

(2023) 03 SIK CK 0068

In the Sikkim High Court

Case No : Criminal Revision Petition No. 01 Of 2020

Directorate Of Enforcement (PMLA)

APPELLANT

Vs

Vinay Rai And Others

RESPONDENT

Date of Decision : 31-03-2023

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 3, 4, 47
Code Of Criminal Procedure, 1973 — Section 397, 401

Citation : (2023) 03 SIK CK 0068

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : Sangita Pradhan, Shakeel Ahmed, Gita Bista, Yogesh Kumar Sharma, Zola Megi, Rahul Rathi, Lidya Pradhan, Hemlal Manger, Jorgay Namka, Simeon Subba, Zangpo Sherpa, Manabendra Thakur, Anjali Shah

Final Decision : Disposed Of

Judgement

Meenakshi Madan Rai, J

1. By filing the instant Criminal Revision Petition under Section 47 of the Prevention of Money-Laundering Act, 2002 (hereinafter, "PMLA, 2002"), read with Sections 401/397 of the Code of Criminal Procedure, 1973, the Petitioner herein impugns the Order dated 31-10-2019 of the Learned Special Judge, Prevention of Money Laundering Act, 2002, East Sikkim, at Gangtok, in Sessions Trial (PMLA) Case No.01 of 2018 (Enforcement Directorate vs. Vinay Rai and Others), discharging all the opposite parties/accused persons of the offences under Sections 3 and 4 of the PMLA, 2002.

2. Today before this Court, Learned Deputy Solicitor General of India submits that although the grounds for challenge have been detailed in the Revision Petition, however in view of the ratio of the Hon'ble Supreme Court in Vijay Madanlal Choudhary and Others vs. Union of India and Others 2022 SCC OnLine SC 929 she does not seek to pursue the matter. This, in view of the fact that the Judgment has laid down the law pertaining to the provisions of the PMLA and the

Scheduled offences.

3. Learned Counsel for the opposing parties submit that they have no arguments to advance in light of the fair submissions advanced by Learned Deputy Solicitor General of India.

4. I have heard the submissions put forth by Learned Counsel for both parties and I have also perused the Judgment of the Hon'ble Supreme Court in Vijay Madanlal Choudhary (supra). The Supreme Court in Paragraph 467 observed as follows;

"467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:—

.....
(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

....." [emphasis supplied]

5. It is now settled law that there cannot be a standalone offence under the PMLA, 2002, when Scheduled offences are not made out against the accused persons.

6. In light of the specific submissions of Learned Deputy Solicitor General of India, the Criminal Revision Petition stands disposed of as not pressed.

7. All pending applications also stand disposed of.

8. Copy of this Order be forwarded to the Learned Trial Court for information along with its records.