transaction’,,,

should have been formally initiated in the banking channels, i.e. should leave some footprints in the banking channel, which may later be abandoned",,,

midway. The following decision was referred.,,,

The Supreme Court in Ramkripal v. State of M.P. (2007) 11 SCC 265 has endorsed this view in the following terms:,,

“10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless”,,,

something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be done in part-”,,,

execution of a criminal design. amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except”,,,

for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime”,,,

falling short of its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would,,

have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to,,

make a difference between the cases of a mere preparation and an attempt. "" [Emphasis Supplied]",,,

By referring the above mentioned decision, it is interpreted that an ‘attempt’ is recognized in law as a situation where a transaction is initiated but”,,,

cannot be completed for some extraneous reason. It requires an overt act beyond mere preparation as illustrated in Illustrations (a) and (b) of Section,,

511 of the IPC, which have been extracted out below:",,,

“(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He”,,,

has done an act towards the commission of theft, and therefore is guilty under this section.”,,

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z’s pocket. A fails in the attempt in consequence of Z’s having,,

nothing in his pocket. A is guilty under this section.”,,

The sting operation in the present case fails to qualify as an ‘attempt’ owing to the lack of mens rea i.e. the criminal intent, because the reporter”,,,

perpetrating the sting operation did not intend actual commission of an offence. This, coupled with the fact that in the instant case the reporter from”,,,

Cobrapost only made inquiries, and without any actual transaction being carried out in the capacity of a customer of the Appellant Bank, the inquiries",,,

cannot qualify as an "attempted suspicious transaction".,,

31. It is submitted that the word "attempt" has not been defined either under the PML Act or under the Rules. In the absence of any definition,,

given in the Act or rules, either the normal meaning of the word "attempt" has to be applied or reference has to be made to Judicial",,,

pronouncements where the meaning and purport of the word came to be given. In this regard reliance is placed on the judgment of State of,,

Maharashtra v/s Mohd. Yakub and others- (1980) 3 SCC 57 at para 13 wherein the Hon'ble Supreme Court has held "Attempt" defies a,,

precise and exact definition. Broadly speaking all crimes which consist of the commission of affirmative acts are preceded by some covert or overt,,

conduct which may be divided into three stages. The first stage exists when the culprit first entertains the idea or intention to commit an offence. In,,

the second stage, he makes preparation to commit it. The third stage, is reached when the culprit takes deliberate over steps to commit the offence.",,,

Similarly in the case of Aman Kumar V/s State of Harayana - Criminal Appeal No. 1106/1997, the Hon'ble Supreme Court has distinguished",,,

between intention to commit an offence, preparation for commission of offence and commission of offence. The Ld. Adjudicating Authority in the",,,

present case failed to consider the aforesaid Judgment as also the distinction elucidated in the said Judgments and arrived at an erroneous conclusion.,,

It is submitted that an attempt of any nature can only commence after a person has completed all the preparation and is intending to take the first step,,

towards the commission of offence. In the present case the Cobra post Journalist after the discussions to execute a transaction. Therefore, the actions",,,

of the Cobrapost journalist were still in the realm of preparations only and did not fall within the definition of steps taken to execute the transactions,,

and as such the same would not be covered under the definition of attempted transaction much less in the category of attempted suspicious,,

transactions under the PML Acts or Rules. Consequently, no culpability can be attached on the Appellant Bank for not having reported the STRs.",,,

32. It is argued on behalf of the banks that number of unwarranted consequences would follow if banks were forced to report every suspicious,,

enquiry with a customer or a potential customer:,,

(a) Potential as well as existing clients, unaware of banking procedures and rules, could have legitimate transactions needlessly flagged and scrutinized",,,

for making a genuine enquiry with the bank. This may not result in a benefit, as the banks would end up loading the system with STRs without",,,

necessarily improving compliance with the law. In fact, such STRs without even complete details, may result in directing the Regulators' attention",,

from the actual cases requiring their oversight.,,

(b) Bank executives and front desk officers may need to record and report even innocuous queries from customers, distracting them altogether from",,

the actual task of banking.,,

(c) The extensive systems prescribed by the RBI. IBA and even the FIU that are designed to capture genuinely suspicious transactions would be,,

rendered redundant if every enquiry were to be reported.,,

(d) Opening the floodgates to reporting of mere inquiries would result in an influx of suspicious reports, multiplying regulatory workload while",,

simultaneously reducing the regulatory responsibilities of bank executives to merely clerical duties. This would defeat the very purpose of reporting.,,

(e) Such a stance would also engender an atmosphere of suspicion and erode the relationship of trust that exists between banking institutions and the,,

public.,,

The Appellants have in place an extensive KYC/AML policy to ensure that any suspicious transactions are immediately captured and reported.,,

32.1 The Appellant Bank has had its own KYC/AML policy since 2005, which is regularly updated to ensure compliance with RBI guidelines and any",,

changes in statutory law. The Appellant Bank's KYC/AML Policy contains adequate safeguards specifically designed to capture any attempted or,,

executed suspicious transaction. The salient features of the policy are set out in Annexure-A-14 filed along with the Memorandum of Appeal.,,

