

FINAL COURSE
ELECTIVE PAPER 6D: ECONOMIC LAWS

CASE STUDY - 3

Mr. Krishnakant Mathur was a lecturer in agricultural college of Pushkar. After 25 years of his service he retired from his job last month. To utilise his time, Mr. Mathur keeps the accounts of his society and has also started a coaching classes for the needy and poor students. Mr. Mathur has three children, two daughters Jaya & Lata and son Neeraj. His wife Asha Devi is a house wife. Neeraj is eldest of all the three children. Jaya and Lata are still studying in Class 12th and 10th respectively. At the time of retirement of Mr. Mathur, Neeraj has completed his engineering degree.

During his work tenure, Mr. Mathur purchased one property (area 2000 Sq feet), at Mansarover colony, Jaipur in the name of his son Neeraj Mathur. The property already has a constructed house over it. Mr. Mathur also owns an ancestral property in his village Titari. Since he was posted at Jaipur, so he resided at Mansarover colony house with his family.

Neeraj got a good job in Maharashtra State Electricity Board (MSEB) as a Junior Engineer. He was posted at Pune. He was very desperate to earn more money and become rich. For clearing the contractors billing and giving necessary approvals he started giving favours to the contractors and vendors. Various projects were in the hands of MSEB, they authorised Neeraj to finalise the tenders related to supply of required articles, goods and services for attainment of the government projects. Many contractors pleased him by cash or kind for acceptance of their tenders for the projects. Neeraj used his position in the said department by manipulating the bidding process.

Soon, Neeraj got promotion. He decided to celebrate his grand success and planned for a trip to Hongkong with his friend. There in Hongkong, he came to know about XBL Company, which was a joint ventures abroad of Indian Companies. He thought to make an equity investment in XBL Company. He talked with the Indian Service Providers for the investment of funds to Securities Exchange of Hongkong for buying equity in XBL Company. Neeraj applied for drawl of foreign exchange, but due to legal compliances, authorised dealer denied for the said transaction. Neeraj, through known authorise dealer, on payment of commission exported the foreign exchange for the equity investment in XBL Company. So in this way, Neeraj made an overseas investments.

In the meantime, Neeraj, while residing in Pune, met a girl in his office named Shalini. They both fell in love with each other. After couple of months they both decided to marry without informing any of the family members as they both are of different caste. As a witness Rahul, Neeraj's friend, was the only one who knew about his marriage. Rahul is located in Dubai and works as a Senior Manager with AI-Aadil Works LLC.

Rahul insisted him to come to Dubai. So Neeraj and Shalini planned their visit to Dubai. Shalini discussed about her trip with her friend. Her friend told that Dubai is a beautiful place and is a hub for Gold and electronics. Since Shalini had a keen interest in buying gold and Neeraj had a restriction in carrying foreign currency, he came up with an idea. He gave Rahul's family Rs. 1 Lakh in cash, in India and took the equivalent foreign currency from Rahul in Dubai. They both had a good time in Dubai. They visited the Gold Souq in Deira. Shalini purchased gold jewellery worth Rs. 1.5 Lakh. Rahul also took them around to see some latest Electronic items. Neeraj found that the price of the Smart Television was less and the shopkeeper proposed further discount without a bill. So Neeraj also bought a new Television worth Rs. 60000. After their return, they did not declare it to the Indian customs and passed through the Green channel. Custom officials on the matter of doubt withheld them at the airport and interrogated. After compliance with the required formalities under the legal prospects, the matter was sorted.

In 2016, during the period of demonetisation, Neeraj was holding a cash of Rs. 10 Lakh. He deposited Rs. 3 lakh in his and his wife's account within the permissible limit imposed by the government. To settle the rest of the amount he took the help of his friend Jai Bakshi. Jai is a renowned hotelier based in Mumbai. As per the discussion Jai told that he could manage Rs. 2 Lakh by depositing it in his account. Further Jai told that he will charge 10 percent

of Rs. 2 Lakh to accommodate the amount in his record books. Also, he will return this amount only after six months due to scrutiny of income tax department. Neeraj found that the market rate of changing the demonetised 500 and 1000 rupees notes were 50% of the given amount. So he thought it is better to agree to the terms and conditions of Jai and gave him Rs. 2 Lakh. With the remaining Rs. 5 Lakh, he booked a flat in Shubh Laxmi apartment near Badlapur Mumbai in the name of his wife Shalini. Neeraj on record showed above that paid amount of Rs. 5 lakh as a loan taken from Shalini's uncle.

