

- (a) That this Court declare that Clauses 8, 9, 11, 12, 14, 15, 18, 21, 22, 30 and 31 are in violation of Articles 3, 4, 11, 12(1), 13, 14 and 14A of the Constitution;
 - (b) For a determination that in addition to being passed with not less than two-thirds of the whole number of Members of Parliament (including those not present) voting in its favour [the special majority], the Bill must be approved by the People at a Referendum.
- (4) Upon receipt of the said petitions, the Registrar of this Court issued notice on the Attorney General, as required by Article 134(1) of the Constitution.
 - (5) We heard extensive submissions of the learned President's Counsel for the Petitioner in SC (SD) No. 25/2026, the learned Counsel for the Petitioner in SC (SD) No. 26/2026, and the learned Additional Solicitor General. All parties were also afforded the opportunity of filing written submissions.

Jurisdiction of Court

- (6) This Court is exercising the jurisdiction conferred on it by Article 120 of the Constitution which requires this Court to determine whether the Bill in its entirety is, or any of its provisions are inconsistent with the Constitution. Article 123(1) provides further that, *"The determination of the Supreme Court shall be accompanied by the reasons therefor and shall state whether the Bill or any provision thereof is inconsistent with the Constitution and if so, which provision or provisions of the Constitution."*
- (7) Once a primary determination is made in terms of Article 123(1), the consequential determinations the Court is required to make are specified in Article 123(2), which reads as follows:

"Where the Supreme Court determines that the Bill or any provision thereof is inconsistent with the Constitution, it shall also state –

- (a) *whether such Bill is required to comply with the provisions of paragraphs (1) and (2) of Article 82; or*

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- (b) *whether such Bill or any provision thereof may only be passed by the special majority required under the provisions of paragraph (2) of Article 84; or*
- (c) *whether such Bill or any provision thereof requires to be passed by the special majority required under the provisions of paragraph (2) of Article 84 and approved by the People at a Referendum by virtue of the provisions of Article 83,*

and may specify the nature of the amendments which would make the Bill or such provision cease to be inconsistent."

- (8) It must be noted that in terms of Article 83, the requirement for a bill or a provision thereof to be passed with the special majority of Parliament and to be approved by the People at a Referendum will arise only where such bill or a provision thereof seeks to amend, repeal or replace Articles 1, 2, 3, 6, 7, 8, 9, 10, 11, 30(2), 62(2) or 83 itself, of the Constitution.

The Financial Action Task Force

- (9) This Court was called upon in May of this year to consider the constitutionality of a Bill that sought to amend the Financial Transactions Reporting Act, No. 6 of 2006. In the Determination of this Court that followed, we referred to the Financial Action Task Force (FATF), an independent inter-governmental body established in 1989, of which Sri Lanka is a member, and to the periodical Recommendations made by it, in order to place in context the provisions of the said Act and the amendments that were sought to be introduced through the said Bill.
- (10) The need to introduce the Prevention of Money Laundering Act, No. 5 of 2006 and the present Bill too can be traced to the FATF and thus, it is only appropriate that we re-produce what was stated by this Court in the aforementioned Determination with regard to FATF.
- (11) The mandate of the FATF is to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering,

terrorist financing, financing of proliferation of weapons of mass destruction and other related acts that pose a threat to the integrity of the international financial system. In collaboration with other international stakeholders, the FATF also works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse and abuse. These objectives are achieved through a set of comprehensive and consistent framework of measures known as FATF Recommendations that are reviewed and updated periodically.

(12) The FATF Recommendations were introduced initially in 1990 as an initiative to combat the misuse of financial systems by persons laundering drug money. While it has been amended on many occasions to cover evolving money laundering trends and techniques, its scope has been broadened to deal with the issue of funding of terrorist acts and terrorist organisations and the financing of proliferation of weapons of mass destruction. The fact that the Recommendations are reviewed and amended on a continuous basis clearly demonstrate that the threat posed to the financial system of a country is not frozen in time but keeps evolving, thus highlighting the importance of the regulatory authorities staying ahead at all times. Last revised in 2025, the Recommendations are universally recognised as the global standard for the protection of the international financial system from money laundering, terrorist financing and financing of proliferation, and member countries are called upon to take effective measures to bring their national systems up to date with the FATF Recommendations.

(13) The FATF Recommendations set out the essential measures that Countries should have in place to:

- a) Identify the risks, and develop policies and domestic coordination;
- b) Pursue money laundering, terrorist financing and the financing of proliferation;
- c) Apply preventive measures for the financial sector and other designated sectors;
- d) Establish powers and responsibilities for the competent authorities (e.g., investigative, law enforcement and supervisory authorities) and other institutional measures;

- e) Enhance the transparency and availability of beneficial ownership information of legal persons and arrangements; and
- f) Facilitate international cooperation.

(14) The Recommendations require a country to identify, assess and understand the risks posed to their financial system by money laundering, terrorist finance and financing of proliferation of weapons of mass destruction, and thereafter adopt appropriate measures to mitigate the risk. This approach, known as the risk-based approach, allows each country to adopt a more flexible set of measures, utilise their resources more effectively and apply preventive measures that are proportionate to the nature of risks faced by each country.

(15) Mr. Sudharshana De Silva, PC, Additional Solicitor General submitted that the FATF Recommendations require Countries to apply the crime of money laundering to all serious offences covering the widest range of predicate offences, to ensure that operational frameworks prioritise asset recovery in both the domestic and international context, and to have legislative measures that would enable the competent authority in each country to:

- a) Identify, trace and evaluate criminal property and property of corresponding value;
- b) Suspend or withhold consent to a transaction;
- c) Take any appropriate investigative measures;
- d) Expeditiously carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of criminal property and property of corresponding value;
- e) Confiscate criminal property and property of corresponding value through conviction based confiscation;
- f) Confiscate criminal property through non-conviction based confiscation;
- g) Enforce a resulting confiscation order; and
- h) Ensure effective management of property that is frozen, seized or confiscated.

