IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 761 OF 2019

Vinodkumar Krishna Murari
Goenka and anr .. Petitioners
Versus
Union of India and ors .. Respondents

…

Mr. Vikram Choudhary, Sr. Advocate I/b Aishwarya Kantawala for the petitioners.
Mr.Anil C. Singh, ASG with Mr.H.S. Venegaonkar, Mr.D.P. Singh and Dona Dutta for respondent no.2.
Mrs.P.P. Shinde, APP for the State.

CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.

DATED : 7th MARCH 2019

<u>P.C</u>:-

1 Heard.

2 The petitioners challenge the vires of Section 3 of the Prevention of Money Laundering Act, 2002 (for short "PMLA Act") essentially on the premise that unless knowledge/ *mens rea* is read into the Section as essential pre-requisite in each of the facets covered by it, the same would be unconstitutional.

3 Mr.Ranjan Mishra, Assistant Director, Directorate of Enforcement, Ministry of Finance, Department of Revenue, Government of India has filed an affidavit opposing the petition. In paragraph nos.13 and 14, the following averments are made :-

> *"13 That the contention of the petitioners that Section 3 of the Act suffers from vagueness due to lack of punctuation and lack of requirement of mens rea is nothing but an erroneous reading of the provision. The alleged interpretation suffers from serious lack of application of mind. A simple breakdown of the said provision, as amended, clearly indicates the intention of the legislature in respect of the nature of mens rea to be considered for the offence of money-laundering.*
>
> 3. Offence of money laundering -
> Whosoever
> - directly or indirectly
> - Attempts to indulge or
> - Knowingly assists or
> - Knowingly is a party or
> - Is actually involved in
>   – Concealment
>   – Possession
>   – Acquisition
>   – Use
>   ° Projecting or
>   ° Claiming
>
> it (proceeds of crime) as untainted property
> shall be guilty of offence of money-laundering.
>
> *14 Thus, the legislature thereby defined the nature of the offence of money laundering and intended*

> *to criminalise the process of activity of concealment, possession, acquisition or use and projecting or claiming of proceeds of crime as untainted property. The mens rea is evident in the provision by a bare reading of the same and does not suffer from vagueness.*

4 The learned Additional Solicitor General also invited our attention to paragraph no.11.38 of the complaint which reads as under :-

> *"11.38 Shri Vinod Kumar Krishna Mural Goenka, has indulged himself in criminal activities by conspiracy and channeling of illicit funds, falsification of documents, fraudulent transactions, creating fictitious documents. As the Managing Director of DB Realty Limited, he has resorted to large scale laundering of funds by indulging into the criminal activity of channeling, acquisition of the funds in the guise of dubious transactions. He has knowingly executed transactions involving the proceeds of crime which were then layered to mask the criminal origin of funds by resorting to sham real estate deals. Thus, Shri Vinod Goenka has been actually involved with the possession, acquisition and use of the proceeds of crime. He has, thus, made himself liable for offence of money laundering as defined under Section 3 of the PMLA, 2002 and is liable for punishment under Section 4 of PMLA, 2002.*

5 Relying upon the allegation in the above paragraphs, Shri Singh submits that petitioners have knowingly executed the transaction involving proceeds of crime. Mr.Chaudhary, learned Senior counsel, however, submits that there is no material whatsoever adduced in the entire complaint

which would even *prima facie* be sufficient to attribute knowledge/*mens rea* for the petitioners so as to proceed against them under Section 3 of the PMLA, 2002.

6 In light of above, we are not inclined to go into the vires of Section 3 of PMLA, 2002. The stand of the petitioners that there is no material against the petitioners so as to proceed against him under Section 3 of the PMLA, 2002, can be well examined in proceedings by way of discharge application.

7 Petitioners are at liberty to file application for discharge before the trial Court. If such an application is filed within a period of two weeks from today, the trial Court shall endeavour to decide the same as expeditiously as possible and in any case, within a period of two months from the date of filing of the application.

8 Subject to above, petition is disposed of.

(SMT. BHARATI H. DANGRE, J.) **(RANJIT MORE, J.)**

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