32.1.1 Specific internal process details of the Bank as placed on record and the main of which are as follows would have captured, recorded and",,

reported any suspicious transaction to the FIU in a timely manner had they been attempted by the Cobra Post reporters:,,

(a) At the customer acceptance stage, the Appellant Bank would have categorized the reporters as High Risk on account of their being politically",,

exposed.,,

(b) Account opening and document verifications which occurs on a centralized basis would have captured any unfulfilled customer due diligence,,

requirements.,,

(c) PAN card and Forms 60/61 would have been sought along with proof of identity, address and existence.",,

(d) Compliance with the Appellant Bank's KYC norms was assured since such a process would be undertaken by an independent, centralized unit",,

which is dedicated to ensuring KYC compliance in all cases.,,

(e) In case an account was opened, the Appellant Bank's AML cell would be required to closely monitor the newly opened account for three months.",,

Year,Count of STR,

2010-11,100,

2011-12,163,

2012-13,904,

2013-14,2575,

2014-15,2330,

36. It is submitted on behalf of all the appellants that a mere reading of Section 12 as a whole would suggest that what the legislature refers to in this,,

Section are the transactions which have been executed in some form or the other. The frequent use of the word "Client", also suggest that the,,

transactions mentioned are the transactions which are entered into between the persons who is engaged in the financial transaction or activity with the,,

bank. The "client" has been defined in section 2 (h) of the Act.,,

It is therefore submitted that as per Rule 2(g) the "suspicious transaction" as referred are the transactions which have been executed. The words,,

used "whether or not made in cash" means the transaction actually made whether in cash or by cheque/transfer etc.,,

37. It is submitted that the Rule 3 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (for short, the Rules) relates to",,

"Maintenance of records of transactions (nature and value)". A bare reading of the above rule would manifest that the types of transactions,,

referred to therein pre-suppose a banker-client relationship and the person enjoying the various facilities with the bank necessarily has to be a,,

customer of the bank. Only when a person or entity is a customer that the bank is presumed to have all the necessary details of such customer i.e.,,

person or entity. And if such a customer attempts or executes any of the types of suspicious transaction referred to in section 2(g) and (h) that banks,,

is under duty to report the same via filing of STRs with the Respondent authority.,,

38. The obligation of maintaining the record is specifically given in Rule 3 and Rule 3 (D) is the only place where "suspicious transaction" is,,

mentioned and it uses the words "whether or not made in cash or by way of" suggest that the transaction have to be transaction actually,,

executed. Rule 4 specifies which records are required to be maintained in terms of Rule 3 by the Reporting Entity. It refers to the information,,

regarding (i) the nature of the transactions (ii) amount of transactions (ii) date on which the transaction was conducted and (iv) the parties to the,,

transaction.,,

In the instant case what has been relied upon by the Department are some oral conversations between the reporter of Cobra Post and some of the,,

employees of the Bank. They are not the information referred in Rule 4.,,

39. It is argued that the Id. Adjudicating Authority failed to consider the fact that in all the five instances under the AML/KYC Policy, the said",,,

instances would be a valid ground for recording STR only if the customer had taken all or any necessary steps to execute a transaction i.e. the,,

customer should have at least disclosed his identity given his name, address, phone number which would enable the Bank to raise STR. In the Cobra",,,

post sting operation no such details/documents were made available so as to enable the Bank to raise STR. The discussions being in the nature of,,

roving inquiry, the same would not be covered within the meaning of "a transaction" as defined under the Act and the Rules. Accordingly, the",,,

Cobra post sting operation at the branches of the Appellants would not be covered within the definition of a transaction or a suspicious transaction or,,

an attempted transaction and therefore, non-reporting of the same cannot be held to be breach of Section 12 of PML Act read with Rules 2, 3, 5 & 7",,,

of PML Rules so as to entail a penalty under Section 13(2) of the PML Act on the Appellant Bank.,,

Therefore, the reporters of Cobra post do not fall in the definition of Client given in the Section 13(2) of the Act.",,,

40. It is argued that the reporting entity would have been responsible for non-maintenance of record as contemplated in Section 12 of the Act, only",,,

where the transactions are complete and some record of the same are maintained in terms of Rule 4. In the present matters since they were only oral,,

communications and no document was created, thus the reporting entity cannot be made responsible for maintaining the record of these conversations.",,,

41. It is true if reading jointly of S. 12 of the Act alongwith Rule 2(h) & 2(g) of the Rules casts an obligation on the Appellant Bank to maintain a,,

record of all transactions including suspicious transactions but of "its" clients only and Client means a person who "is" engaged in a financial",,,

transaction or activity with the reporting entity under the Act. Once the person becomes a Client of the reporting entity, the said entity will conduct a",,,

"client due diligence" as defined in Rule 2(b) of the Rules and assign a "Know your Client (KYC) Identifier" as defined in Rule 2(ca) of the,,