The Bill

- (16) The foundation for criminalizing and facilitating investigations into the laundering of illicit funds was established by the Prevention of Money Laundering Act, No. 5 of 2006 [the Act]. While the first amendment to the Act in 2011 strengthened the enforcement mechanisms, the learned Additional Solicitor General submitted that the growing sophistication of cross-border financial networks has necessitated the introduction of reforms that close the gaps through which complex financial crime has escaped prosecution in Sri Lanka, thus ensuring a more comprehensive legislative response to prevent money laundering.
- (17) The Bill contains 31 clauses and seeks to provide *inter alia* for the following:
- (i) Clause 2 provides for the broadening of the applicability of the provisions of the Act.
 - (ii) Clause 3 provides for the broadening of the scope of the offence of money laundering and to provide for the removal of the minimum jail term specified for that offence.
 - (iii) Clauses 6 and 7 seek to increase the fine for (a) failure to disclose information relating to properties connected with the offence of money laundering, and (b) divulging information relating to investigations into the offence of money laundering.
 - (iv) Clause 8 provides *inter alia* for the issuing of a Freezing Order on any property or property of corresponding value which may have been used in committing the offence of money laundering and increase the punishment for the contravention of a Freezing Order.
 - (v) Clause 9 seeks to extend the time period available for making an application for the confirmation of a Freezing Order and the period for which the High Court may extend such Freezing Order.
 - (vi) Clause 12 provides for the protection, preservation, management and disposal of property subject to a Freezing Order.

- (vii) Clause 14 provides for issuing a Freezing Order in relation to any other property connected to a property that is subject to a Freezing Order.
- (viii) Clause 16 provides for restoring the rights of bona fide claimants over the property subject to a Freezing Order.
- (ix) Clause 18 provides for (a) furnishing an affidavit or sworn statement by a person subject to an investigation and the admissibility of such affidavit and sworn statement, (b) the imposition of a penalty for giving false evidence, and (c) special investigation techniques to be used during an investigation.
- (x) Clause 21 provides for exchange of information relating to court proceedings with foreign law enforcement agencies.
- (xi) Clause 24 provides for the application of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 in respect of providing assistance between the Government of Sri Lanka and foreign countries.

Freezing Orders – Clauses 8, 9, 11, 12, 14, 15 and 22 of the Bill

- (18) Clauses 8 – 17 seek to amend the provisions of the Act with regard to freezing orders and forfeiture orders relating to property. Of these, the provisions in Clauses 8, 9, 11, 12, 14, 15 and 22 were challenged by the Petitioner in SC SD No. 26/2026 on the basis that when taken cumulatively, these clauses are inconsistent with Articles 12(1), 13 and 14(1)(g) of the Constitution
- (19) The learned Additional Solicitor General submitted that the offence of money laundering involves the transfer, concealment, conversion, dissipation or destruction of criminal proceeds and that if law enforcement authorities were confined solely to property physically traceable to the original unlawful activity, offenders could readily defeat the operation of the Act by disposing of the original property before judicial proceedings are even commenced. Hence, the need for Orders to freeze property that had been used in the commission of an offence in order to prevent further acts being committed and to prevent the dissipation of such property, with adequate safeguards to prevent the arbitrary exercise of such powers by the Police.

- (20) The learned Additional Solicitor General submitted further that the FATF Recommendations require Countries to have measures, including legislative measures (a) to enable their competent authorities to expeditiously carry out provisional measures that includes the making of the initial application to freeze or seize criminal property and property of corresponding value *ex parte* or without prior notice, and (b) to enable competent authorities to freeze and seize criminal property and property of corresponding value without a court order, with such action reviewable through judicial proceedings within a specified period of time.
- (21) Mr. Pulasthi Hewamanne, the learned Counsel for the Petitioner in SC SD No. 26/2026 submitted that the amendments that are sought to be introduced to the freezing order framework in the Act creates a coercive and intrusive mechanism whereby property rights, financial autonomy and lawful economic activity of bona fide third parties may be restricted for prolonged periods through uncertain and expanding statutory standards, notwithstanding the absence of a final judicial finding of criminal liability. He submitted further that such restrictions are an interference with lawful occupation, livelihood, contractual obligations and ordinary commercial activity protected under Article 14(1)(g) of the Constitution.
- (22) Bearing in mind the above submissions and in particular the distinction between a Freezing Order made at the outset and an Order for Forfeiture made at the conclusion of a trial, we shall now examine the amendments that are sought to be made by the Bill with regard to Freezing Orders.
- (23) The starting point is Section 7(1) of the Act, which currently reads as follows:

“A Police Officer not below the rank of an Assistant Superintendent of Police may, where there are reasonable grounds to believe that any person is involved in any activity relating to the offence of money laundering and it is necessary for preventing further acts being committed in relation to such offence, issue an order (hereinafter referred to as a “Freezing Order”) prohibiting any transaction in relation to any account, property or investment which may have been used or which may be intended to be used in connection with such offence.”

(24) Clause 8 seeks to amend Section 7(1) as follows:

"A police officer not below the rank of an Assistant Superintendent of Police may, where there are reasonable grounds to believe that any person is involved in any activity relating to the offence of money laundering and it is necessary to prevent further acts being committed in relation to such offence or dissipation of property reasonably believed to be criminal property, issue an order prohibiting any transaction in relation to such property or any property of corresponding value of such property which may have been used or which may be intended to be used in connection with such offence (hereinafter referred to as a "Freezing Order")."