Whereas, Shubh Laxmi Apartment, constructed by J.K. Builders was registered with the Maharashtra Real Estate Regulatory Authority. The flat was sold by Himmat Chand to Neeraj. In the meantime J.K. Builders filed an application for bankruptcy and shed of their responsibilities as to the completion and handover of the possession of the flats to the buyers. Neeraj approached to the office of J.K. Builders and they denied from their responsibilities by saying that the said flat was sold by Himmat Chand, so he owns the responsibility. Whereas Himmat chand took the plea that ultimate responsibility lies with the J.K. Builders, being a promotor. Neeraj went to the consumer forum for the relief.

In the meantime, due to the tip off received from unknown sources and on grounds of noticing the suspicious activities of Neeraj, Income Tax Department issued a scrutiny notice to him. According to the Notice, Neeraj was asked to clarify the mode of payment for the loan amount from his uncle as there was no entry of cash credited to Shalini's account. Neeraj and Shalini, however, managed and came safely out of a situation on benefit of doubt.

After few months, Neeraj went to Jaipur with his wife Shalini to meet his family. Mr. Mathur was extremely angry and shattered to see his son married without his consent. Mr. Mathur and his son had a heated argument and he turned both of them out of his house. Neeraj told that this house is in his name and legally belongs to him. Hence his father has no right to throw them away.

Mr. Mathur files a case for claiming ownership over the property as he does not want to give the possession of his house to Neeraj. As per plaint allegation, Mr. Mathur has purchased the property in 18/2/2015 in the name of his son Neeraj Mathur. As per plaint allegation, he has purchased the property out of his own income. He has claimed relief that he be declared as owner of the property and Neeraj should be permanently restrained from interfering in possession of the property. Plaint clearly reveals that Mr. Mathur has purchased the property out of his own income in the name of his son Neeraj. It was his own property and he had claimed declaration of ownership right over the property. He has also prayed for permanent injunction against his son. Entire plaint allegation does not whisper that it was joint Hindu family property or purchased by Mr. Mathur for joint Hindu family.

On the other hand, Neeraj claimed that he has purchased the property from his own income, his father was not having any right over the property.

During pendency of the suit, Mr. Mathur died. According to the procedure of the Tribunal in case of death of one of several plaintiffs or of sole plaintiff, the right to sue survives. The Tribunal, on an application made in that behalf shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. So, his wife and two daughters were impleaded as legal representatives of the deceased. His legal representatives have amended the plaint and have claimed declaration that the property is Joint Hindu family property. By detail amendment, made in the plaint, his legal representatives pleaded that Mr. Mathur was "Karta" of Joint Hindu Family.

The Tribunal held that in the present case, as per the claim of Mr. Mathur he purchased the property in the name of defendant i.e. the defendant was Benamidar. So, Mr. Mathur was not entitled to claim any right over such property in the light of Section 4 of the Prohibition of Benami Property Transactions Act, 1988.

Further, the Tribunal held that Late Mr. Mathur or legal representatives of the plaintiff have neither pleaded nor proved that the defendant was holding the property as a trustee or in a fiduciary capacity for the benefit of other persons for whom he was a trustee or was standing in a fiduciary capacity, inter alia, as per original pleading and amended pleading, the property was owned by Mr. Mathur as his self-acquired property or property was owned by Joint Hindu Family. Nothing has been pleaded by original plaintiff or his legal representatives that Neeraj was a

trustee or standing in a fiduciary capacity for the present legal representatives, original plaintiff and for others. Inter alia, it has been specifically pleaded that the owner was the plaintiff and he has purchased the property in the name of the present defendant.

Objective Type Questions:

1. In the given case study, Neeraj and Shalini bought gold jewellery worth Rs. 1.5 Lakh from Dubai. They have custom clearance through green channel. State whether the given act will constitute an offence under the Prevention of Money Laundering Act, 2002?
 - a. Yes, because the gold bought is beyond the permissible limit
 - b. Yes, because of an evasion of duty chargeable thereon goods on an & above the permissible limit.
 - c. No, because they are carrying the original bill of the purchased gold
 - d. No, because gold bought is within the permissible limit
2. Will Shalini's uncle be liable for punishment under the Money Laundering Act, if he lends the loan amount from his known sources of income?
 - a. Yes, because he is knowingly associating in the crime
 - b. No, because he is not a party to the crime
 - c. Yes, because he is actually involved in the process
 - d. Not sure
3. During the period of demonetisation Neeraj deposited Rs. 2 Lakh in Jai's account. who is the beneficial person in the light of the Prevention of Money-Laundering Act, 2002?
 - a. Neeraj
 - b. Jai
 - c. Both a and b
 - d. Neither a nor b
4. Suppose Mr. Mathur acquired a property from undisclosed & unaccounted sources of funds. Later, he created a trust of his entire property for his family benefit and appointed Neeraj as his trustee. Will Neeraj be held liable for such transaction made by Mr. Mathur-
 - a. Yes
 - b. No
 - c. Partially Liable
 - d. Not Sure
5. Neeraj in the course of his duty took commission in clearing the bill. This act can be termed as?
 - a. Money laundering through Prevention of Corruption Act, 1988
 - b. Money laundering through unlawful activities (Prevention) Act, 1967
 - c. Money laundering through customs
 - d. Money laundering through Indian Penal Code, 1860
6. Can Neeraj resale his house located in Jaipur to his father?
 - a. No, it is prohibited under Benami Transaction

