

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on :27.07.2023
Pronounced on: 10.08.2023

OWP No.1194/2011
c/w
OWP No.757/2018
OWP No.820/2017

IRSHAD AHMAD QURESHI & ANR. ... PETITIONER(S)

Through: - Mr. Arshid Andrabi, Advocate.

Vs.

STATE OF J&K & OTHERS ...RESPONDENT(S)

*Through: - Mr. T. M. Shamsi, DSGI, with
Ms. Sahila Nisar, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

- 1) By this common judgment, afore-titled three writ petitions filed by the petitioners, are proposed to be disposed of.
- 2) By virtue of writ petition bearing OWP No.757/2018, the petitioners have challenged the provisions contained in Prevention of Money-Laundering Act, 2002 (hereinafter referred to as "the PMLA"). Challenge has also been thrown to proceedings initiated against the petitioners pursuant to ECIR/01/SRZO/2011 dated 29.04.2011, which are stated to be pending before the Designated Court.

3) In OWP No.820/2017, the petitioners have challenged the proceedings initiated against them pursuant to ECIR/01/SRZO/2011 dated 29.02.2011, as also the aforesaid ECIR.

4) Vide writ petition (OWP) No.1194/2011, the petitioners have challenged the order of summoning issued by respondent No.4-Director of Enforcement, against them with a further direction for restraining the respondents from interfering in the cases already investigated and prosecuted by the J&K Police.

5) It appears that the petitioners are facing trial before the Court of 4th Additional Sessions Judge, Srinagar, in a case arising out of FIR No.14/2009 for offences under Section 11, 17, 20 ULA(P) Act and Section 121-A of RPC registered with P/S Karan Nagar, Srinagar. According to the petitioners, they were also detained under Public Safety Act in terms of orders No. DMS/PSA/68/2010 and DMS/PSA/67/2010 both dated 3rd February, 2010. It has been submitted that the allegations made in the challan pending against the petitioners are similar in nature to the allegations levelled against them in the grounds of detention. It has been further submitted that the orders of preventive detention passed against the petitioners have been quashed by this Court in terms of judgment dated 23.03.2010 passed in writ petition No.161/2010.

6) It seems that the respondent Enforcement Directorate has registered as case bearing No.ECIR/01/SRZO/2011 dated 29.04.2011 against the petitioners in which the impugned summons have been issued against them. According to the petitioners, they have been subjected to investigation and enquiry under the provisions of the PMLA on the basis of same

allegations which are subject matter of the challan pending against them.

7) In all the three petitions, the petitioners have urged common grounds of challenge against the impugned proceedings initiated by respondent No.4-Enforcement Director against them under the provisions of the PMLA. It has been contended that the provisions of the PMLA are unconstitutional and ultra vires the provisions of Articles 14, 19(1)(g), 21, 50 and 323 of the Constitution. It has been further contended that the respondents have subjected the petitioners to prosecution under the provisions of the PMLA on the same allegations and facts which are subject matter of criminal challan pending against them and that this amounts to double jeopardy. On this basis, it is being contended that the action of the respondents is unconstitutional. It has also been contended that the occurrence which is subject matter of the impugned proceedings dates back to a period when offences under ULA(P) Act had not been included in the Schedule to the PMLA, as such, the impugned proceedings initiated against the petitioners under the PMLA are without jurisdiction.

8) The respondents have contested the writ petitions by filing reply thereto. In the reply, it has been submitted that the petitioners have been booked in FIR No.14/2009 for offences under Section 11, 17, 20 of ULA(P) Act read with Section 121-A RPC registered with P/S Karan Nagar, Srinagar, and the case is pending trial before the Court 4th Additional Sessions Judge, Srinagar. It has been submitted that the petitioners are workers of banned outfit Hizb-ul-Mujahidin who have received money

through illegal means for passing on the same to top ranking militants of Hizb-ul-Mujahidin so as to upgrade terrorist activities in the valley. It has been submitted that the petitioners were apprehended near National School, Karan Nagar, Srinagar, and an amount of Rs.1,25,000/ was recovered from their possession and on the basis of their disclosure, a total amount of Rs.13,40,000/ was recovered, which, according to the respondents, was meant for funding terrorist activities. It is also alleged that petitioner Irshad Ahmad was maintaining a bank account with J&K Bank in which the money was being deposited by the terrorists residing in Pakistan Occupied Kashmir for funding the terrorist activities. It has been contended that since the petitioners are involved in Scheduled offences, as such, the respondents were well within their jurisdiction to initiate proceedings against them under the provisions of the PMLA. It has also been contended that the petitioners have committed offences under the PMLA as well as under ULA(P) Act which are quite distinct from each other, as such, there is no question of double jeopardy. The respondents have denied that they have committed any acts of harassment against the petitioners.

9) I have heard learned counsel for the parties and perused the record of the case.

