OFFENCES AND PROSECUTIONS UNDER PMLA, PBPT ACT, BLACK MONEY ACT & INCOME TAX ACT & INTERPLAY OF LAWS

BY

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The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act,2015

49. Punishment for failure to furnish return in relation to foreign income and asset

(Black Money Act)

If a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Incometax Act, who at any time during the previous year, held any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise, or was a beneficiary of such asset or had income from a source outside India and wilfully fails to furnish in due time the return of income which he is required to furnish under sub-section (1) of section 139 of that Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under sub-section (1) of section 139 of the Income-tax Act if the return is furnished by him before the expiry of the assessment year.

50. Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India (Black Money Act)

If any person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, who has furnished the return of income for any previous year under sub-section (1) or sub-section (4) or subsection (5) of section 139 of that Act, wilfully fails to furnish in such return any information relating to an asset (including financial interest in any entity) located outside India, held by him, as a beneficial owner or otherwise or in which he was a beneficiary, at any time during such previous year, or disclose any income from a source outside India, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

51. Punishment for wilful attempt to evade tax (Black Money Act)

(1) If a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

- (3) For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—
 - (i)has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or
 - (ii)makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv)causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

276C. Wilful attempt to evade tax, etc

(Income Tax Act)

(1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or [imposable, or under reports his income] under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,

Punishment:

If Tax evaded is more than Rs. 2.5 Lacs: Minimum 6 Months

Upto 7 years & fine

In other cases: Minimum 3 months

Upto 2 years & fine

Explanation :

Willful attempt to evade tax for the purpose of the section shall include a case where any person:

- (i) has in his possession or control books or other documents containing false entry; or
- (ii) makes or causes to be made any false entry in the books or documents; or
- (iii) willfully **omits or causes to be omitted any relevant entry**; or
- (iv) causes any other circumstance which will have the effect of enabling such person to evade any tax, penalty or interest.

463. Forgery (IPC)

Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Section 471 (IPC)

Using as genuine a forged document or electronic record:

Whoever fraudulently or dishonestly uses as genuine any document or electronic record, which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Section 276C (2)

If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall **not be less than three months** but which may extend **to two years** and shall, in the discretion of the court, also be liable to **fine**.

Whether the Assessing Officer has to wait till the completion of the assessment for initiating the prosecution under these Sections?

For sub-section (1) Evasion of Tax

Prosecution can be proposed or initiated even before the completion of assessment proceedings

(Tip Top Plastic Ind. vs ITO) (1995 214 ITR 778 Mad)

Sub-section (2) Evade to pay

It can only start after the assessment is complete and tax, penalty or interest has become due

(Vijay Chandra Chandulal Shah Vs State of Gujrat)



52. Punishment for false statement in verification (Black Money Act)

If a person, makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

277. False statement in verification, etc

(Income tax Act)

If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,

Punishment:

If Tax evaded is more than Rs. 2.5 Lacs: Min. 6 Months

Upto 7 years & fine

In other cases: Min. 3 months

Upto 3 years & fine

S. 277A Falsification of books of accounts etc.

(Income tax Act)

If any person (hereafter in this section referred to as the first person) willfully and with intent to enable any other person (hereafter in this section referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person, under this Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

Explanation-For the purposes of establishing the charge under this section, it shall not be necessary to prove that the second person has actually evaded any tax, penalty or interest chargeable or imposable under this Act.



53. Punishment for abetment

(Black Money Act)

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to tax payable under this Act which is false and which he either knows to be false or does not believe to be true or to commit an offence under subsection (1) of section 51, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

278. Abetment of false returns

(Income Tax act)

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income or any fringe benefits chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be punishable,

Punishment:

If Tax evaded is more than Rs. 2.5 Lacs:

Minimum 6 Months

Upto 7 years & fine

In other cases:

Minimum 3 months

Upto 3 years & fine

55. [Prosecution to be at instance of Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Commissioner.] (Black Money act)

(1) A person shall not be proceeded against for an offence under section 49 to section 53 (both inclusive) except with the sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals), as the case may be.