(25) It is clear from the wording of Section 7(1) that prior to issuing a Freezing Order, the Assistant Superintendent of Police [ASP] must have reasonable grounds to believe that a person is involved in any activity relating to the offence of money laundering and that it is necessary to prevent further acts being committed in relation to such offence or to prevent the dissipation of property which is reasonably believed to be criminal property, thereby ensuring that the power to issue a Freezing Order cannot be misused or abused by an ASP. This requirement acts as an important safeguard against the arbitrary exercise of such power to issue a Freezing Order.

(26) The proposed amendment has taken into consideration the ease with which property can be dissipated or transferred in this digital era, and, in keeping with FATF Recommendations, has extended the scope of the Freezing Order to any property of corresponding value. The learned Additional Solicitor General submitted that criminals frequently commingle dirty money with clean money, or convert illicit cash into other assets to hide their origin, and hence the extension of the Freezing Order to property of corresponding value. He submitted further that such extension would assist to close loopholes that allowed criminals to keep their illicit profits when direct tracking was impossible. Although the Petitioners complained that the phrase 'corresponding value' is vague and unclear, one must bear in mind that this is the first step in the process of securing property prior to its dissipation and that the provisions that follow ensure that there are adequate safeguards to prevent an abuse of power.

- (27) Once a Freezing Order is issued in terms of the proposed Section 7(1), the proposed Section 7(2) requires that such Order shall be communicated to:
- (i) any person who is in possession, occupation, or control of, or is enjoying any benefits from, the property which is subject to the Freezing Order; or
 - (ii) any person who is believed to be having an interest in the property which is subject to the Freezing Order; and
 - (iii) any other person or Institution who or which may be required to give effect to such Freezing Order.
- (28) It must be noted that the proposed Section 7(2) is wider in scope than what is currently available in Section 7(2) and ensures that notice of the Freezing Order is served on or communicated to any person who may be affected by such Order. The issuance of a notice would also enable an affected party the opportunity of challenging such notice in a Court of Law.
- (29) In terms of Section 7(3), a Freezing Order issued by an ASP is valid for a period of seven days. While the Police may continue with their investigations during this seven day period, if they wish to have the Freezing Order extended, an application must be made to the High Court within such period. Clause 8 seeks to amend Section 7(3) by extending this period to fourteen working days. Mr. Hewamanne submitted that given the fact that a Freezing Order can extend to property held by bona fide third parties, the extension of the validity period of a Freezing Order to fourteen working days deprives such innocent parties the use and benefit of their property during this extended period.
- (30) The learned Additional Solicitor General submitted that investigations relating to money laundering can be complex and that a period of seven days has proved to be grossly inadequate to carry out further investigations and invoke the jurisdiction of the High Court. Although one must bear in mind that by the time a Freezing Order is made, the ASP has already formed an opinion that there are reasonable grounds to issue such Freezing Order, the difficulty in tracing criminal property due to the ease with which criminal property can be moved around from one Country to

another can pose severe challenges to investigators. Hence, we are of the view that extending the validity period of a Freezing Order is not inconsistent with Article 12(1).

(31) Where circumstances necessitate an extension of the Freezing Order, Section 8(1) requires the ASP issuing the Freezing Order to invoke the jurisdiction of the High Court within the validity period of the Freezing Order seeking an extension, thus ensuring judicial scrutiny of a Freezing Order at a very early stage. Section 8(2), as it currently reads, provides that:

“Where the High Court is satisfied that there are sufficient reasons for the making of such Freezing Order, the Court may confirm the Freezing Order and also grant the application made for the extension thereof for such periods as it considers necessary, subject however—

(a) to any Orders which may be made under section 12; and

(b) to the requirement that the maximum period of any extension so granted shall not exceed three months at any given time and in any event shall not in the aggregate exceed a period of two years from the date of the issuing of the Freezing Order by such police officer:

Provided that where indictment is filed for an offence under Section 3 of this Act in respect of the account, property or investment which is subject to the Freezing Order, such Freezing Order shall unless vacated by Court for reasons to be recorded, remain in force until the conclusion of the trial in respect of such offence, or where an appeal is preferred against a conviction for such offence, until the determination of the appeal.”

(32) Thus, Section 8(2) provides for judicial scrutiny of the Freezing Order issued by an ASP and any extensions thereof shall be made only where the High Court is satisfied that there are sufficient reasons for the extension of such Freezing Order and for periods of time that the High Court considers necessary, subject to an upper limit of three months for each extension and an overall upper limit of two years. Although the application to the High Court is made *ex parte*, the fact that notice of a Freezing

Order is served on an affected party means that such party can appear before the High Court and be heard prior to the High Court making an order for the extension of such Freezing Order. This ensures that the rights of a party affected by a Freezing Order are protected.