10) So far as the issue as regards the constitutional validity of the provisions of the PMLA is concerned, the same has been finally decided by the Supreme Court in the case of **Vijay Madanlal Choudhary and others vs. Union of India and others**, 2022 SCC Online SC 929. A three Judge Bench of the Supreme Court in the aforesaid case has upheld the constitutional validity of various provisions of the PMLA. The judgment of

the Supreme Court in the aforesaid case being binding upon this Court, as such, there is no scope for this Court to re-open the issue.

11) That takes us to the argument of the petitioners that they have been subjected to double jeopardy as the allegations which are subject matter of the criminal challan pending against them are also the subject matter of proceedings initiated against them under the PMLA. It has been argued by learned counsel for the petitioners that the petitioners cannot be subjected to investigation and trial on same set of facts more than once. The learned counsel has placed reliance upon the provisions contained in Section 235 of the Cr. P. C which deals with trial for more than one offence.

12) Article 20(2) of the Constitution of India affords protection against double jeopardy. It provides that no person shall be prosecuted and punished for the same offence more than once. A bare perusal of this provisions, makes it clear that what is prohibited is prosecution and punishment for the same offence more than once. To attract applicability of Article 20(2) of the Constitution, there must be a second prosecution and punishment for the same offence for which the accused has been prosecuted and punished previously.

13) In the instant case, the petitioners are facing trial for various offences under ULA(P) Act whereas the respondents have initiated proceedings against them for offences under the PMLA. So, the petitioners are neither being prosecuted nor punished for the same offence. The offences under ULA(P) Act are quite distinct from the offence under the PMLA. The Supreme Court has in **Vijay Madanlal Choudhary's** case

(supra), while interpreting the provisions contained in Section 3 of the PMLA, which defines the offence of ‘money laundering’ observed as under:

269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

14) From a perusal of the afore-quoted observation of the Supreme Court, it is clear that the offence under Section 3 of the PMLA is an independent offence distinct from the offences under ULA(P) Act which has been incorporated in the Schedule to the PMLA.

15) The offence of money laundering involves the act of indulging in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property. So far as the offences under ULA(P) Act, for which the petitioners have booked, are concerned, they relate to using of funds of an unlawful association, raising of funds for unlawful association and being a member of a terrorist organization. These offences are clearly distinguishable from the offence under Section 3 of the PMLA. Therefore, by no stretch of

imagination, it can be stated that the petitioners have been subjected to double jeopardy by initiating prosecution against them under the provisions of the PMLA.

16) The provisions contained in Section 235 of Cr. P. C, that have been relied upon by the petitioners in support of their contention, have no applicability to the instant case because the said provisions govern the matters pertaining to framing of charge and trial of cases relating to series of acts connected to same transaction.

17) It has been next contended by learned counsel for the petitioners that the offences under ULA(P) Act were included in the Schedule to the PMLA by virtue of Notification bearing S.O. No.1388(E) dated 1st June, 2009 whereas the alleged activities, on the basis of which petitioners have been subjected to prosecution under the PMLA, are stated to have taken place on 10th March, 2009. On the basis of these facts, it has been contended that the respondents cannot initiate proceedings against the petitioners under the PMLA in respect of the activities relating to Scheduled offences when these offences were not included in the Schedule.

18) A similar issue, as has been raised by learned counsel for the petitioners in these cases, has been elaborately discussed by the Supreme Court in the case of **Vijay Madanlal Choudhary** (supra). In para 49 of the said judgment, the Supreme Court formulated the question whether the authorities can proceed against an accused when commission of the predicate offence predates the addition of the said

offence to the Schedule of the PMLA. This question has been answered by the Supreme Court in para 270 of the judgment by holding as under:

“270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of moneylaundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of moneylaundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

19) From a perusal of the afore-quoted observations of the Supreme Court, it is clear that even if a criminal activity has been committed before the same had been notified as a Scheduled offence for the purpose of the PLMA, still then if a person has indulged in or

continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as Scheduled offence, the said person is liable to be prosecuted for the offence of money-laundering. Therefore, merely because the predicate offence in the instant case dates back to a period when such offence was not incorporated in the Schedule to the PLMA, it cannot be stated that that the petitioners cannot be prosecuted for the offence under the PMLA.

20) Apart from the above, the petitioners besides facing trial for the offences under ULA(P) Act, are also facing trial for offence under Section 121-A of RPC. The offence under Section 121-A of IPC, which is in *pari materia* with Section 121-A of the RPC, was a scheduled offence even prior to the Amendment Act of 2009. On this ground also, the petitioners cannot claim that they could not have been prosecuted for offence under Section 3 of the PMLA.

21) In view of what has been discussed hereinbefore, I do not find any merit in these petitions and the same are, accordingly, dismissed. Interim order(s), if any, shall stand vacated.

(SANJAY DHAR)
JUDGE

Srinagar,
10.08.2023
"Bhat Altaf, PS"

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No