279. Prosecution to be at the instance of [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] (Income tax Act)

Prosecutions under Sections 275A, 275B, 276, 276A, 276B, 276BB, 276C, 276CC, 276D, 277, 277A or 278 only with the previous sanction of the [Principal Commissioner or] Commissioner or Commissioner (Appeals) or the appropriate authority:

Whether show cause notice is a must before initiation of prosecution?

CIT v. Velliappa Textiles Ltd. (2003) 263 ITR 550 (SC)

No show cause notice is required by the law before grant of Sanction.

However, the Department, as a practice, is invariably issuing notices, prior to grant of Sanction.

(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General.

(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the income-tax authorities specified in clauses (a) to (g) of Section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived, under Section 273A or that the offence in respect of which such proceeding was taken would be compounded.

Relation between: Prosecution And Assessment/ Penalty proceedings (including Appeals therefrom)

Whether the prosecution can be initiated even before conclusion of the Penalty Proceedings?

- They are independent of each other
- The two types of proceedings could run simultaneously and that one need not wait for the other.
 [P. Jayappan v. ITO (1984) 149 ITR 696] (SC)
- Existence of other mode of recovery cannot act as a bar to the initiation of prosecution proceedings. [Kalluri Krishan Pushkar v Dy. CIT(2016) 236 Taxman 27] (AP& T) (HC)

If penalty proceedings failed?

Can the Prosecution continue?

The Supreme Court, in *Uttam Chand v. ITO (1982) 133 ITR 909 (SC)*

Prosecution u/s. 277 was for filing of false returns/ verification because the registration of the firm was cancelled on the ground that it was not genuine. The Appellate Tribunal held the registration of the firm to be genuine and consequently the returns as valid. Supreme Court held that once the ITAT had held that the firm was genuine & returns valid, the prosecution under IT Act could not continue.

<u>Radheshyam Kejriwal Vs State of West Bengal</u> -<u>Supreme Court of India 18th February, 2011</u>

The following principles were laid down by the Supreme Court:

- Adjudication proceedings and criminal prosecution can be launched simultaneously;
- 2)Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- 3)Adjudication proceedings and criminal proceedings are independent in nature to each other;

- 4)The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution.
- 5)The finding in the adjudication proceedings in favor of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- 6)In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person is held to be innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue underlying principle being the higher standard of proof in criminal cases.

Commissioner Of Income Tax, ... Vs Bhupen Champak Lal Dalal & Anr Supreme Court of India on 27 February, 2001(2001) 167 CTR (SC) 283

High Court stayed the final outcome of criminal proceedings in view of same question being pending before the ITAT.

Supreme Court concurred.

If no Penalty proceedings were initiated, can the prosecution be launched?

Non-initiation of penalty proceedings does not lead to a presumption that the prosecution cannot be initiated.

Universal Supply Corporation v. State of Rajasthan (1994) 206 ITR 222 (Raj) (HC)

(A.Y. Prabhakar (Kartha) HUF v. ACIT (2003) 262 ITR 287 (Mad.)

OFFENCE UNDER THE PREVENTION OF MONEY LAUNDERING ACT

Definition

3. Offence of money-Laundering.-

(PMLA)

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

"Explanation:- For removal of doubts, it is clarified that,-

- i. a person shall be guilty of offence of moneylaundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:
 - a. Concealment; or
 - b. Possession; or
 - c. Acquisition; or
 - d. Use; or
 - e. Projecting as tainted property; or
 - f. Claiming as untainted property,

in any manner whatsoever;

ii. The process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever"

Section 2 (1)(u): Proceeds of Crime

"proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];

[Explanation - For the removal of doubts, it is hereby clarified that "proceeds of crime" including property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]

Jafar Mohammed Hasanfatta & Ors.Vs. Deputy Director & Ors. Gujrat High Court (DOD: 16.02.2017)