Rules and thereafter maintain the "Know your Client (KYC) Records" as defined in Rule 2(cb) of the Rules, and continue to update the KYC",,,

records of the Client as defined in Rule 2(cc) of the Rules.,,

42. Rule 9 contemplates existence of a "Client" and in the absence of any formal document with the reporter, it is argued on behalf of appellants",,,

that it cannot be said that the reporter had become the Client of the Appellant Bank. The process of the reporter, or the alleged politician allegedly",,,

represented by the Reporter becoming the Client of the Appellant Bank may have commenced only from the point of filling up of the Know Your,,

Customer (KYC) form or an account opening form type of cases.,,

43. It is also true that a person has to be involved in some financial transaction or activity with the Appellant Bank before he/she can be termed as a,,

Client of the Appellant Bank. It is correct in the present case no financial transaction of any nature whatsoever was initiated by the Reporter,",,

we have to decide that in the present appeal as to whether the reporter could not be termed as a Client of the Bank in respect of whom the,,

Appellant Bank was required to maintain the prescribed records and furnished report. Further, the Act as well as the Rules have been formulated in",,,

respect only of existing Clients of the reporting entity. It is doubtful that those are also applicable to a person who had not even provided a name while,,

enquiring from the officials of the Appellants in general types of cases.,,

44. It is not in dispute that the obligation to report under the Act must be read strictly as non-compliance thereof carries penal consequences. The,,

provisions specifying transactions for which records are required to be maintained (Rule 3), manner of maintaining such records (Rule 5) and reporting",,,

requirements for such transactions (Rule 7), all apply to actual transactions and not to mere enquiries.. Rule 3(1)(D) when read with the definition of",,,

suspicious transaction" {Rule 2(g)} makes clear that mere enquiries cannot constitute a "transaction" or a "suspicious transaction". If Rule 3 is not",,,

triggered, Rules 5 (manner of maintenance of records) and Rule 7 (reporting of transactions) are also not triggered. Accordingly, the Appellant was",,,

not mandated to report the said conversations under the reporting rules as nothing tangible had transpired.,,

45. The alleged clip of the sting operation conducted by the Cobra Post was uploaded on the website of Cobra Post on 13.03.2013. It is also,,

mentioned that the alleged sting operations at the branches of the appellant banks were conducted during the period 01.04.2012 to 28.02.2013. Thus,,

the sting operations continued till 28.02.2013 that is well after the Amendment Act of 2009 came in operation from 15.02.2013. The sting operation,,

and the uploading of the sting and the issuance of the Show Cause Notice are all post the Amendment Act of 2009.,,

46. Let us now examine rival submission of the parties in light of pleadings and material placed on record. Counsel appearing on behalf of all the,,

appellants have challenged the validity of transcripts of Cobrapost. Counsel for the respondent has argued that as far as the recordings are concerned",,,

there is no denial by any of the appellant of the alleged conversations of the employees of different appellant banks with the Cobrapost reporters,,

having not taken place at all. He also submits that it is not the case of any of the appellant that the transcript is either bogus or manipulated or forged,,

or fabricated. The appellants are merely stating that the same have not been proved as per law and that only selected portion of transcripts were,,

produced, personal opinion and comments are mentioned therein and therefore the transcripts cannot be relied up on the department.",,,

47. As far as admissibility of the transcripts is concerned, the same would be discussed in the later part of our order. However, in order to have an",,,

idea / assessment of the type of conversation that were had by the concerned bank employees with the Cobrapost reporter, it is necessary to refer to",,,

some of the recordings. Small portion of the same in the case of the one of the appellant banks are mentioned below:-,,

A. Suggesting a one -time payment scheme. Singh elaborates on how this could be done: ँँ,“Account khulega unka... passport se account,,

khulega. Usmein cash jama kar denge hum. Usmein fir kisi bhi amount ka DD bana ke investment kar denge. Fir account hum band kar,,

denge... band kar sakte hain ek sal baad (We will open an account, with your passport. We will deposit the cash in it. Then we will make",,,

DD for any amount from the deposit and make an investment. After that we will close the account. We can close the account after a year).ँँ,“

Could the bank provide him with a locker to stash Rs. 5 -7 crore? Although his branch didn't have a locker. Singh says he would certainly,,

help him get one in another branch. ँँ,“Lockers nahin hai... dekh lenge pehle account khul jayega. Jaakar dilwa denge. Bahut saari,,

branches haj humari. Rajendra Nagar mein humari Sir branch hai. Wahan par hum locker facility aapko de sakte hain. bada to nahin,,

medium size mil payega. Bade to pata hat kya hota hai? Jaise branches khulti hain na to pehle malik le lete hain. Panch-chhe hain bade,,

locker doh mil jayenge (There are no lockers here. We will see. First, account will be opened, then 1 will personally go there to get you one.",,,

We have so many branches. We have a branch in Rajendra Nagar, Sir. We can offer you locker facility there, not of big size but medium.",,,

You know as soon as branches open, people grab them all. There are five-six big lockers. You will get two).ँँ,“

Has he handled such transactions in the past? Replies Singh: ँँ,“Sir humnein toh, humnein jo hai Janakpuri, Rohini mein punch crore",,,

rupaye dalwaye hue hain (Sir, I have got cash deposits of Rs. 5 crore in Janakpuri and Rohini). He then shows some papers and claims:",,,

