

Yash Tuteja vs Union Of India on 8 April, 2024

Author: Abhay S.Oka

Bench: Abhay S. Oka

2024 INSC 301

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO.153/2023

YASH TUTEJA & ANR.

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

WITH

WRIT PETITION (CRIMINAL) NO.208/2023

WRIT PETITION (CRIMINAL) NO.216/2023

AND

WRIT PETITION (CRIMINAL) NO.217/2023

JUDGMENT

ABHAY S.OKA, J

1. Taken up for final hearing as notice has already been issued on the petitions. In substance, in these Writ Petitions, the only challenge that survives is to the complaint filed by the Directorate of Enforcement under Section 44(1)(b) of the Prevention of Money-Laundering Act, 2002 (for short, “the PMLA”) concerning ECIR/RPZO/11/2022.

2. It is not in dispute that the alleged scheduled offences on which the complaint is based are under various sections of Reason: the Income-tax Act, 1961, read with Sections 120B, 191, 199, 200 and 204 of the Indian Penal Code, 1860 (for short, “the IPC”). It is also not in dispute that except for Section 120B of the IPC, none of the offences are scheduled offences within the meaning of clause (y) of sub-Section (1) of Section 2 of the PMLA. This Court, in the decision in the case of Pavana Dibbur v. Directorate of Enforcement¹, recorded its conclusions in paragraph 31, which reads thus:

“CONCLUSIONS

31. While we reject the first and second submissions canvassed by the learned senior counsel appearing for the appellant, the third submission must be upheld. Our conclusions are:

- a. It is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged, must have been shown as the accused in the scheduled offence;
 - b. Even if an accused shown in the complaint under the PMLA is not an accused in the scheduled offence, he will benefit from the acquittal of all the accused in the scheduled offence or discharge of all the accused in the scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence;
 - c. The first property cannot be said to have any connection with the proceeds of the crime as the acts constituting scheduled offence were committed after the property was acquired;
 - d. The issue of whether the appellant has used tainted money forming part of the proceeds of crime for acquiring the 1 2023 SCC OnLine SC 1586 second property can be decided only at the time of trial; and e. The offence punishable under Section 120-B of the IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule.” (underline supplied)
3. Hence, the offence punishable under Section 120B of the IPC could become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule to the PMLA. In this case, admittedly, the offences alleged in the complaint except Section 120-B of IPC are not the scheduled offences. Conspiracy to commit any of the offences included in the Schedule has not been alleged in the complaint. ECIR/RPZO/11/2022, which is the subject matter of the complaint, is based on the offences relied upon in the complaint. As the conspiracy alleged is of the commission of offences which are not the scheduled offences, the offences mentioned in the complaint are not scheduled offences within the meaning of clause (y) of sub-Section (1) of Section 2 of the PMLA.

4. In paragraph 15 of the decision in the case of Pavana Dibbur¹, this Court held that:

“The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence.” Therefore, in the absence of the scheduled offence, as held in the decision mentioned above of this Court, there cannot be any proceeds of crime within the meaning of clause (u) of sub- Section (1) of Section 2 of the PMLA. If there are no proceeds of crime, the offence under Section 3 of the PMLA is not made out. The reason is that existence of the proceeds of crime is a condition precedent for the applicability of Section 3 of the PMLA.

5. There is some controversy about whether the Special Court has taken cognizance on the basis of the complaint. The learned ASG, on instructions, states that cognizance has not been taken. The learned ASG submits that as the cognizance is not taken, this Court should not entertain the prayer

for quashing the complaint.

6. The only mode by which the cognizance of the offence under Section 3, punishable under Section 4 of the PMLA, can be taken by the Special Court is upon a complaint filed by the Authority authorized on this behalf. Section 46 of PMLA provides that the provisions of the Cr.PC (including the provisions as to bails or bonds) shall apply to proceedings before a Special Court and for the purposes of the Cr.PC provisions, the Special Court shall be deemed to be a Court of Sessions. However, sub-section (1) of Section 46 starts with the words “save as otherwise provided in this Act.” Considering the provisions of Section 46(1) of the PMLA, save as otherwise provided in the PMLA, the provisions of the Code of Criminal Procedure, 1973 (for short, Cr. PC) shall apply to the proceedings before a Special Court. Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 of the Cr.PC will apply to the Complaint. There is no provision in the PMLA which overrides the provisions of Sections 200 to Sections 204 of Cr.PC. Hence, the Special Court will have to apply its mind to the question of whether a prima facie case of a commission of an offence under Section 3 of the PMLA is made out in a complaint under Section 44(1)(b) of the PMLA. If the Special Court is of the view that no prima facie case of an offence under Section 3 of the PMLA is made out, it must exercise the power under Section 203 of the Cr.PC to dismiss the complaint. If a prima facie case is made out, the Special Court can take recourse to Section 204 of the Cr. PC.

7. In this case, no scheduled offence is made out the basis of the complaint as the offences relied upon therein are not scheduled offences. Therefore, there cannot be any proceeds of crime. Hence, there cannot be an offence under Section 3 of the PMLA. Therefore, no purpose will be served by directing the Special Court to apply its mind in accordance with Section 203 read with Section 204 of the Cr.PC. That will only be an empty formality.

8. We may note that the petitioners in Writ Petition (Crl.) No.153/2023 and the petitioner in Writ Petition (Crl.) No.217/2023 have not been shown as accused in the complaint. Only the second petitioner in Writ Petition (Crl.) No.208/2023 and the petitioner in Writ Petition No.216/2023 have been shown as accused in the complaint. In the case of those petitioners who are not shown as accused in the complaint, it is unnecessary to entertain the Writ Petitions since the complaint itself is being quashed.

9. Hence, we pass the following order:

(i) Writ Petition (Crl.) Nos.153/2023 and 217/2023 are disposed of;

(ii) The complaint based on ECIR/RPZO/11/2022, as far as the second petitioner (Anwar Dhebar) in Writ Petition (Crl.) No.208/2023 is concerned, is hereby quashed. The Writ Petition is, accordingly, partly allowed;

(iii) The complaint based on ECIR/RPZO/11/2022, as far as the petitioner (Arun Pati Tripathi) in Writ Petition (Crl.) No.216/2023 is concerned, is hereby quashed.

The Writ Petition is, accordingly, allowed;

(iv) There will be no order as to costs; and

(v) Pending applications, including those seeking impleadment, are disposed of accordingly.

10. At this stage, the learned ASG stated that, based on another First Information Report, which, according to him, involves a scheduled offence, criminal proceedings under the PMLA are likely to be initiated against the petitioners. It is not necessary for us to go into the issue of the legality and validity of the proceedings that are likely to be initiated at this stage. Therefore, all the contentions in that regard are left open to be decided in appropriate proceedings.

11. The learned senior counsel appearing for the petitioners in Writ Petition (Crl.) Nos.153/2023 and 208/2023 seeks continuation of the interim order dated 7th August 2023 passed by this Court in these two Writ Petitions to enable the petitioners to take recourse to appropriate proceedings before the appropriate Court.

12. By keeping the rights and contention of the parties open, we direct that the interim order dated 7th August 2023 passed in Writ Petition (Crl.) Nos.153/2023 and 208/2023 shall continue to operate for three weeks from today.

.....J. (Abhay S. Oka)J. (Ujjal Bhuyan) New Delhi;

April 8, 2024.