37. A holistic reading of this definition of 'proceeds of crime' and the penal provision under Section 3 of PMLA, which uses conjunctive 'and', makes it luminous that any persons concerned in any process or activity connected with such "proceeds of crime" relating to a "scheduled offence" including its concealment, possession, acquisition or use can be guilty of money laundering, only if both of the two pre-requisites are satisfied i.e.-

- (i) Firstly, if he-
 - (a) directly or indirectly 'attempts' to indulge,
 - (b) 'knowingly' either assists or is a party, or
 - (c) is 'actually involved' in such activity; and
- (ii) Secondly, if he also projects or claims it as untainted property;"

IS THERE OR CAN THERE BE ANY RELATIONSHIP BETWEEN OFFENCES UNDER PMLA

&

OFFENCES UNDER INCOME TAX ACT?

- A. Offences under Section 51 of The Black Money Act.
- B. Any fraudulent act may attract Sections 417 to 420 IPC or Section 447 Companies Act 2013.
- C. Any false/ forged document may attract Sections 467, 471, 472 & 473 of IPC.
- A. If any Government machinery is involved in such fraud or forgery, even provisions of Prevention of Corruption Act may be attracted.

BURDEN OF PROOF

Time Tested Principle of Criminal Law

"It is well settled that the prosecution, must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view"

Sharad Birdhichand Sarda Vs. State of Maharashtra Supreme Court (DOD: 17.07.1984)

Section 24 (PMLA) - Burden of Proof

In any proceedings relating to proceeds of crime under this Act,-

- (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and
- (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

UPENDRA RAI vs DIRECTORATE OF ENFORCEMENT

Delhi High Court (DOD: 09.07.2019)

"A bare perusal of Section 24 reveals that in the case of a person charged with the offence of money laundering, the authority or the Court shall presume that such proceeds of crime are involved in money laundering unless the contrary is proved. The stage of raising the presumption or for the accused to rebut the said presumption would be during the course of trial. Even if assuming that at the stage of bail this Court is required to consider that the accused is prima facie required to rebut the presumption, the same would not have to be beyond reasonable doubt but on the basis of broad probabilities"

Jafar Mohammed Hasanfatta & Ors.Vs. Deputy Director & Ors. Gujrat High Court (DOD: 16.02.2017)

There is no legal presumption in this Section 24 that -

- (a) The concerned property is "proceeds of crime",
- (b) The person accused has knowledge that the property is "proceeds of crime", and
- (c) The person is involved in or is guilty of "money-laundering" merely for possessing or having any concern with the proceeds of crime."

Prior to amendment of 2013 effective till 14.02.2013

Section 24. Burden of proof (PMLA) -

When a person is accused of having committed the offence of money laundering under Section 3, the burden to prove that proceeds of crime are untainted property shall be on the accused.

54.Presumption as to culpable mental state

(Black Money Act)

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a pre-ponderance of probability.

278E. Presumption as to culpable mental state (Income Tax Act)

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation- In this sub-section, "culpable mental state" includes **intention**, **motive** or **knowledge** of a fact or **belief** in, or **reason to believe**, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Constitutional Validity upheld:

Selvi J. Jayalalitha v. UOI and Ors. (2007) 288 ITR 225 (Mad)

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, ACT, 1985

35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section "culpable mental state" includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, ACT, 1985

- **54. Presumption from possession of illicit articles**.—In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—
- (a) any narcotic drug or psychotropic substance or controlled substance;
- (b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;
- (c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or
- (*d*) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.

Mohan Lal Vs The State of Punjab

Supreme Court (DOD: 16.08.2018)

"10. Unlike the general principle of criminal jurisprudence that an Accused is presumed innocent unless proved guilty, the NDPS Act carries a reverse burden of proof Under Sections 35 and 54. But that cannot be understood to mean that the moment an allegation is made and the F.I.R. recites compliance with statutory procedures leading to recovery, the burden of proof from the very inception of the prosecution shifts to the Accused, without the prosecution having to establish or prove anything more. The presumption is rebuttable. Section 35 (2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability.