ँँ,“Ye jo fund humara hai, ismein bhi hai, ispe humare Sir 498 crore rupaye dale hue hain, ye November tak ki hai (Even in this fund of",,,

ours, Sir, we received investments worth Rs. 498 crore. This figure is up to November). It was obvious that Rs. 50 lakh was a pittance",,,

compared to the investments his branch had managed. It was not clear, however, if all the investments were done in cash, although what he",,,

claimed was unmistakably suggestive of that in its content: "Pachas lakh to agar aap keh rahe ho to kuchh bhi nahin hai, kar denge koi",,

problem nahi hai (If you are talking of Rs. 50 lakh, then it is nothing. We will do it, no problem).",,

B. Faisal went on to make the ultimate revelation, leaving nothing to doubt: "Sir koi chakkar nahin hai. HDFC baitha hi hua hai black",,

money khan eke liye (Sir, there is no problem. HDFC is here to eat up all the black money).",,

Faisal then introduces the journalist to his superior, Branch Head A.R. Miglani, who too is willing to help. Better invest in insurance",,

suggests Miglani: "Best part hota hai, jo alag policy mein lagana na hai. black ka paisa laga dete ho Ab koi problem nahin hai .. koi",,

poochta bhi nahin hai. Kal ko kuchh bhagwaan na kare to uske upa kisi ki nazar nahi jaa sakti hai. 110 percent usko court bhi nahi,,

utha sakta (This is the best part. Invest in two different policies. If you invest black money, there is no problem. Nobody asks about it. God",,

forbid, if somebody casts his evil eye on it 110 per cent even courts can't pick it up.",,

C. What if the Income Tax authorities come knocking on the door after such a large investment in cash is made, asks the reporter? Nothing",,

of that sort is going to happen, assures Bhowmik: "Aapko kuch nahin aayega, humari surety hai. Wo bank draft bhi nahin lagta ki aap",,

kahan se cash de rahe hain. Hum kahin nahi batate. Aap note kaun sa de rahe hain, ye mention nahin hoga (Nothing will come to",,

you, this is the surety we give you. We don't need even a bank draft for this so as to know from where you got all this cash. We don't tell",,

it to anybody. We will not mention even what types of currency notes you're giving). After more such assurances, Bhowmik tells the",,

reporter the cash will be kept hidden in a chest at her branch: "Ye kahin leak nahin hoga. Humne aapse kya liya wo hum kahin nahin,,

dene wale. Humare wahan chest hota hai. Wo wahan pe jayega fir wahan se (We will not leak it any where. We are not going to disclose,,

ever what we took from you. We have a chest here. It will go there and from there)",,

48. In this context, it is also useful to refer to the "Forensic inquiry and fact finding review of transactions and allegations of inappropriate practices",,

made against HDFC Bank by Cobrapost conducted by Deloitte which were published on March, 14, 2013 and April 5, 2013 during the course of",,

which few statements of concerned employees were also recorded for clarifications purposes. Portion of the same read as under:-,,

f That recalled reporting about the incident to his senior, who had instructed him to be cautious of the reporter.",,

f According to Priyanka the reporter had suggested opening of three accounts and she had agreed to the same (one for the politician",,

one for the politician's wife and one for the reporter. She had however informed the reporter about the requisite documents that,,

would be required for opening of the account.,,

Simrandeep clarified that at the end of the meeting he had informed the reporter that PAN and source of funds would be required and,,

the reporter had agreed to provide the same.,,

Simrandeep also stated that after the reporter left his branch, he told his team that the reporter was a fraud and no one should contact",,,

him again.,,

However Yadav did not give a coherent response to the queries raised by the interviewer regarding the reporter's suggestion to,,

convert black money into white and also agreed to meet the politician and made a follow up call to the customer (reporter).,,

Miglani accepted that he had agreed to the customer's desire to open multiple accounts to deposit cash, however he clarified that he",,,

did so only on account of persistent requests by the customer (reporter). He also clarified that he had requested for PAN cards for all.,,

Miglani further suggested that as the Bank's internal systems were in place, any suspicious transactions could be tracked by the",,,

Central office. Accordingly, the system would not permit any suspicious transaction to succeed.".,,

49. Learned Counsel for the respondent submits that in case all the statements are read together, the case against the appellant are made out. The",,,

statements also show that at least the recording was conducted at the branches of the concerned banks. The appellant banks do not dispute that the,,

conversations took place, the contention is that there is some re-arrangement of the conversation, its sequencing etc, but the heart and soul of the",,,

conversation is not disputed. It was his submission that under the provisions of Section 12 of the Act and the rules framed under the PMLA,,

(Maintenance of Record Rules), 2005 a scheme has been created that when banks come across an instance where some suspicious transaction has",,,

occurred or has been attempted, the same should be reported to the appropriate authority in the manner provided. The subject conversations not only",,,

reveal that the bank employees, some of whom are placed at senior positions in some cases, not only conversed freely with a person coming to invest",,,

having large amount of unaccounted money which he was wanting to keep with the bank, but also lent a helping hand to the concerned person with",,,

ideas how to conceal the said amount. It was his submission that the statutory provisions are to be interpreted in a manner so as to advance the,,

S.No.,Alert Indicator,Indicative Rule/Scenario

1,"CV1.1.-Customer left without opening

account", "Ã,Ã. Customer did not open account after

being informed about KYC requirements

2,"CV2.1-Customer offered false or forged

identification documents", "Ã,Ã. Customer gives false identification

documents or documents that appears to

be counterfeited, altered or inaccurate

3,"CV2.2-Identity documents are not

verifiable", "Ã,Ã. Identity documents presented are not

verifiable i.e. Foreign documents etc.

