

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4704 OF 2019

Vinodkumar Krishnamurari Goenka

and another.

... Petitioners.

V/s.

Union of India and others.

... Respondents.

Mr.Vikram Chaudhary, Senior Advocate with
Aishwarya Kantawala for the Petitioners.

Mr.Hiten Venegaonkar with Saurabh Kshirsagar
for Respondent No.1.

Mr.J.P.Yagnik, APP for Respondent No.3- State.

CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.

DATE : 16 November 2021.

P.C. :

Heard learned counsel for the parties.

2. The petition prays for three reliefs which are as follows:

*“(a) That this Hon’ble Court may be pleased to quash
and set aside the amendment introduced purportedly*

by way of an “Explanation” vide Section 193 of the Finance (No.2) Act, 2019 thereby substantially amending Section 3 of PMLA in its context and application in such manner as has rendered Section 3 manifestly arbitrary, illegal and ultra vires on the touch stone of Article 14, 19, and 21 of Constitution of India.

(b) Issue an appropriate writ, order or direction, quashing and setting aside the impugned Criminal Proceedings qua the petitioners, in Special PMLA Case 2 of 2016 including Orders dated 27.04.2016 (Exh-E supra) and 14.05.2019 (Exh-N supra) passed thereunder by the Ld. Special Court by mechanically issuing process qua the petitioners for alleged offence under Section 3 of PMLA, and erroneously rejecting the application for discharge, with consequential reliefs.

(c) Issue an appropriate writ, order or direction, quashing and setting aside the impugned bail condition no.2(e) imposed vide Order dated 21.01.2017 (Exh-F supra), which restricts foreign travel of the Petitioner no.1.”

As regards prayers (b) and (c) are concerned, they pertain to the assignment of the Single Judge as per the Rules. The Petitioners have moved the Division Bench in view of prayer (a) that is the challenge to the Explanation to Section 3 of the Prevention of Money Laundering Act, 2002 (PMLA) introduced by Section 193 of the Finance Act, 2019.

3. The Petitioners had approached this Court earlier by filing Writ Petition No.761/2019 challenging the vires of Section 3

of the PMLA. This writ petition was disposed of by the Division Bench by order dated 7 March 2019, observing that it was not inclined to go into the vires of section 3 of the PMLA and the stand of the Petitioners that there is no material against the Petitioners to proceed against them under section 3 of the PMLA can be examined in the proceeding by way of a discharge application. Accordingly, the Petitioners applied for discharge and by the impugned order dated 14 May 2019, the application is rejected.

4. Both, the learned counsel for the Petitioners and the learned counsel for Respondent- Directorate point out that the impugned amendment was not under consideration of the learned Special Judge in the impugned order because the impugned amendment has come in force subsequent to the impugned order. The learned counsel for Respondent- Directorate also submits that facts of the Petitioners' case fall within the first part of Section 3 of the PMLA, before the explanation was added to it.

5. Considering the stand of the learned counsel for the parties before us, it is clear that the challenge to the impugned amendment is academic. The Writ Court will not decide the validity of the statutory enactment unless it is necessary. If prayer clause (a) does not arise for consideration, as the learned counsel for the parties point out, the petition with other prayers will pertain to the assignment of the Single Judge.

6. Leave to the Petitioners to amend the petition by deleting prayer clause (a). Amendment to be carried out within two weeks. After the amendment is so carried out, the Registry and the Petitioners will take necessary steps. We, however, keep the challenge of the Petitioners to the concerned Explanation open, in case it arises in the facts of the Petitioners' case in the course of hearing in future.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)