

## MOOT PROBLEM

1. Anil Chaudhary and Vikram are friends and each of them are renowned person in their own fields, respectively. Anil is a Commissioner of Income Tax, who qualified the UPSC examination in 1997 and was appointed into the Indian Revenue Services Cadre later in 1998 at the age of 29. Ever since his appointment, Anil Chaudhary, who hails from Uttarakhand, has been in the Income Tax Department in a number of states including Maharashtra, Gujarat and is currently in Tamil Nadu, where he is the Commissioner for the Chennai Region. Anil served as Asst. Commissioner of Income Tax for the Mumbai Circle from 1999 to 2004 and then was transferred to the Ahmedabad Circle, where he served as Asst. Commissioner of Income Tax till the year 2010. In 2011, he was promoted as Commissioner of Income Tax and transferred to the Chennai Circle, which post, he holds till today. It is believed in all the offices where he has worked that, he is close to some of the top officials in the Income Tax Department in the country and also has strong political connections across party lines.
2. Vikram, is a chartered accountant, who hails from Uttarakhand, having practice in Mumbai through a Chartered Accountants firm, which runs by the name M/s Time Value Tax Consultant Services. Both, Vikram and Anil Chaudhary were classmates and roommates in their residential school and have been close friends ever since. In fact, one was the best man for the other, in each of their weddings. Vikram, had passed the CA (Chartered Account's) examinations in the year 1993 at the age of 24 and had commenced his practice as a Chartered Accountant in that year itself in Dehradun. Vikram's initial years were quite meek and his practice did not pick up until the year 2000, which was the year he shifted to Mumbai and started his Tax Consultancy Firm. Subsequent to his move to Mumbai, his growth was phenomenal and by the year 2007, he was one of the most popular Chartered Accountants in Mumbai. He subsequently decided to expand his firm and opened branch offices between the years 2006 and 2012 in Kolkata, Ahmedabad, Delhi, Chennai and Bangalore, wherein, he appointed a local Chartered Accounts to manage the affairs of each of these branches. Today, his firm is one of the top ranked firms in the country.
3. Dhvani Real Estate Ltd (*DREL*) is an unlisted public company, which was incorporated in the year 1999, with its registered office in Uttarakhand, whose main objects of business is to develop real estate and to undertake government tenders in infrastructure

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

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

5. During the period between 01.11.2015 and 31.01.2016, Anil received calls frequently from Vikram and Shivraj, who was the company secretary of *DREL*. While nothing really incriminating was found in any of the conversations during the said period, the officials of the CBI caught on to only one particular conversation arising out of a conference call, which was between Anil, Vikram and Shivraj at around 11: 55 P.M. on the 31<sup>st</sup> of January, 2016, which lasted for about 20 minutes. In the said phone conference, there was some talk about some transaction which was to take place in the Office of the Sub-Registrar Office, Kanchipuram, which was supposed to be a “big break in that area”. There were also talks of some “first of its kind project” and of some amounts having to be paid in cash before registration. Subsequently, it was concluded in the call that, Shivraj should follow up on the transaction and should keep the other two informed.
6. On the basis of the aforesaid conversation, the CBI, after a detailed late night meeting held at 2AM in its headquarters, decided to send a team of its officers to the concerned Sub-Registrar Office, in disguise. When the officials deputed by the CBI arrived at the said office, it was informed by the Sub-Registrar that there was only one high value registration scheduled for the day, wherein a land admeasuring about 150 acres near Kanchipuram Town, was to be sold by one Raghu Chandran to the *DREL*. The papers had been put for the verification of the Sub-Registrar, who had, on the previous day itself, informally, found the papers for registration to be in order. After the same, at around 11:30 AM, the CBI officials present therein split into separate teams to observe what was going on in the Sub-Registrar office. At around 12:15 P.M, two cars arrived back to back into the sub-registrar office, in which one, Mr. Chandran and Siddanth arrived in one car and an unknown person came in another. It was subsequently found out that the unknown person was one Mr.Suresh. While Suresh waited out, Siddanth and Chandran went into the Sub-Registrar’s Office and smoothly finished their registration. Subsequently, both the vehicles, left the Sub-Registrar’s Office campus and entered into a building, which was situated two streets away. While the officials of the CBI followed them, until the gate, it could not enter the same and they decided to wait outside to see if there was a way to figure out what was happening inside. About ten minutes later, 3 cars emerged out of the parking and left in different directions. The team of CBI officers split into three and stopped each of these cars, about 1 km away. Upon checking, it was found that in the car of Chandran, there was a sum of Rs.60,00,00,000/- in cash, but nothing

was found in the vehicles of Siddanth or Suresh. The cash was found in 6 black suitcases, which were immediately seized by the CBI and Chandran was immediately arrested.