- (33) Clause 9 of the Bill seeks to amend Section 8(2) by increasing the maximum period that an extension may be granted by the High Court at any given time to four months and to an overall limit of upto three years. The extension of the time periods are in order since the safeguards in Section 8(2) that we have referred to remain intact.
- (34) The complaint of Mr. Hewamanne was primarily focused on the inadequacy of protection afforded to bone fide third parties. Having examined the provisions of the Act and the Bill, we observe that the interests of such a party is further protected by the following provisions:
- (i) Clause 9 [Proposed Section 8(3)] – in addition to the publication in the newspapers of the Freezing Order made by the High Court, the Freezing Order shall be published in the Gazette in order to facilitate bona fide third parties to make an application to the Court in support of their claims to the property which is subject to the Freezing Order.
 - (ii) Clause 16 [Proposed Section 14(1)] which provides that, *“Any person who has neither committed nor concerned in any offence under this Act, and who owns, possesses, or has beneficial ownership in, or is in control of, any property which is subjected to the Freezing Order issued under section 7 may, within thirty days of the notice published under subsection (3) of section 8 apply to the Court which confirmed the Freezing Order, seeking the intervention of the Court to exclude from such Order any property he owns, possesses, has beneficial ownership in, or is in control of.”*
 - (iii) Section 14(2) sets out the matters that the High Court shall be satisfied if it is to make an order for the release of property which is the subject of the application before it, from the Freezing Order made under section 7, and restore the right of the applicant in respect of the same, thus affording an

affected party of an opportunity of placing before Court the circumstances in their favour.

- (iv) Clause 11 [proposed Section 10] which empowers Court to sanction essential transactions. The proposed provision reads as follows:

“In confirming a Freezing Order made under section 7, if the High Court is of the opinion that such Order could damage legitimate business or other interests of any person affected thereby and that any essential transaction in relation to the property which is subject to such Freezing Order, may be legitimately carried out, the High Court may, on an application made in that behalf or on its own motion, make order –

- (a) sanctioning the carrying out of such transaction; or*
- (b) sanctioning the carrying out of such transaction under the supervision of the Receiver or Special Manager who may be appointed, or the Proceeds of Crime Management Authority that may be directed, as provided for in section 11.”*

- (35) Clause 12 seeks to repeal and replace Section 11 of the Act, thus ensuring that property which is the subject matter of a Freezing Order is protected and preserved. The proposed Section 11 reads as follows:

“(1) Upon confirming a Freezing Order by the High Court under section 8, a police officer not below the rank of an Assistant Superintendent of Police may apply to the High Court for an order for the appointment of a Receiver or Special Manager or for a direction on the Proceeds of Crime Management Authority, as the case may be, in terms of Part IV of the Proceed of Crime Act, No. 5 of 2025 for the purpose of protecting, preserving, managing or disposing of the property which is subject to the Freezing Order.

- (2) The High Court may, on an application made under subsection (1), or on its own motion, appoint a Receiver or Special Manager or direct the Proceeds of Crime Management Authority, as the case may be, in terms of the provisions contained in Part IV of the Proceeds of Crime Act, No. 5 of 2025 for the purpose*

of protecting, preserving, managing or disposing of the property which is subject to the Freezing Order."

(36) Clause 13 seeks to repeal and replace Sections 12(1) and 12(3) of the Act. Accordingly, in terms of the proposed Section 12(1), an ASP may move the High Court for an order empowering such ASP to ascertain the ownership, possession, beneficial ownership or the person who is in control of such property which is subject to the Freezing Order. The proposed Section 12(3) provides that, "*Upon ascertaining the ownership, possession, beneficial ownership or the person who is in control of any property which is subject to a Freezing Order, such police officer shall report the same to the Court which made the order under subsection (1), along with all documents and information obtained, establishing and supporting such ownership, possession, beneficial ownership or control, as the case may be.*"

(37) Clause 14 seeks to introduce the following new Section, numbered as Section 12A:

"Where, upon receipt of any document or information ordered to be delivered or furnished under subsection (1) of section 12, such police officer has reasonable grounds to believe that any other property-

- (a) is connected to the property which is subject to the Freezing Order issued under section 7; or*
- (b) has been derived or realised from any unlawful activity and is connected to the property which is subject to the Freezing Order, then such police officer shall issue a Freezing Order in relation to such connected property in terms of the provisions of section 7."*

(38) We observe that the proposed Section 12A arises pursuant to an order made by the High Court in terms of Section 12(1). Hence, the rationale applicable to the issuance of the initial Freezing Order in terms of Section 7(1) by an ASP valid for a period of fourteen working days may not apply entirely. With the proposed Section 12(3) requiring the ASP to report facts to the High Court, we are of the view that if a necessity to issue a Freezing Order in respect of any other property connected to the property which is already subject to the Freezing Order issued under section 7

arises, the ASP may issue a fresh Freezing Order but shall make an application to the High Court in terms of Section 8(1) within seven working days. We are therefore of the view that the proposed Section 12A(b) is overbroad and is violative of Article 12(1), and must be passed by the special majority of Parliament. The said inconsistency shall however cease and the proposed Section 12A(b) may be passed with the simple majority of Parliament if the following proviso is inserted at the end of the proposed Section 12A(b):

“Provided however such Freezing Order shall be in force for a period of seven working days and any application to the High Court in terms of Section 8(1) shall be made within such period.”

(39) The above provisions relate to Freezing Orders relating to property issued during an investigation and which shall remain in force during the continuance of a trial and prior to conviction for an offence under the Act. Subject to the amendment that we have set out in Paragraph 38, we are of the view that Clauses 8, 9, 11, 12, 14, 15 and 22 are not inconsistent with the provisions of the Constitution.

(40) Section 13 of the Act deals with the **forfeiture** of property. Clause 15 of the Bill seeks to repeal and replace Section 13(1) with the following:

“(1) Where a person is convicted of an offence under section 3, the Court shall, subject to the provisions of subsection (2), order that-

(a) the criminal property which is owned or possessed by, or under the control of, the convicted person or any other person;

(b) the criminal property in which the convicted person or any other person has beneficial ownership; or

(c) if the circumstances of the case so necessitate, any property of corresponding value of the criminal property,

be forfeited to the State free from all encumbrances.”

