IN THE HON'BLE SUPREME COURT OF INDIA

T.C. (CRL.) NO. 4/2018

IN THE MATTER OF:

Karti P. Chidambaram … Petitioner

VERSUS

Directorate of Enforcement and Ors. … Respondent

NOTE ON THE LAW RELATING TO MONEY BILLS AND ITS APPLICATION TO THE AMENDING ACTS TO THE PMLA

No.	Amending Act	Provisions Amended	Passed in LS	Ruling by Speaker on point of order relating to "Money Bill"	Passed in RS
1.	Finance Act, 2015 (***Vol. I, Pg. 67***)	S. 2(1)(u), 2(1)(y), 5(1), 8(3)(b), 8(8), 20(5), 20(6), 21(5), 21(6), 60(2A), Schedule	30.04.2015	30.04.2015 (***Vol. IX, Pg. 327***)	07.05.2015
2.	Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 [Money Bill] (***Vol. I, Pg. 70***)	Part C, Schedule	11.05.2015	-	13.05.2015
3.	Finance Act, 2016 (***Vol. I, Pg. 72***)	S. 2(1)(b), 25), 27, 28, 30, 31, 32, 33, 34, 36, 37, 38, 40, 73(2)	05.05.2016	05.05.2016 (***Vol. IX, Pg. 360***)	11.05.2016
4.	Finance Act, 2018	S. 2(1)(u), 5(1), 5(3), 8(3), 8(8), 19(3), 45(1), 50(5)(b), 66(1), Schedule	14.03.2018	-	**Passed by virtue of Article 109(5),**

	(***Vol. I, Pg. 74***)		[**Without Debate**]		**Constitution of India**
5.	Finance Act, 2019 (***Vol. I, Pg. 78***)	S. 8(3)	12.02.2019	-	13.02.2019
6.	Finance (No. 2) Act, 2019 (***Vol. I, Pg. 82***)	S. 2(1)(i)(n), 2(1)(i)(sa), 3, 12A, 15, 17, 18, 44(1)(b), 44(1)(d), 45(2), 72, 73(2)	18.07.2019	18.07.2019 (***Vol. IX, Pg. 394***)	23.07.2019

A. The instant petition ought to be referred to a bench of 7-judges in light of the decision in *Rojer Mathew v. South Indian Bank Ltd. and Ors. (2020) 6 SCC 1 [Vol. IX, Pg.1]*

1. Several provisions of the PMLA, including s. 45(1), have been introduced by way of amendments through the Finance Acts of 2015, 2016, 2018, 2019 and (No.2) 2019. These amendments to the PMLA through the route of the Finance Acts are liable to struck down being colourable uses of legislative power, violative of Article 110(1) of the Constitution of India. Article 110(1) of the Constitution reads as under,

> *"110. Definition of "Money Bills".—*
> *(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:— (a) the imposition, abolition, remission, alteration or regulation of any tax;*
> *(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;*
> *(c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;*

> *(d) the appropriation of moneys out of the Consolidated Fund of India;*
> *(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;*
> *(f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or (g) any matter incidental to any of the matters specified in subclauses (a) to (f).”*

2. The amendments to the PMLA brought through the Finance Acts, have absolutely no bearing on any of the matters referred in Article 110(1)(a)-(f) pertaining *inter alia* to the restrictions on grant of bail and nature of the offence under the PMLA. Therefore, the same could not have been passed as a part of a Money Bill.

3. The issue of whether such amendments, having no nexus with the matters enumerated in Article 110(1)(a)-(g) fell for consideration of this Hon’ble Court in Rojer Mathew and the same is now pending before a bench of 7 Hon’ble Judges. More specifically, the interpretation of the term “only” in Article 110(1) of the Constitution and its relationship with Article 110(1)(g) of the Constitution is pending before a bench of 7-judges. While referring the question to the 7-judge bench, the Supreme Court in ***Rojer Mathew (supra)*** noted,

> “***116.*** *Upon an extensive examination of the matter, we notice that the majority in K.S. Puttaswamy (Aadhaar-5 J.) [K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India, (2019) 1 SCC 1] pronounced the nature of the impugned enactment without first delineating the scope of Article 110(1) and principles for interpretation or the repercussions of such process.* ***It is clear to us that the majority dictum in K.S. Puttaswamy (Aadhaar-5 J.) [K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India, (2019) 1***