7. A First Information Report (F.I.R.) was immediately lodged by the CBI stating offences under the Indian Penal Code against Chandran, who then was taken into custody and an investigation was conducted by the concerned authorities, wherein Chandran informed the CBI that he was only a seller of 150 acres of land, for a consideration of Rs.130 crores of which, the Rs.100 crores was the cash component, with the guideline value component having been paid via a cheque dated 1<sup>st</sup> February, 2016, for a sum of Rs.30 crores, which he produced. He further stated that he had already received a sum of Rs.40 crores in cash on the 30<sup>th</sup> of January, 2016. Further, when asked as to who had paid the sum of Rs.100 crores in cash, Chandran replied that, he thought it was the company he was dealing with, although he said, there were two conversations where he got a feeling that it was someone else, who was paying the sum. All of these were recorded as statements under Section 161, Code of Criminal Procedure 1973.
8. The CBI also sent the six suitcases to the forensic department, which upon verification found 5 sets of finger prints on the suitcases, which were not made more than 3 days ago. Out of the five sets, three sets were identified to be that of Suresh, Chandran and Siddanth. In order to identify the other two sets of finger prints, the forensic team, in light of the extreme gravity of the matter, decided to compare the two unknown sets of finger prints with the biometric data collected by the Government of India for the purposes of the Aadhar Card. Upon making such comparison, it was found that finger prints belonged to one of the most influential industrial couples in Tamil Nadu, Mrs. and Mr.Raju, who of late, had been reported to have had an Income Tax Survey conducted in their house, couple of months ago, where unaccounted money, to the tune of Rs.350 crores is said to have been found. While this was reported in local newspapers, the papers of the Income Tax Department on this regard are unclear and an Assessing Officer, one Mr. Ram had passed an assessment order by which, the amount of tax liability was fixed at Rs.35 crores. This assessing officer happens to be an immediate subordinate of Anil and the rumour goes that he is a close aide of Anil.

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

*Siddanth: "I am one of the shareholders of Dhwani Real Property Ltd and all decisions of the company are taken by a learned independent management team. Interference by the shareholders is very limited. Yes, I am related to Anil and I am a good friend of Vikram as well."*

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

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

10. Further, the CBI also called for records of calls made by Siddanth and upon examining the same, it was found that Siddanth had received a lot of calls from Suresh and after every call from Suresh, within a span of 30 mins, Siddanth had time and again, called a specific number (about 57 such calls were seen), which was assigned in the name of the Personal Secretary to Vikram. Upon comparison, it was found that after every call to the said number, within a span of one hour, a call was made by Vikram to Anil's wife's (was made about 71 times). In particular, on the day prior the transaction in Kanchipuram took place, there were as many as 16 calls, where such a pattern could be observed. In fact, about 20 minutes prior to the CBI getting hold of the six suit cases of cash in Chandran's car, a call had been made from Siddanth to Vikram's Personal Secretary's number, right after which, there had been a call from Vikram's number to Anil's wife's number.
11. On the basis of the suspicion created through the aforesaid investigations, the CBI decided to conduct a search in Anil's house in Chennai, on the 23<sup>rd</sup> of February, 2016 at 9 A.M. in the morning. The search was conducted after due permissions as required under law. During the course of the search, it was found that Anil lived with his parents and has an unmarried brother who however lived separately and visited on weekends, though had a room he used for himself. On enquiry he was found to be, very close to all the family members of Anil. During the course of the raid in Anil's house, in a shelf in Anil's brother's room, three cartons were found, which contained, a large number of share certificates relating to *DREL*, fourteen diaries from the year 2000 to 2016 which

had names of cartoon characters written on it on particular dates and certain numbers and alphabets written across it. For example, on 29<sup>th</sup> January 2016, the diary read “Archie” and across it the number “600” along with alphabet “*Pe*” in Devanagiri script was written. Upon further enquiry it was found that the shares found in the room were all the shares that were retained by Anil’s family in *DREL*. Further, upon detailed analysis of the 16 diaries that were available, it was found that the names “Tom”, “Jerry”, “Archie”, “Olive”, “Scooby” and “Bravo” were repeated often. It was also observed that the entries in these dairies often fell within a **30** day gap, within which transactions took place in *DREL*. Thus, the CBI suspected that these diaries actually reflect the amounts that went from Anil to *DREL*, but the main issue that they faced in conclusively saying so was that the handwriting in these dairies did not match the handwriting of any of the family members of Anil.