(41) Mr. Hewamanne submitted that the rights of bona fide third parties may be affected if their property is forfeited upon conviction of the person accused of having committed an offence under the Act. However, Clause 15 seeks to repeal Section 13(2) and replace with the following:

"The Court shall, before making an Order of Forfeiture under subsection (1), determine on the balance of probabilities upon such inquiry as it may deem necessary, whether such order is likely to prejudice the rights of-

(a) a bona fide purchaser for value of;

(b) any other person who has acquired, for value, a bona fide interest in; or

(c) a third party who has bona fide interest in,

such criminal property."

(42) Thus, we are satisfied that the property of a bona fide third party can be forfeited by Court only after an inquiry, where such persons would have the opportunity of satisfying Court of their bona fides.

Clause 18 of the Bill

(43) The next clause that was challenged by the Petitioners is Clause 18 of the Bill, which seeks to introduce five new Sections, numbered as 17A – 17E. Both Mr. Viran Corea, PC, the learned Counsel for the Petitioner in SC SD 25/2026 and Mr. Hewamanne challenged the proposed Sections 17A, 17B and 17C on the basis that its provisions are violative of Articles 12(1) and 13(3) in that these sections when read together deprive an accused person the opportunity of a fair trial and the equal protection of the law.

(44) The proposed Sections 17A, 17B and 17C read as follows:

17A – *"A person who is subject to an investigation for an offence under section 3, shall furnish to a police officer not below the rank of an Assistant Superintendent of Police in charge of such investigation an affidavit or a sworn statement, describing the manner in which any suspected property*

*acquired by such person has been derived or realised and **providing answers to any question put to him by such police officer on the matters under investigation or any facts relevant to the matters under investigation:***

*Provided however, it shall **not be an obligation** for a person who is subject to an investigation for an offence under section 3, **to furnish a self-incriminating or confessional statement** or an affidavit or answer to any question, which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."*

17B – *"**Notwithstanding anything to the contrary in any other written law**, an affidavit or a sworn statement furnished by any person to a police officer under section 17A shall be relevant and **admissible in evidence** at the trial in respect of such person for an offence under section 3."*

17C(1) – *"If any person giving evidence, at the trial for an offence under section 3, gives, in the opinion of the court before which the trial is being held, false evidence within the meaning of section 188 of the Penal Code (Chapter 19) it shall be lawful for such court to summarily sentence such witness for contempt of court to a fine not exceeding one million rupees or to imprisonment for a period not exceeding two years."*

17C(2) – *"At any trial under subsection (1), it shall be sufficient to prove that such person has made contradictory statements and it shall not be necessary to prove which of such statements is false."*

(45) In terms of Section 188 of the Penal Code, *"Whoever, being legally bound by an oath or affirmation, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give "false evidence."*

46) Mr. Corea, PC submitted that the proposed Sections 17A and 17B have the cumulative effect of empowering a Police Officer not below the rank of an ASP to

compel a person under investigation to give an affidavit or a sworn statement (a) describing the manner in which any suspected property was acquired by such person, and (b) provide answers to any question put to him by such police officer on the matters under investigation or any facts relevant to the matters under investigation, which answers shall then be recorded in the said affidavit.

- (47) Mr. Corea, PC proceeded to state that an affidavit provided by a person can have serious repercussions for the deponent or affirmant thereof since such an affidavit shall not only be admissible in a trial against such person, but where there is any contradiction between the contents of the affidavit and the evidence given at the trial, and irrespective of the need to establish which statement is false, such person can summarily be sentenced for Contempt of Court.
- (48) It was further submitted by Mr. Corea, PC that Section 17A applies to persons who are and who are not in the custody of the Police at the time of submission of the affidavit. He stated that while any person required by law to provide an affidavit must have access to an Attorney-at-Law of his choice to seek advice prior to the preparation of an affidavit, such an opportunity will not be available to persons who are already in the custody of the Police or who are being questioned within a police station, and therefore to compel them to state their position in an affidavit which can subsequently be used against them is arbitrary and violative of Article 12(1).
- (49) Mr. Hewamanne submitted that in the absence of having access to professional legal advice at the time of preparing and furnishing the affidavit, the protection provided by the proviso to Section 17A is illusory in that even though the proviso excludes self-incriminating or confessional statements and questions that would expose such person to a criminal charge, it is of no practical value to a person who may not know what constitutes a self-incriminating statement or to a person who is required to sign an affidavit or make a sworn statement while in the custody of the Police.
- (50) While Section 24 of the Evidence Ordinance renders inadmissible confessions caused by inducement, threat or promise proceeding from a person in authority, Section 25 thereof imposes an absolute prohibition on the admissibility of confessions made to police officers. These two sections are therefore important

safeguards and ensure that statements made to police officers cannot be used against the maker of such statement. The learned Counsel for the Petitioners submitted that the use of the words, "*Notwithstanding anything to the contrary in any other written law*" used at the beginning of the proposed Section 17B deprives an accused the protection afforded by Sections 24 and 25 of the Evidence Ordinance and aggravates the consequences that arise from providing an affidavit while in the custody of the Police.

(51) The critical importance of the above two sections of the Evidence Ordinance was referred to in Nandasena v Republic of Sri Lanka [(1978–79) 2 Sri LR 235], where this Court stated that:

"By section 24 a confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been produced under the stimulus of any inducement, threat or promise having reference to the charge and proceeding from a person in authority. Under section 25 there is an absolute embargo against proof at the trial of a person accused of an offence of a confession made to a police officer."

"The partial ban under section 24 and the total ban under section 25 apply equally whether or not the person against whom evidence is sought to be led in criminal trial was at the time of making the confession in custody or whether or not he had been accused of any offence at the time he made the confession." [at page 246].