> ***SCC 1] did not substantially discuss the effect of the word "only" in Article 110(1) and offers little guidance on the repercussions of a finding when some of the provisions of an enactment passed as a "Money Bill" do not conform to Articles 110(1)(a) to (g). Its interpretation of the provisions of the Aadhaar Act was arguably liberal and the Court's satisfaction of the said provisions being incidental to Articles 110(1)(a) to (f), it has been argued, is not convincingly reasoned, as might not be in accord with the bicameral parliamentary system envisaged under our constitutional scheme****. Without expressing a firm and final opinion, it has to be observed that the analysis in K.S. Puttaswamy (Aadhaar-5 J.) [K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India, (2019) 1 SCC 1] makes its application difficult to the present case and raises a potential conflict between the judgments of coordinate Benches.*
>
> ***117. Given the various challenges made to the scope of judicial review and interpretative principles (or lack thereof), as adumbrated by the majority in K.S. Puttaswamy (Aadhaar-5 J.) [K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India, (2019) 1 SCC 1] and the substantial precedential impact of its analysis of the Aadhaar Act, 2016, it becomes essential to determine its correctness. Being a Bench of equal strength as that in K.S. Puttaswamy (Aadhaar-5 J.) [K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India, (2019) 1 SCC 1], we accordingly direct that this batch of matters be placed before the Hon'ble the Chief Justice of India, on the administrative side, for consideration by a larger Bench***." (emphasis supplied) [***Vol. IX, Pg. 124***]

4. The decision of the 7 Hon'ble Judges in the above-mentioned reference will therefore, go to the heart of whether the amendments to the PMLA in 2015, 2016, 2018 and 2019 could have validly been passed as money bills.

5. While such a question is pending before a bench of 7 Hon'ble Judges, judicial discipline would demand that this Hon'ble Court await the guidance of the said bench on the interpretation of the scope of Article 110.

6. Reliance in this regard is placed on the following judicial decisions of this Hon'ble Court,

   a. *Ram Shiroman Mishra v. Vishwanath Pandey, (2012) 8 SCC 575* ***[Vol IX, Pg. 254, Relevant at Pg.257]***

> ***9.*** *In Sangham Tape Co. [(2005) 9 SCC 331 : 2005 SCC (L&S) 65] , a two-Judge Bench held and observed that an application for recall of an ex parte award may be entertained by the Industrial Tribunal/Labour Court only in case it is filed before the expiry of 30 days from the date of pronouncement/publication of award. A contrary view was taken by a two-Judge Bench to which one of us (Aftab Alam, J.) was a party, in Radhakrishna Mani Tripathi v. L.H. Patel [(2009) 2 SCC 81 : (2009) 1 SCC (L&S) 358] . In both the cases, the Court referred to and relied upon the earlier decisions in Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal [1980* ***Supp*** *SCC 420 : 1981 SCC (L&S) 309] and Anil Sood v. Labour Court [(2001) 10 SCC 534 : (2009) 1 SCC (L&S) 494] but read and interpreted those two decisions completely differently.* ***Noticing this conflict, a Division Bench in Haryana Suraj Malting Ltd. v. Phool Chand [(2012) 8 SCC 579] , to which one of us (Aftab Alam, J.) was a party has referred the said issue to a larger Bench. Since the same issue is involved in this case, it is not possible for us to dispose of this matter. We will have to await the decision of the larger Bench. In the circumstances, we grant leave****.*

   b. *Asgar Ali v. State of Jammu and Kashmir and Ors., 2021 SCC OnLine SC 3095* ***[Vol. IX, Pg. 246, Relevant at Pg. 247]***

> ***"1.*** *The principal issue in this batch of cases is whether consequential seniority for the SC/ST category candidates for reservation in*

promotion as provided by Article 16(4-A) of the Indian Constitution, introduced by the Constitution (85th Amendment) Act, 2001, would be applicable to the then State of Jammu and Kashmir in view of the provisions of Article 370. During the pendency of the special leave petitions, the President notified Constitution Order No. 272 of 2019 and Constitution Order No. 273 of 2019 which in effect applied all ***provisions*** *of the Constitution (as amended from time-to-time) to the State of Jammu and Kashmir. The constitutional validity of the Constitutional orders Nos. 272 and 273 of 2019 is pending before a Constitution Bench. By its order in Shah Faesal v. Union of India[1], the Constitution Bench has declined to make a reference in regard to the validity of the constitutional orders to a larger Bench.* ***The validity of some of the observations of the High Court in the judgment under appeal would depend upon the assessment by the Constitution Bench on the issues involved.***