4,"CV3.1-Address found to be non

existent", "Ã,Ã. Addressed provided by the customer is

found to be non existent

5,CV3.2-Address found to be wrong,"Ã,Ã. Customer did not staying at address

provided during account opening

6,"CV4.1-Difficult to identify beneficial

owner", "Ã,Ã. Customer uses complex legal

structures or where it is difficult to identify

the beneficial owner

7,"LQ 1.1-Customer is being investigated for

criminal offences", "Ã,Ã. Customer has been the subject of

inquiry from any law enforcement agency

relating to criminal offences

8,"LQ 2.1-Customer is being investigated for

TF offences", "Ã,Ã. Customer has been the subject of

inquiry from any law enforcement agency

relating to TF or terrorist activities.

9,"MR1.1-Adverse media report about

criminal activities", "Ã,Ã. Match of customer details with

persons reported in local media/open

sources for

criminal offences

10,"MR2.1-Adverse media report about TF or

terrorist activities of customer", "Ã,Â. Match of customer details with persons reported in local media/open source for terrorism or terrorist financing related activities.

11,"EI1.1-Customer did not complete transaction", "Ã,Â. Customer did not complete transaction after queries such source of funds etc.

12,EI2.1-Customer is nervous,Ã,Â. Customer is hurried or nervous.

13,EI2.2-Customer is over cautious,"Ã,Â. Customer over cautious in explaining genuineness of the transaction.

14,"EI2.3-Customer provides inconsistent information", "Ã,Â. Customer changes the information provided after more detailed information is required

Ã,Â. Customer provides information that seems minimal, possibly false or inconsistent.

15,"EI3.1-Customer acting on behalf of a third party", "Ã,Â. Customer has vague knowledge about amount of money involved in the transaction.

Ã,Â. Customer taking instructions for conducting transactions.

Ã,Â. Customer is accompanied by unrelated individuals.

16,"EI3.2-Multiple customers working as a group", "Ã,Â. Multiple customers arrive together but pretend to ignore each other.

17,"EI4.1-Customer avoiding nearer", "Ã,Â. Customer travels unexplained distances to

(a) Ram Kripal son of Shri Shyam Lal Charmakar Vs State of Madhya Pradesh (2007) 11 SCC 26 5 Supreme Court of India The word,,

“attempt” is not itself defined, and must, therefore, be taken in its ordinary meaning ---. The moment one commences to do an act with,,

the necessary intention, he commences his attempt to commit the offence.”,,

(b) State of Maharashtra Vs. Mohd. Yakub, reported as AIR1980SC1111”,,,

The term attempt is wide enough to take in its fold any one or series of acts committed beyond the stage of preparation “such act or acts”,,

being reasonably proximate to the completion of unlawful activities.,,

(c) Abhayanand Mishra V/s The State of Bihar (1961 Cri LJ 822),,,

Hon. Supreme Court held the appellant liable for the offence of attempt to cheating, holding that the preparation was complete when he”,,

prepared the application for submission to the University. The moment he dispatched it, he entered the realm of attempting to commit the”,,,

offence. He did succeed in receiving the university admission card. He failed to sit in the examination as forgery came to light before he,,

could succeed. The moment one commences to do an act with necessary intention, he commences his attempt to commit the offence.”,,

(d) Rasila Mehta Vs. Custodian-20116SCC 220,,

In paragraph 47 the Hon’ble court stated that the statutes must be construed in a manner which will suppress the mischief and advance,,

the object the legislature had in view. A narrow construction which tends to stultify the law must not be taken.,,

There is nothing in the above pronouncements that would seem to support the contention of the Bank that the Cobrapost incidents do not,,

fall in the category of “attempted suspicious transaction”,,

20. The object of the PMLA is to prevent the menace of money laundering. If this object is taken as the guiding factor in discharge of the,,

statutory obligations like filing STRs, then it would be difficult to believe why a reporting entity should not get alarmed or alerted when a”,,,

customer explicitly discusses black money and the ways to launder it across its branches. In the instant cases, the reporter had made known”,,,

his intention to launder black money. He had selected beforehand the branches of the Bank that he visited, had prepared in advance, and”,,,

conceived of a similar theme to ascertain the possibility of laundering money and the ways to do laundering in detail. This was the,,

penultimate act before initiating a transaction. Thus it had all the ingredients of an attempt to do a transaction. There is no evidence that,,

any of the branches doubted his intention or story at the material time and this should be an important consideration in judging the,,