52) The learned Additional Solicitor General submitted that the requirement in the proposed Section 17A to furnish information relating to the origin, derivation or ownership of property must be examined in light of the nature of the offence of money laundering itself. He submitted that Section 3(1) of the Act provides that any person who engages in transactions involving property derived from unlawful activity, or who receives, possesses, conceals, disposes of, transfers or invests such property, knowing or having reason to believe that such property is derived or realized, directly or indirectly from any unlawful activity, or from the proceeds of any unlawful activity shall be guilty of the offence of money laundering.

(53) It was submitted further that the tracing of assets, the identification of beneficial ownership, the determination of the source of funds and the reconstruction of financial transactions therefore constitute the very essence of a money laundering investigation, and that the Act proceeds upon the premise that persons shall be required to explain the lawful basis upon which assets have been acquired.

(54) This is reflected in Section 4 of the Act, which reads as follows:

"For the purposes of any proceedings under this Act, it shall be deemed until the contrary is proved, that any movable or immovable property acquired by a person has been derived or realised directly or indirectly from any unlawful activity, or are the proceeds of any unlawful activity, if such property—

(a) being money, cannot be or could not have been—

(i) part of the known income or receipts of such person; or

(ii) money to which his known income or receipts has or had been converted; or

(b) being property other than money, cannot be or could not have been—

(i) property acquired with any part of his known income or receipts; and

(ii) property which is or was part of his known income or receipts; and

(iii) property to which is any part of his known income or receipts has or had been converted."

(55) It must be noted that Clause 5 of the Bill seeks to amend Section 4 by the substitution for the words "*shall be deemed*", of the words "*shall be presumed*," and for the words "*are the proceeds of any unlawful activity*," of the words "*are the proceeds of any unlawful activity or any conversion of such property*".

(56) Responding to the submission of the Petitioners that the proposed Section 17A effectively transfers the burden of proof from the prosecution to the suspect, the learned Additional Solicitor General submitted that the commission of an offence

under the Act must be established by the prosecution in accordance with the applicable standard of criminal liability and that nothing contained in the proposed Section 17A alters the prosecution's obligation to prove the constituent elements of the offence beyond reasonable doubt.

- (57) The learned Additional Solicitor General submitted that the proposed Section 17A does not introduce a novel evidentiary principle into the statutory scheme but only seeks to establish a procedural mechanism enabling investigators to obtain information relevant to matters that are already recognised by the existing Act as material that is relevant to determining whether property constitutes proceeds of an unlawful activity. It was his contention that whilst the provision empowers investigators to obtain information relevant to the ownership, derivation and control of property under investigation, the proviso to the proposed Section 17A simultaneously preserves the right of the person concerned to decline to furnish any information which would amount to a confession or which would tend to expose such person to criminal liability, penalty or forfeiture. The learned Additional Solicitor General therefore submitted that the privilege against self-incrimination is expressly recognised and preserved by the Bill and acts as a safeguard against any arbitrary action on the part of the Police.
- (58) The learned Additional Solicitor General submitted further that the proposed Section 17B forms part of a single legislative scheme together with the proposed Section 17A and especially its proviso, and that the two sections must be interpreted harmoniously. He submitted that the admissibility contemplated by Section 17B extends only to material lawfully obtained under section 17A and does not enlarge the scope of Section 17A nor does it render admissible material which Section 17A expressly protects. It was the position of the learned Additional Solicitor General that Section 17B merely confirms the evidentiary status of statements lawfully furnished under Section 17A and ensures that such material may be relied upon in subsequent proceedings, subject always to the limitations expressly preserved by the proviso to the proposed Section 17A.
- (59) The learned Additional Solicitor General finally submitted that the protection against self-incrimination established by Section 24 of the Evidence Ordinance and

a long-history of case law would still serve to ensure that a Court of Law provides their judicial mind to the nature of any admissions or confessions contained in the Affidavit, in a proceeding against such person for a money laundering offence.

- (60) Having carefully considered the submissions presented by all learned Counsel, we are of the view that the proposed Section 17A caters to two categories of persons. The first is with regard to affidavits submitted by a person who is subject to an investigation for an offence under Section 3 but who is not in the custody of, or in the presence of a Police Officer at the time of the submission of the affidavit and therefore had every opportunity of seeking legal and professional advice prior to swearing or affirming to the truthfulness of the contents of such affidavit. The second category of persons are those who are in the custody of, or in the presence of a Police Officer and whose statements and their answers to the questions posed by the Police form part of the affidavit.
- (61) We see no issue with regard to the first category of persons, especially bearing in mind the objective that the learned Additional Solicitor General submitted is sought to be achieved, that being the granting of a person under investigation the opportunity of explaining the source of his or her assets.
- (62) However, the proposed Sections 17A and 17B effectively circumvents the protection afforded by Sections 24 and 25 of the Evidence Ordinance by creating a statutory mechanism compelling a person under investigation to furnish an affidavit or sworn statement while in the custody of, or in the presence of a Police Officer containing answers to any question posed by the Police. We are of the view that the protection afforded by Sections 24 and 25 of the Evidence Ordinance must apply in respect of the aforementioned second category of persons. Thus, we are of the view that the failure to draw a distinction between the two categories of persons renders the proposed Sections 17A and B overbroad and inconsistent with the provisions of Article 12(1). The proposed Sections 17A and B contained in Clause 18 of the Bill must therefore be passed by the special majority of Parliament.