2. In this view of the matter, we are of the considered view that it would be appropriate for the three-Judge Bench to await the decision of the Constitution Bench in the pending proceedings arising out of Writ Petition (C) No. 1099 of 2019 and companion matters, referred to in the order noted above*."*

c. *Karan Singh v. DTC, (2017) 16 SCC 72 [**Vol. IX, Pg. 248, Relevant at Pg. 253**]*

"9. *The Tribunal after computing the appellant's appointment from 27-5-1983 has accepted the case of the appellant which comes to 9 years, 11 months and 6 days. After adding the training period and deducting 98 days it comes to 9 years, 10 months and 11 days. The appellant who appears in person has also placed before us the photocopy of the service-book of the appellant which also contains the details of his leave. There is no mention in the leave account that leave without pay granted shall be treated as disruption in service.* ***The effect of Rules 27 and 28 has to be considered which matter has been referred for consideration by a larger Bench as noted above.***

10. We are of the view that in the interest of justice it shall be appropriate to await the decision on

> ***reference dated 9-11-2016 as made in DTC v. Balwan Singh [DTC v. Balwan Singh, (2017) 11 SCC 405] . List this appeal after the decision in reference is made in CA No. 7159 of 2014****."* (emphasis supplied)

*d. Dissenting Opinion of Chandrachud, J in Beghar Foundation v. Justice K.S. Puttaswamy and Ors., (2021) 3 SCC 1 [**Vol. IX, Pg. 258, Relevant at Pg. 268**]*

> ***20. If these review petitions are to be dismissed and the larger Bench reference in Rojer Mathew [Rojer Mathew v. South Indian Bank Ltd., (2020) 6 SCC 1] were to disagree with the analysis of the majority opinion in Puttaswamy (Aadhaar-5 J.) [K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India, (2019) 1 SCC 1] , it would have serious consequences — not just for judicial discipline, but also for the ends of justice****. As such, the present batch of review petitions should be kept pending until the larger Bench decides the questions referred to it in Rojer Mathew [Rojer Mathew v. South Indian Bank Ltd., (2020) 6 SCC 1]. **In all humility, I conclude that the constitutional principles of consistency and the rule of law would require that a decision on the review petitions should await the reference to the larger Bench.*** (emphasis supplied)

7. As highlighted in the above decisions, judicial discipline would demand that where the question pending before the larger bench would intrinsically impact the adjudication of the present case, the present issue ought also to be referred to a bench of 7 Hon'ble Judges.

B. Even otherwise, the amendments to the PMLA vide the Finance Act, 2015, 2016, 2018, 2019 and (No. 2) of 2019 are unconstitutional being violative of Article 109 and 110 of the Constitution of India.

I. None of the amendments to the PMLA fulfil the requirement of Article 110

1. The PMLA has been amended by 5 Finance Acts [Money Bills] i.e. Finance Act 2015 [***Vol. I, Pg. 67***], Finance Act, 2016 [***Vol. I, Pg. 72***], Finance Act, 2018 [***Vol. I, Pg. 74***], Finance Act, 2019 [***Vol. I, Pg. 78***] & Finance (No. 2) Act, 2019 [***Vol. I, Pg. 82***].

2. All 5 Acts primarily dealt with the rates of taxation and to give effect to various financial proposals of the Central Govt. The Finance (No. 2) Act, 2019 however, states that the purpose of the Act is also to ***amend certain enactments [Vol. I, Pg. 78]***.

3. There is no nexus between the amendments to the PMLA and the aforestated objectives. Therefore, it cannot be said that these amendments are incidental to the main act, which would undoubtedly be a money bill. The amendments to the PMLA also do not fall within the purview of Article 110(1)(a)-(f).

4. Therefore, it is *ex facie* evident that these amendments are a colourable exercise of power, intended to carry out wide ranging changes to criminal law without the scrutiny of the Rajya Sabha.

5. Even a perusal of the speeches made by the Finance Ministers on the floor of the Lok Sabha shows that there was never any nexus between the PMLA amendments and the larger Finance Bill, which was being passed, thereby excluding these amendments from the purview of Article 110(1)(g) [***See Vol. IX, Pg. 411-42***].