Bank's or its employees' response to the reported incidents.,,

58. We agree with the submission of the Learned A.S.G. that the scheme of the Act and the PML (Maintenance of Records) Rules, 2005 and Rule",,

2(g) thereof places a "good faith" obligation on a reporting authority (i.e., the Bank) to report suspicious transactions including attempted",,

suspicious transactions which would lead a person who acts in good faith to believe that the source of funds is dubious. It cannot be contended now,,

that appellant did not believe that a suspicious transaction was involved.,,

59. Some of the appellant Banks submitted that a Bank can never be held responsible for the actions of its officers while the learned ASG argued that,,

banks could not divest itself and avoid responsibility from the actions of his officers. We are of the view that this would depend upon case to case,,

basis. In serious matters, the bank may be responsible for a situation as it happens in the present case, our opinion is that as in the present case bank",,

officers failed to report attempted suspicious transactions which they are required to report U/s 12 of PMLA and such instances have been repeated,,

over several branches of the bank, they (the banks) cannot be absolved of the responsibility. If, senior level officers were involved/party to the",,

conversations and the manner in which they readily agreed to become party to a dubious scheme, then those discussions are to be reported as per the",,

said provisions and for failure to do so, the banks are liable to action in terms of section 13 of the Act.",,

60. To meet the argument addressed on behalf of banks that the banks did not have the requisite details to report the incident. Admittedly, that the",,

same incident was reported by Standard Chartered, therefore it cannot be accepted that other Banks did not have the sufficient details to report the",,

same.,,

61. In view of the reasons mentioned by us in paras 46 to 60 of this order and the contents of Para-2.16 of RBI Master Circular dt. 1.7.2013 regarding,,

attempted suspicious transactions to be reported taken together, it appears to us that the subject conversations are to be treated as required to be",,

reported to Director FIU as attempted suspicious transactions in terms of the PMLA Act and the PML (Maintenance of Records) Rules, 2005.",,

62. The appellants may be correct about modus operandi used by the Cobra investigator but at the same time, it is also true that the conversations are",,

not between the two private parties. One of the parties is a bank who are responsible to comply their obligations under Section 12 of the Act and in,,

case of violations of obligations, the body appointed by the Government of India is entitled to impose the penalty. Thus, we are of the view that since",,

the discussions are of serious nature even orally which are by the way not denied by any of the bank, thus, these types of conversations are liable to",,

be reported. It is for the department to accept their explanation or not.,,

63. In the referred master circular of the RBI, it is mentioned that it is likely that in some cases transactions are abandoned /aborted by customers but",,,

even then all such attempted transactions are to be reported in STRs even if abandoned or not completed by the customers.,,

In the present cases, if the nature of recording conducted by the official of Cobra Post is examined, it is apparent that the reporter introduced himself",,,

as the representative of the customer and after discussion the further steps were abandoned/aborted. The bank officials have provided him details,,

though orally at the time of discussions and even suggested lot of ideas as to how the black money can be converted into white money and kept in the,,

bank. Therefore, these conversations ought to have been reported as attempted suspicious transactions in terms of Section 12(1) (b) of the Act read",,,

with Rule 2(g) of Money Laundering (Maintenance of record) Rules, 2005. In having not sent the required reports, the banks are liable for action in",,,

terms of Section 13 of the Act. and benefit of Section 13(2)(a) would have been availed in the nature of the peculiar circumstances in the matters as,,

discussions are covered as reported matters within the meaning of section 12 (2) of the respondent.,,

64. However, at the same time we are of the considered opinion that the present matter is not a case of imposition of maximum penalty provided",,,

under the statute as imposed by the respondent under section 13 (2) (d) but one of penalty under section 13 (2)(a). The orders passed vide Director,,

FIU imposing major penalty of 13(2)(d) is not sustainable.,,

On this aspect, the impugned orders are required to be modified/set-aside on the following reasons:-",,,

(i) The respondent has failed to give reasons why the maximum penalty as imposable under the Act was imposed in respect of the present appellants.,,

The impugned order passed in this regard imposing maximum penalty uniformly on all the appellant banks involved in these cases under section 13(2),,,

(d) of the Act is non-speaking.,,

(ii) The respondent itself in the matter of Kotak Mahindra Bank which is one of the banks involved in the Cobra Post sting and against whom Director,,

FIU had initially closed the matter by issue of warning in terms of a letter dated 13.09.2015 bat later on again imposed a penalty on the Bank under,,

Section 13(2) (d) of the Act. Incidentally, appeal namely, FPA-PMLA-1123/DLI/2015 against the said order of Dir. FIU has been allowed vide a",,,

separate order issued today. The said letter dated 13.09.2015 reads as under:,,

F.No. 25-1/2013/FIU-IND Dated 18th Sep, 2014",,,

The Designated Director,,

ING Vysya Bcink 6th Floor",,,

ING Vysya House No. 22,",,

IvJG Road Bangalore,,

Dear Sir,",,

Sting Operation by Cobra Post,,

Please refer to your letter dated February 21, 2014 on the above mentioned subject vide which you had submitted your reply to the",,,

enquiries made by us-under section 12A of the Prevention of Money Laundering Act, 2002.",,