(63) However, the said inconsistency shall cease and the proposed Sections 17A and 17B may be passed by the simple majority of Parliament if the following proviso is added at the end of the proposed Section 17B:

“Provided however, the provisions of the Evidence Ordinance shall apply in respect of an affidavit or sworn statement made by a person subject to an investigation while in the custody of, or in the presence of a Police Officer.”

(64) The proposed Section 17C(1) provides for a summary punishment on a finding in the substantive judgment without being charged and tried. We are of the view that this is inconsistent with the provisions of Articles 12(1) and 13(3) of the Constitution and thus, the proposed Section 17C must be passed by the special majority of Parliament. The said inconsistency shall however cease and the proposed Section 17C may be passed by the simple majority of Parliament if the said Section 17C is amended to read as follows:

“If any person giving evidence, at the trial for an offence under section 3, gives, in the opinion of the court before which the trial is being held, false evidence within the meaning of section 188 of the Penal Code (Chapter 19) it shall be lawful for such court, upon the conclusion of such trial, to arraign and to summarily try and sentence such witness for contempt of court to a fine not exceeding one million rupees or to imprisonment for a period not exceeding two years.”

(65) The proposed Section 17D (1) – (4) provides for special investigation techniques to be used when conducting an investigation under the Act, which techniques may include the following:

- (a) surveillance and observation;
- (b) undercover operations;
- (c) video recording;
- (d) using listening devices;

(e) controlled deliveries; or

(f) accessing computer data and computer systems.

(66) Mr. Corea, PC submitted that only paragraphs (c) – (f) require an order by a Magistrate, and that paragraphs (a) and (b) which do not require such an Order are a violation of the right to privacy of an individual and is a violation of Article 12(1) of the Constitution.

(67) Having considered provisions identical to those contained in the proposed Sections 17D and 17E, this Court, in its Determination on the Convention on the Suppression of Terrorist Financing (Amendment) Bill [SC SD Application Nos. 17/2026, 20/2026 and 24/2026] stated as follows:

“The method to be adopted by the investigating police officers to exercise these powers would depend on the facts and circumstances of each case. Therefore, we are unable to accept the argument that these powers as set out in the Bill are vague and overly broad; lack legal certainty; and have the potential to lead to arbitrary use and/or abuse of police powers.

The provision in Section 4J(3) of the Bill requires firstly, that these powers be exercised by a police officer not below the rank of an Assistant Superintendent of Police. Secondly, even such officer has to exercise these powers when it is in respect of techniques set out in paragraphs (c), (d), (e) and (f) of subsection (1), under judicial supervision, i.e., video recording; using listening devices; controlled deliveries; or accessing computer data and computer systems.

In the above circumstances, we are unable to accept that permitting such powers to be used by the investigators as set out in the Bill when conducting an investigation is inconsistent with Article 12(1) of the Constitution.”

(68) We are in agreement with the above findings and are of the view that the proposed Sections 17D and 17E are not violative of Article 12(1) of the Constitution.

Clauses 21 and 22 of the Bill

(69) Clause 21 seeks to introduce the following section, numbered as Section 21:

“For the purpose of effecting a conviction of a person or forfeiture of any criminal property or property of corresponding value of the criminal property, any information recorded in the course of any court proceedings relating to an offence under this Act or any decision or determination relating thereto, may be exchanged with any foreign law enforcement agency.”

(70) The said Clause reads in Sinhala as follows:

“යම් තැනැත්තකු වරදකරු කරනු ලැබීමක් හෝ යම් සාපරාධී දේපළක් හෝ එම සාපරාධී දේපළේ වටිනාකමට අනුරූප වටිනාකමකින් යුත් දේපළක් රාජසන්තක කිරීමක් ක්‍රියාත්මක කිරීමේ කාර්යය සඳහා, මේ පනත යටතේ වන වරදකට අදාළ යම් අධිකරණ නඩු කටයුත්තක දී වාර්තාගත කරන ලද යම් තොරතුරක් හෝ ඊට අදාළ යම් තීරණයක් හෝ නඩුතීන්දුවක් යම් විදේශීය නීතිය බලාත්මක කිරීමේ නියෝජ්‍යායතනයක් සමඟ හුවමාරු කරගනු ලැබිය හැකිය.”

(71) Mr. Hewamanne submitted that this clause is overbroad in that there is no limitation on the information that may be provided and that even confidential information can be provided without any limitation. He submitted further that there is no independent oversight prior to sharing information and that the person whose information is transmitted to a foreign law enforcement agency may never know that such information has been transmitted.

(72) We have examined Clause 21 and observe that the information that can be shared is limited to information recorded in the course of any court proceedings relating to an offence under this Act and the decision or determination relating to such case. The Sinhala version makes it clear that the decision or determination is a reference to an order or judgment made in such case. Such information is already part of a public record and hence, there cannot be an impediment to the sharing of such information. Hence, we are not in agreement with the submission that the said Clause is inconsistent with any provision of the Constitution.

(73) Clause 22 seeks to repeal and replace Section 22 with the following new section:

*“Where a request is made to the Government of Sri Lanka by or on behalf of the Government of another country or foreign State and the Minister, in consultation with the Minister assigned the subject of Foreign Affairs, considers it appropriate, either because an international arrangement so requires or permits, or in the interests of comity, he may order that the whole or any part of any criminal property or property of corresponding value of the criminal property **forfeited under the provisions of this Act**, or the value thereof, be transferred or remitted to such requesting country or foreign State:*

Provided however, substantial or extraordinary costs incurred in enforcing the Order of Forfeiture, or in protecting, preserving or managing such property or on matters incidental thereto shall be deducted or recovered prior to transferring or remitting such property or value thereof to the requesting country or foreign State.”