Mohan Lal Vs The State of Punjab (Cont.) Supreme Court (DOD: 16.08.2018)

The stringent provisions of the NDPS Act, such as Section 37, the minimum sentence of ten years, absence of any provision for remission, do not dispense with the requirement of the prosecution to establish a prima facie case beyond reasonable doubt after investigation, only after which the burden of proof shall shift to the Accused. The case of the prosecution cannot be allowed to rest on a preponderance of probabilities.

11. A fair trial to an Accused, a constitutional guarantee under Article 21 of the Constitution, would be a hollow promise if the investigation in a NDPS case were not to be fair......"

THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988

The Benami Transactions (prohibition) Act, 1988

Section 2 (9):

(PBPT)

"benami transaction" means,—

(A) a transaction or an arrangement—

- (a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and
- (b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

except when the property is held by:

- (i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;
- (ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

- (B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or
- (C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;
- (D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

Explanation.—For the removal of doubts, it is hereby declared that benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), if, under any law for the time being in force,—

- (i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;
- (ii) stamp duty on such transaction or arrangement has been paid; and
- (iii) the contract has been registered.

Section 3. PBPT Act Prohibition of benami transactions

(1) No person shall enter into any benami transaction.

2 * * * * *

- 3 [(2)] Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.
- 4 [(3) Whoever enters into any benami transaction on and after the date of commencement (01.11.2016) of the Benami Transactions (Prohibition) Amendment Act, 2016 (43 of 2016) shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.]

Section 53 PBPT Act

Penalty for benami transaction

(1) Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction.

(2) Punishment:

Not less than one year- may extend to seven years And shall also fine which may extend to twenty-five per cent of the fair market value of the property.

Section 55 PBPT Act

Previous sanction

No prosecution shall be instituted against any person in respect of any offence under sections 3, 53 or section 54 without the previous sanction of the Board.]

All prosecutions under the PMLA, PBPT as well as under Income Tax Act commence with a "Complaint" before the respective Special Courts.

(read with Section 190 of Cr.P.C.)

Provisions of Criminal Procedure Code applicable (Section 65 PMLA) (Section 51 PBPTA) (Section 280D Income Tax Act)

(Also applicable to Black Money Act (Section 84)

In the normal course, Complainant and his witnesses are required to be examined on oath by the Magistrate before the accused can be summoned under Section 200 of the Criminal Procedure Code.

But as the Complainant in the cases under PMLA, PBPTA, Black Money Act or Income Tax Act are "Public Servants" the Magistrate need not examine them on oath before summoning the accused.

(Section204(1) Cr.P.C.)

No summons or warrants shall be issued if a 'List of prosecution witnesses' is not filed (Section 204(2) Cr.P.C.)

Every summons or warrants must be accompanied by copy of such complaint (Section 204(3) Cr.P.C.)

Must check for Annexures & Copy of Sanction under Section 279 of IT Act

Magistrate will require the accused to furnish 'Security Bond' (Section 88 Cr.P.C.)

Accused has to be present on every date of hearing, however the Magistrate may dispense with personal appearance of the accused (Section 205 Cr.P.C.)

It is a very important stage:

- To decide whether complaint discloses a prima facie case;
- Whether legal requirements such as of Sanction (under Section 279 IT Act or under Section 55 of PBPT Act) were followed
- Whether Sanction & the summoning order were passed:
 - -after due application of mind to relevant material?
 - -was the material sufficient?
 - -are they impacted by extraneous considerations or material?
 - -are they perverse?
 - -whether due procedure & legal provisions were followed?

(If there is no sanction or defective sanction, the accused will be entitled to discharge)

- Whether grounds exist to challenge the summoning order by way of Revision under Section 397 Cr.P.C
- Or seek quashing of proceedings under Section 482 Cr.P.C.
- Or to wait for the stage of framing of charge (in warrant case) or Notice (in summons case) to raise all the pleas against summoning

THANK YOU

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