



India's anti-graft laws apply to both givers and recipients of bribes, top court rules

3 Nov 2022 | 01:22 GMT | Insight ⓘ

By [Freny Patel](#)

A person offering a bribe can be prosecuted under India's anti-money laundering legislation on the grounds of the person's intent before the money is handed over, according to an order by the country's top court. Overturning an earlier decision of a court in the state of Madras, the Supreme Court of India ruled that by handing over money with the intent of giving a bribe, a person "will be assisting or will knowingly be a party to an activity connected with the proceeds of crime."

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The active participation of the person concerned meant that the money could be considered "proceeds of crime" under the provisions of India's 2002 Prevention of Money Laundering Act, or PMLA, the Supreme Court's 10-page order said.

The ruling marks a departure for Indian courts, which have tended to put the legal onus of bribery on the person accepting the bribe, rather than the person offering it.

While India's new anti-corruption law also targets bribe givers, the Supreme Court judgment is significant because the civil and criminal consequences under the PMLA are far higher than the Prevention of Corruption Act, Ketan Mukhija, partner at Link Legal told MLex.

The order overturns a ruling by the Madras High Court, which had dismissed allegations of money laundering against an individual who had allegedly handed over 5 million rupee (\$60,630) to a government official.

The Madras court had concluded that the money couldn't be defined as tainted under the PMLA and could only meet that definition once the cash had been received by the public official.

The state court has also concluded that the money couldn't be considered tainted because it was never claimed that the funds had been gathered through criminal activity. Further, the Madras court said that the amount had been seized by the Central Bureau of Investigation, which had laid a trap targeting the government official.

In overturning the Madras court's decision, the Supreme Court said that the case hinged on the intent before the amount was handed over.

The Supreme Court judgment also pointed to the definition of “proceeds of crime” under the anti-money laundering legislation, which includes any property derived as a result of criminal activity relating to scheduled offenses under the law.

The Directorate of Enforcement, or ED, is responsible for enforcing the PMLA and can confiscate property linked to proceeds of crime, as defined by the legislation.

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Geographies: Asia, India, South Asia

Topics: Bribery , Money laundering

Printed on 3 Nov 2022 by patel@mlex.com.

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