courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 09/11/2025

(2010) 08 JH CK 0062

Jharkhand High Court

Case No: None

Hari Narayan Rai	APPELLANT
Vs	
Union of India (UOI), Assistant Director-II and Deputy Directors, Directorate of Enforcement	RESPONDENT

Date of Decision: Aug. 6, 2010

Acts Referred:

- Constitution of India, 1950 - Article 20(1)
- Prevention of Money-Laundering Act, 2002 - Section 19, 2, 3

Citation: (2010) 4 JLJR 221

Hon'ble Judges: Sushil Harkauli, Acting C.J.

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sushil Harkauli, A.C.J.

1. I have heard all parties at length. The petitioner is being prosecuted u/s 3 of the Prevention of Money Laundering Act, 2002 (hereinafter called "the Act").

2. This writ petition has been filed alleging that the prosecution should be quashed, on the ground that it violates the fundamental right of the petitioner guaranteed under Article 20(1) of the Constitution of India. More specifically the said fundamental right is said to have been violated because the acts constituting the offences, which are said to have generated money, were committed prior to 1.6.2009. Prior to that date the offences under Indian Penal Code and Prevention of Corruption Act, which are given in the impugned complaint, were not mentioned in the Schedule of the Act.

3. All these offences were inserted in the Schedule by the amending Act of the year 2009 with effect from 1.6.2009. For appreciating the argument it is necessary to quote Section 3, Section 2(u) and 2(v) of the Act:

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 any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.

2(u) ''procceds of crime'' means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of such property.

2(v) ''property'' means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

4. According to the learned Counsel for the petitioner it is the date when the ''proceeds of crime'' were acquired/generated which is the relevant date. The argument proceeds further to say that the word ''Crime'' is in Section 3 means the offences listed in the Schedule. Section 2(u) of the Act, which defines the phrase "proceeds of crime", has been pressed into service for the above interpretation.

5. Thus in substance, the argument is that the money alleged to have been acquired will not fall within the definition of ''proceeds of crime'' because the acts leading to its generation were not among the offences listed in the Schedule, as it stood on the date when those acts were committed.

6. The argument is misconceived. The reason is that what is being targeted by Section 3 and another provisions of the Act is the ''laundering of money'' acquired by committing the scheduled crimes and, therefore, it would be the date of ''laundering'' which would be relevant. The ''laundering'' as used in Section 3 comprises of involvement in any process or activity by which the illicit money is being projected as untainted.

7. Thus, the relevant date is not the date of acquisition of illicit money but the dates on which such money is being processed for projecting it untainted.

8. At this stage we are concerned with the allegations, and not with the consideration whether the allegations will ultimately be proved or not, It has been argued from the respondents'' side, relying upon various allegations about acts of omission and commission, that attempt is still going on for laundering the money acquired illicitly, by way of showing the same to be the legitimate income of persons closely related to the petitioner.

9. In the circumstances, I am of the view that the petitioner is not being prosecuted merely for any act which was not a scheduled offence on the date when it was committed. Therefore, the fundamental right of the petitioner guaranteed by Article 20(1) is not being violated.

10. It has also been argued that the detention of the petitioner is illegal. This argument is based upon the allegation that the grounds for detention were not communicated as required by Section 19 of the Act.

11. Firstly this is not a writ petition for Habeas Corpus. There is only a prayer for quashing the judicial remand order dated 13.10.2009, Annexure 5 to this writ petition.

12. A perusal of that remand order shows that no such ground was taken before the Court below at the time when the petitioner was being remanded for detention by a judicial order of the Court below.

13. Being a Pure question of fact, not raised before the Court below, this cannot be permitted to be raised for the first time in writ jurisdiction.

Moreover, there is a denial of this fact in the counter affidavit making it a disputed question of fact. Most important of all, after the remand dated 13.10.2009 there would have been several other judicial remand orders which are not under challenge. Therefore, the prayer for quashing the remand order dated 13.10.2009 is redundant.

14. I do not consider it appropriate to go into the greater details as it might embarrass the trial.

15. For the reasons given above, the writ petition fails and it is dismissed.