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

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

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

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

...

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

...

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

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

15. During the pendency of these writ petitions, the criminal case against the accused proceeded and a charge sheet was filed by the CBI, alleging violations of Section 420 and 120B of the Indian Penal Code read with Section 7, 8, 11, 12 and 13(1) (e) of the Prevention of Corruption Act; and Section 3 of the Benami Transactions (Prohibition) Act, 1988. After due investigation, a report under section 173(2) of Cr.P.C was filed and charges were framed against all the accused under Sections 7, 8, 11, 12 and 13(1)(e) of the Prevention of Corruption Act, 1988; Section 3 of the Benami Transaction (Prohibition) Act, 1988; Section 420 and 120B of the Indian Penal Code. The aforesaid charges were framed against Anil, Vikram, Siddanth, Shivraj and all other shareholders of *DREL*. Independent charges were also framed against Mr. & Mrs. Raju as well as Chandran.
16. Against the aforesaid charge sheet, a Criminal Original Petition under Section 482 of Cr.P.C was preferred by Anil and Vikram, seeking to quash the proceedings, in which amongst several complicated issues, one particular issue of some difficulty was canvassed on behalf of the Petitioner. The Counsel who appeared for the Petitioner, argued that the charges against Anil under section 13(1)(e) of the Prevention of Corruption Act cannot be sustained, as the properties, alleged to belong to Anil were neither owned in his name nor “on his behalf”.
17. Per the learned Counsel appearing for the petitioner, for a property to be held “*by or on behalf of*”, by virtue of the Benami Transaction Prohibition Act, the holder of such property could only be a wife or an unmarried daughter. It was argued that the Prevention of Corruption Act, being a later legislation, the Parliament, in this respect, ought to be deemed to have noted this premise of the Benami Transaction Prohibition Act and hence, when the Prevention of Corruption Act uses the words “*if he or any person on his behalf*”, it only refers to the property in the name of the wife or the unmarried daughter.
18. The Ld. Single Judge, despite seeing considerable force in the arguments of the Counsel, felt bound by the decisions of the Hon’ble Supreme Court and held that the charge sheet framed, could not be quashed. With respect to the other issues that were raised, which concerned the scope of her powers under section 482, she held that while dealing with the issue of whether admissibility of evidence could be gone into in a petition under Section 482 Cr.PC, against framing of charges, the Court does not have the power to do

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

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

- (i) *What is the Scope of judicial review in a proceeding under Section 482 of the Criminal Procedure Code, after charges have been framed?*
- (ii) *Whether a transaction can be called a benami transaction, when the title to the property is not with the wife or an unmarried girl child? In other words, whether any transaction other than one in the name of a wife or an unmarried girl child can be called a benami transaction, in light of the specific sections provided for in the Benami Transactions (Prohibition) Act? If not, should these assets be taken into consideration while calculating assets for the purpose of section 13(1)(e) of the Prevention of Corruption Act?*
- (iii) *Whether properties of third parties can be attached under section 5 proceedings, when there is no FIR against them? Can it extend to sums which were earned prior to the notification of the relevant sections of the PMLA Act?*

(iv) *If it extends to such, prior to the notification also, is section 5 of the Prevention of Money Laundering Act, 2002 constitutionally valid?*

(v) *Can questions of admissibility of evidence be gone into at quashing stage, where charges have been framed?*

(vi) *Whether the transcripts of the call made on the night of 31<sup>st</sup> January – 1<sup>st</sup> February, 2016 can be relied upon and whether the same are admissible in evidence?*

20. The matter has been posted for final hearing on 29<sup>th</sup> January 2017.

- 
- *It shall be deemed that the participants can raise new issues (if any) & relevant to the facts and issues already identified, after filing the written submissions on such issues.*
  - *Kindly note that the Benami Transactions (Prohibition) Amendment Act, 2016 has come into force on 01.11.2016. Participants are free to raise any issues as may arise out of this amendment as well, if found necessary and applicable in the facts and circumstances of this case.*
  - *For the purposes of this problem, Anil Chaudhary in respect of the issues pertaining to the appeal arising out of the Quash proceedings and the Employees of DREL in respect of the issues pertaining to appeal arising out of the writ petitions, may be treated as the main petitioners and the CBI, Enforcement Directorate and the Union of India may be shown as the main respondents, although there are other petitioners and respondents in this case.*

**Disclaimer:** *None of the facts above are intended to depict anyone or any pending litigation. All facts stated and issues raised herein, are out of academic research and may be taken in that light only.*