It is observed that you have filed 3STRs covering 79 transactions for the year 2012-13 subsequent to our queries on the subject under,,

reference. This implies that the system prevalent in your bank failed to capture the said transactions at the material time. As you may be,,

aware, this implies that the bank failed to put in place a mechanism to examine, detect and report suspicious transactions thereby violating",,,

the provisions of Sec 12(1)(b) of PMLA, 2002 read with rules 3(D), 7(3), 5(2) and 8(3) of the PML Rules. You are hereby advised to be",,,

more vigilant and exercise caution in future by making necessary modifications and strengthening the PML related procedures in your bank,,

to prevent the recurrence of such events in the event of recurrence of these lapses, we will be constrained to initiate compliance",,,

proceedings against the bank or the persons responsible in accordance with Section 3 of PMLA. This issues with the approval of Director,",,

FIU.,,,

Yours sincerely,",,

(Renu Amitabh),,,

(Emphasis supplied),,,

(iii) The respondent is not supposed to discriminate the present appellant banks when the respondent itself in some cases has condoned the similar acts,,

of other Banks by giving the simple warning u/s 13(2)(a) of the Act. No justification has been given as why the major penalty is imposed in the,,

appellant banks instead of a warning under section 13(2)(a) ibid.,,,

65. We now deal with the point regarding admissibility of the evidence in the case. The entire case of the Respondent is based on electronic evidence,",,

i.e. video recordings and their transcripts uploaded online as the proceedings were initiated on the basis of sting operation conducted by Journalists of,,

Cobra post in respect of allegation on the banks are not complying with (RBI) Master circular dated 01.07.2013 regarding reporting of attempted,,

suspicious transactions to the department, therefore the penalty was imposed.",,

66. It is the common submission on behalf of all the appellants that the Ld. Director could not have relied on the sting operation in as much as the,,

held inadmissible in evidence.,,

This Court in Anvar P. V. has held in no uncertain terms that the evidence relating to electronic record being a special provision, the",,

general law on secondary evidence Under Section 63 read with Section 65 of the Act would have to yield thereto. It has been propounded.,,

that any electric record in the form of secondary evidence cannot be admitted in evidence unless the requirements of Section 65B are,,

satisfied. This conclusion of ours is inevitable in view Of the exposition of law pertaining to Sections 65A and 65B of the Act as above.,,

[Emphasis Supplied],,

70. The electronic evidence in addition to the above legal requirement is also required to satisfy the tests laid down by the Hon'ble Supreme Court in,,

the case of Ram Singh v. CoL Ram Singh 1985 Supp SCC 611 which are as follows:,,

Ã¢â¬32. 1) The voice of the speaker must be duly identified by the maker Of the record or by others who recognise his voice. In other words",,,

it Manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the,,

speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of,,

the speaker.,,

2) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence direct or,,

circumstantial.,,

3) Every possibility of tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said,,

statement out of context and, therefore, inadmissible.".,,

4) The statement must be relevant according to the rules of Evidence Act.,,

5) The recorded cassette must be carefully sealed and kept in safe or official custody.,,

6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances. """,,,

71. In the present case, the conversation has been recorded in the recorder. It is a settled law that tape recorded evidence is merely corroborative and",,,

cannot form the basis of a finding. Reliance in this regard is placed on the judgment in Nilesh Dinkar Paradkar v. State of Maharashtra (2011) 4 SCC,,

143 (paragraphs 31 to 39) where the Hon'ble Supreme Court categorically stated as under:,,

Ã¢â¬31. In our opinion, the evidence of voice identification is at best suspect, if not, wholly unreliable. Accurate voice identification is much",,,

more difficult than visual identification. It is prone to such extensive and sophisticated tampering, doctoring that the reality can be",,,

73. Further, the Hon'ble Supreme Court of India in R.K. Anand v. Delhi High Court (2009) 8 SCC 106, was also of the view that sting operation are",,,

to be to a strict proof as to its genuineness before it can from the basis of a,,

Ã¢â¬Å. However, what we find completely inexplicable is why, at least at the beginning of the proceeding, the High Court did not put",,,

NDTV, along with the two appellants, in the array of contemnors. Looking back at the matter (now that we have on the record before us the",,,

appellants' affidavits in reply to the notice issued by the High Court as well as their first response to the telecast in the form of their live,,

interviews), we are in the position to say that since the contents of the sting recordings were admitted there was no need for the proof of",,,

integrity and correctness of the electronic materials. But at the time the High Court issued notices to the two appellants (and two others) the,,

position was completely different. At that stage the issue of integrity, authenticity and reliability of the sting recordings was wide open. The",,,

appellants might have taken the stand that not only the sting recordings but their respective responses shown by the TV channel were fake,,

and doctored. In such an event the TV channel would have been required to be subjected to the strictest proof of the electronic materials on,,

which its programmes were based and. In case it failed to establish their genuineness and correctness, it would have been equally guilty, if",,,

not more, of serious contempt of court and other criminal offences. By all reckoning, at the time of initiation of the proceeding, the place of",,,