- b. Yes, Because Neeraj has the right to sale the property
 - c. Yes, because Neeraj is an owner
 - d. Both b and c
7. State which statement as to the drawl of the foreign exchange by Neeraj for transaction related to equity investment in XBL Company is correct –
- a. Neeraj can do such transaction through authorised dealer by providing commission on export for equity investment in XBL Company.
 - b. Neeraj can do such transaction by directly buying equity in XBL Company
 - c. Neeraj cannot transact for equity investment in XBL Company
 - d. Drawl of foreign exchange by Neeraj for payment of commission on exports towards equity investment in XBL Company, is prohibited.
8. Neeraj can claim relief for the completion and handover of the possession of the flat purchased in Shubh Lakshmi Apartment against-
- a. J.K. Builders
 - b. Himmat Chand
 - c. Both (a) & (b)
 - d. Maharashtra Real Estate Authority
9. When any transaction cannot said to be benami transaction-
- a. If a person deposits old currency in account of another person in an understanding that account holder will return the money in new currency
 - b. Individual held property in joint name with his grand children with the consideration paid by an individual.
 - c. Company raising share capital through fictitious shareholders
 - d. Person takes a loan and not able to prove the genuinity of the lender
10. Suppose there are 3 bidders X, Y, & Z in a tender process initiated for MSEB. X & Y bidders were removed by neeraj unethically showing them incompetent to make bid in the tender process for supply of goods to MSEB for its project. This relates to-
- a. Regulation of combinations
 - b. Abuse of dominant position
 - c. Controlling affairs or management
 - d. All of the above

Descriptive Questions:

1. a. Neeraj without consulting his Chief Engineer Authority, affixes his sign and seal to a document certifying Mr. X (Fictitious Client) as a registered dealer of electronic goods. He there by obtains his share for certifying the said document.
- Mr. X misappropriates this forged document for his business to obtain various projects of government for supply of electric goods.
- Examine the given situation as to the nature of offence committed under the Prevention of Money Laundering Act, 2002.

- b. Neeraj While returning to India from Dubai trip gave wrong declaration about his gold and electronic purchase at the airport. State the nature of liability of Neeraj for the commission of the above act?
2. a. Neeraj was given an offer by a company vendor to disclose him the lowest bid quoted by other vendors. Neeraj accessed the computer of his Executive Director and passed on the lowest quotation to the vendor and thus helped him in quoting the lowest among all the bids. Examine and analyse the situation and conclude how Neeraj will be held liable under PMLA?
- b. If suppose Neeraj with one of his friend registers a company and quotes bid to get a tender of MSEB to get an extra income. Neeraj being at the back foot helps his friend unofficially to get maximum tenders allotted to their company. They need to raise a share capital of the company. So Neeraj decided to invest from his unknown sources of his income in the name of fictitious shareholders.

Determine in the given scenario, the liability of Neeraj being covered under which Act?

3. (i) The Competition Commission of India (CCI) has received a complaint from a State Government alleging that Shubh Limited and Mangal Limited have entered into an informal agreement, not enforceable at law, to limit or control production, supply and market, to determine the sale price of their products. Such an action of these companies has an appreciable effect on competition.

Examining the provisions of the Competition Act, 2002:

- (A) Decide whether the above agreement has appreciable effect on competition.
- (B) What factors shall the Competition Commission of India consider while taking the above decision?
- (C) What orders can the Competition Commission of India pass on completion of the inquiry?
- (ii) Explain the restrictions, if any, under Foreign Exchange Management Act, 1999 in respect of the following issue and transfer of shares:

Issue of Equity Shares of ` 1 crore at face value accounting for 45 percent of post-issue capital to non-resident Indians in U.S.A. on non-repatriation basis. The shares are issued by M/s ABC Knitwear Limited to finance the modernization of its plant.