

1/9/22

① In Benami property cases, the SC has wisely placed restrictions on retrospective penal action in a civil law?

Introduction -

Recently SC has declared that section 3(2) of the Benami transaction (prohibition) Act, 1988 as unconstitutional on the grounds of being manifestly arbitrary.

SC ruled on Benami (transaction) :-

① It extended the 3 year imprisonment to 7 years & fine of up to (25%) of market value of property, if any person entered into Benami transaction

② Subsequently it ruled that concerned authorities cannot initiate or continue criminal proceedings against transaction prior to 2016 (Act) as such proceedings will be quashed.

Forfeiture of Benami properties :-

(i) SC held the provision in [Benami, 1988 act] regarding forfeiture of benami properties as unconstitutional & only the provisions of the same in 2016 act will apply.

PMLA (2002) -

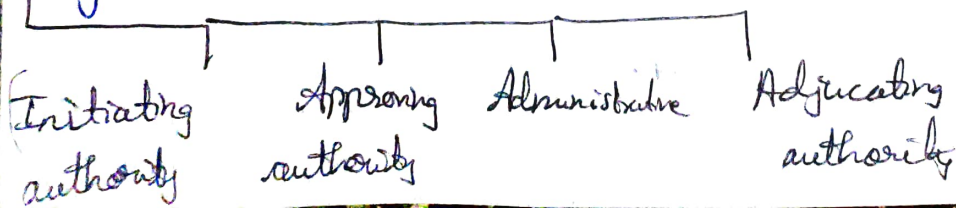
* SC upheld provisions that allows authorities to take possession of properties in exceptional cases, before trial.

* As it ruled this provision leaves the scope for arbitrary application.

Benami Transaction (2016) Act -

(1) provides for an Appellate tribunal to hear appeals against adjudicating authority.

(2) The act also established (4) authorities to conduct inquiries & investigation regarding Benami transaction.



③ After the process completed by approval of Adjudicatory authority, the Based on an order to confiscate the property, the administrator receives & manage the property as per prescribed law.

Conclusion - Thus, the Judgement provides relief to thousands of property holders who faced imminent prosecution for transactions that are denominated as benami to prior 2016.