(74) Mr. Hewamanne submitted that the said clause does not contain any safeguards to protect bona fide third parties whose properties may be forfeited. We have already stated that Court must conduct an inquiry prior to any forfeiture of property belonging to bona fide third parties and that such party must be afforded a hearing, thus ensuring that the rights of bona fide third parties are protected.

(75) Clause 15 seeks to introduce the following new section, numbered as Section 13(3):

“An order made under subsection (1) shall take effect –

(a) where an appeal has been preferred to or pending before the Court having jurisdiction against the Order of Forfeiture, upon the determination of such appeal confirming or upholding the Order of Forfeiture; or

(b) where no appeal has been preferred to the Court having jurisdiction against the Order of Forfeiture within the period allowed therefor, after the expiration of the period within which an appeal may be preferred against such Order of Forfeiture.”

(76) Thus, an order for forfeiture made by the High Court shall take effect only in accordance with the provisions of the proposed Section 13(3). Accordingly, we are of the view that the reference in Clause 22 to ‘*property forfeited under the provisions*

of this Act' means that any property would come within the proposed Section 22 only after a finding by the High Court, and where an appeal is filed against such finding, only after such finding is affirmed in appeal. We are thus satisfied that the proposed Sections 13(1) and 13(3) protect the interests of bona fide third parties.

Clause 30 of the Bill

(77) In terms of Section 33 of the Act:

“(1) The Minister may make regulations under this Act for any matter authorized or required to be made under this Act, or for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations in respect of the following matters:—

(a) prescribing any business as a “designated non finance business” taking into consideration the interests of the national economy;

(b) prescribing any business as a “finance business” taking into consideration the interest of the national economy.

(3) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.”

*(4) Every regulation made by the Minister shall as soon as convenient after its publication in the Gazette **be brought before Parliament** for its approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder.”*

(78) Clause 30 of the Bill seeks to replace the words in Section 33(4), “shall as soon as convenient after its publication in the Gazette” with the words, “shall, within three months from the date of its publication in the Gazette”.

(79) Mr. Hewamanne submitted that since the power of the Minister to make regulations is not limited to giving effect to the provisions of the Act but extends to the principles of the Act which principles have not been laid down in the Act, permitting the regulations to be in force for a period of three months without Parliamentary approval is violative of Article 12(1). He submitted further that the proposed amendments to Section 33(2) seeks to expand the power of the Minister to make regulations prescribing any profession as a designated non-finance business, and that the violation of a regulation by a member of such profession may result in such person being guilty of an offence under the Act. He therefore submitted that any regulation must become effective only upon such regulation being approved by Parliament.

(80) Clause 30 of the Bill only seeks to effect two amendments to Section 33, that being to Sections 33(2) and (4). Section 33(3) remains intact. The amendment to Section 33(4) fixes a temporal limit on the period within which such regulations must be brought before Parliament. We are of the view that neither of the two amendments sought to be introduced by Clause 30 are inconsistent with any provision of the Constitution.

Clause 31 of the Bill

(81) Clause 31 of the Bill seeks to repeal and replace Section 35 which contains the interpretation of the words and phrases used in the Act. Mr. Corea, PC submitted that the definition of 'unlawful activity' is too wide, especially in the context of Section 3 of the Act, and would expose an innocent party to a prosecution under the Act since the definition extends to provisions which an ordinary citizen may not be aware of.

(82) The learned Additional Solicitor General submitted that the amendment only seeks to clarify and modernise the scope of what is meant by 'unlawful activity' in order to ensure consistency with contemporary methods of financial crime and Sri Lanka's international obligations relating to anti-money laundering and asset recovery, and that the amendment enhances legal certainty by providing a clear legislative standard for investigators, prosecutors, courts and members of the public.

(83) We observe that what is an “unlawful activity” has been clearly defined in the proposed amendment and hence, we are not in agreement that the said definition is too wide, or would result in the arbitrary implementation of the provisions of the Act.

Summary of the Determination

(84) The Bill may be passed by the simple majority of Parliament, except Clause 14 [proposed Section 12A(b)] and Clause 18 [proposed Sections 17A, 17B and 17C] which Clauses shall be passed by the special majority of Parliament. However, if Clauses 14 and 18 are amended as follows, the said Clauses too can be passed by the simple majority of Parliament:

[A] Clause 14 – by the insertion of the following proviso at the end of the proposed Section 12A(b):

“Provided however such Freezing Order shall be in force for a period of seven working days and any application to the High Court in terms of Section 8(1) shall be made within such period.”

[B] Clause 18 – by the insertion of the following proviso at the end of the proposed Section 17B:

“Provided however, the provisions of the Evidence Ordinance shall apply in respect of an affidavit or sworn statement made by a person subject to an investigation while in the custody of, or in the presence of a Police Officer.”

[C] Clause 18 – by the amendment of the proposed Section 17C(1) to read as follows:

“If any person giving evidence, at the trial for an offence under section 3, gives, in the opinion of the court before which the trial is being held, false evidence within the meaning of section 188 of the Penal Code (Chapter 19) it shall be lawful for such court, upon the conclusion of such trial, to arraign and to

summarily try and sentence such witness for contempt of court to a fine not exceeding one million rupees or to imprisonment for a period not exceeding two years."

(85) We place on record our appreciation of the assistance given by the learned Additional Solicitor General who represented the Hon. Attorney General, the learned President's Counsel and the learned Counsel who appeared for the Petitioners.

ACHALA WENGAPPULI, J

JUDGE OF THE SUPREME COURT

ARJUNA OBEYSEKERE, J

JUDGE OF THE SUPREME COURT

K.M.G.H.KULATUNGA, J

JUDGE OF THE SUPREME COURT