NDTV was along with the appellants facing the charge of contempt.,,

[Emphasis Supplied],,

As per the ratio of the said decision, if the department was relying upon certain video tape of the conversation could not have simply relied on such",,,

evidence which is not proved as per the provision of Evidence Act and settled law.,,

74. The Hon'ble Delhi High Court in Court on its Own Motion V/s. State & Others. 2008 (105) DRJ 557 (DB I) laid down the following principles,,

with regard to sting operations:,,

Ã¢â¬Å86. Reference was also made to erudite and academic articles on the subject, but we are not inclined to discuss them in this judgment.",,,

The views of various scholars, based on the law in some other countries, lead us to conclude as follows:",,,

1. A sting operation by a private person or agency is, by and large, unpalatable or unacceptable in a civilized society. A sting operation by",,,

a State actor is also unacceptable if the State actor commits an offence so that an offence by another person is detected.,,

2. A State actor or a law enforcement agency may resort to hidden camera or sting operations only to collect further or conclusive evidence,,

as regards the criminality of a person who is already suspected of a crime.,,

3. The law enforcement agency must maintain the original version of the actual sting operation. Tampering with the original video and,,

audio clips of a sting operation may lead to a presumption of the spuriousness of the entire operation.,,

4. A sting operation cannot be initiated to induce or tempt an otherwise innocent person to commit a crime or entrap him to commit a crime.,,

5. Normally, if a private person or agency unilaterally conducts a sting operation, it would be violating the privacy of another person and",,,

would make itself liable for action at law.,,

6. A sting operation must have the sanction of an appropriate authority. Since no such authority exists in India, and until it is set up, a sting",,,

operation by a private person or agency, ought to have the sanction of a court of competent jurisdiction which may be in a position to",,,

ensure that the legal limits are not transgressed, including trespass, the right to privacy of an individual or inducement to commit an offence",,,

etc. """,,,

75. Admittedly, the afore mentioned requirements and those in the judgments cited above have not been complied with in the present case.. Therefore",,,

the video tapes and their transcripts are inadmissible as evidence. The Ld. Director could not have relied upon inadmissible evidence in passing the,,

Impugned Order without such compliance. Further, it is also a matter of fact that original equipment used in the recording of the evidence were not",,,

produced in order to establish the case for the purpose of imposing the major penalties u/s 13(2)(d) of PMLA, 2002. Not only that the journalists who",,,

has conducted the sting operation of cobra post has not been examined and the department is merely relying on certain video tape recordings of the,,

conversations between the bank officials and the journalists of cobra post.,,

76. It is also the admitted position that the transcripts and videos were not re-produced in the same condition. It was rearranged and sliced versions of,,

the actual conversations and cannot be considered as conclusive proof of the actual conversations, certain Cobrapost reporter had with the featured",,,

employees of the Appellant Bank. The Cobrapost transcripts not only reflect selective conversation, the video and written transcripts do not match in",,,

entirety.,,

77. The Report of the independent forensic investigator engaged by the one of the Appellants in appeal no. 826/2015 who has carried out a forensic,,

audit on the allegations made vide Cobrapost sting operation, clearly establishes that the sting video footage and the transcripts available do not provide",,,

the complete conversation or complete record of events as they have possibly been rearranged and edited to provide a misleading picture (Annexure,,

D at Page 121 of the Appeal has been filed along with the appeal by the said appellant). It was also been reiterated by the Appellant at multiple,,

instances including its reply dated 24 January 2014 to the Show Cause Notice, during the personal hearing granted to the Appellant on 24 February",,,

2014, additional submissions placed by the Appellant on 05 March 2014 and in Appellant's detailed response of 6 May 2014. Copies of the same have",,,

been filed as Annexure H to K.,,

78. It is evident that the Ld. Director before passing the Impugned Order even failed to investigate beyond the edited tapes and transcripts.,,

Admittedly, the FIU, till date has not received the complete and unedited tapes.",,,

79. The FIU has not produced the original recorded tapes and has sought to rely upon the incomplete version as broadcasted by the Cobra Post,,

Reporter. The transcripts of such incomplete versions of purported sting operation cannot be considered.,,

80. Thus it is apparent that the respondent has failed to establish its case on electronic evidence. The transcripts uploaded online is not admissible and,,

authorized under the law in the absence of proving its case as alleged by the respondent.,,

81. Under these circumstances, for the reasons explained, impugned order passed by the respondents in all the matters are modified to the extent that",,,

the present matters are covered u/s 13(2)(a) and not under section 13(2)(d) of the PMLA, 2002. The finding given by the respondent for major",,,

penalty is not sustainable as on merit the respondent has not proved its case of major penalty. But in future, the banks and their employees are",,,

directed to be careful and if these types of discussion are happened, it should be reported u/s 12 of PMLA, 2002.",,,

82. The appeals are disposed off accordingly, the amounts/FDRs deposited by the banks in terms of the impugned order or the amounts / FDRs",,,

deposited as per the orders of interim measured is directed to be released forthwith. The said banks are entitled to receive the refund of the related,,

amount and / or receive the FDRs in question immediately. All pending applications are disposed off in above terms.,,