6. The amendments to the PMLA can also be severed from the rest of the Finance Acts, which goes to show that a) there was in fact no nexus between the PMLA and the main Finance Act and b) striking down the amendments to the PMLA would have no bearing on the validity or otherwise of the Finance Acts themselves [***Rojer Mathew (supra) ¶99, Vol. IX, Pg. 118***]

II. The wrongful passage of a Bill as a Money Bill violates the principles of Bicameralism and Federalism which are a part of the Basic Structure of the Constitution

1. Bicameralism is a founding value of the Constitution. The Rajya Sabha, representing the principles of bicameralism and federalism, therefore, represents the Basic Structure of the Constitution. Any supersession of the Rajya Sabha therefore, must be in strict conformity with the provisions of the Constitution [***Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors., (2019) 1 SCC 1, ¶¶ 397, 1106; Rojer Mathew v. South Indian Bank Ltd. and Ors. (2020) 6 SCC 1, ¶ 86, Vol. IX, Pg. 114***]

2. Unlike an ordinary bill, which in terms of Article 107 r/w Article 111 of the Constitution, must receive the assent of both Houses of Parliament before receiving Presidential Assent, a Money Bill accords significant primacy to the Lok Sabha in its passage. A Money Bill can only be introduced in the Lok Sabha [***Article 109(1)***]. Further, in terms of Article 109 of the Constitution, the Rajya Sabha has no major role to play in its passage. On receipt of a Money Bill from the Lok Sabha, the same can only be returned to the Lok Sabha with the recommendations of the Rajya Sabha which are not binding on the Lok Sabha [***Article 109(2) and 109(4)***].

3. Further, as was the case in the Finance Act, 2018, if the Rajya Sabha does not return the money bill to the Lok Sabha within 14 days, it is deemed to have been passed by both houses of Parliament [***Article 109(5)***]. Further, though the President has the power to return an ordinary bill to the Parliament [***Article 111***], no such power is present with the President in cases of Money Bills. Additionally, a Money Bill can also not be referred to a Joint Committee of the Houses of Parliament, allowing it to further escape the scrutiny of the Rajya Sabha [***R. 74, Rules of Procedure and Conduct of Business in Lok Sabha, 2014, Vol. IX, Pg. 425***].

4. The above makes it clear that the passage of a bill as a money bill, as opposed to an ordinary bill has severe consequences on the right of the Rajya Sabha, and consequently, the representatives of the States to scrutinise legislation being passed by the Union Government. The Rajya Sabha, representing the value of federalism and bicameralism, is a fundamental facet of the law-making procedure, and ought not to be bypassed, except in strict accordance with the provisions of the Constitution.

5. Therefore, any illegality in the certification or passage of a Money Bill is not a mere irregularity of procedure but an illegality which vitiates the basic structure of the Constitution.

III. <u>The certification of the Speaker under Article 110(4) is amenable to judicial review.</u>

1. The decision of the Speaker in the ordinary course is amenable to judicial review only in case it suffers from an illegality or if the said decision is unconstitutional ***[Raja Ram Pal v. Hon'ble Speaker, Lok Saba and Ors., (2007) 3 SCC 184 ¶¶ 366, 386, 398; Puttaswamy (supra), ¶¶ 892, 901, 1085; Rojer Mathew (supra), ¶¶ 102-103, Vol. IX, Pg. 119***]

2. This is because all the institutions created by the Constitution [including that of the Speaker] are bound by the provisions of the Constitution [***Opinion of Justice Chandrachud in Puttaswamy (supra), ¶ 1067***]

3. The proscription under Article 122 which prohibits Courts from inquiring into any proceedings of Parliament on the grounds of irregularity of procedure would not insulate those proceedings which are illegal or unconstitutional.

4. As highlighted above, the issue of whether a Bill has been certified as a Money Bill would have grave ramifications on the constitutional scheme, and therefore, would not amount to a mere irregularity.

IV. Article 110(3) does not insulate the certification of the Speaker from judicial review.

1. Article 110(3) of the Constitution states, "If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon ***shall be final***"

2. The language "***shall be final***" is only as conflicts between the Houses or between the Speaker and the President are avoided and not to oust judicial review.

3. The Court has on multiple occasions held that such language would still render the subject matter of the provision amenable to judicial review in cases where the decision was illegal or unconstitutional. Some judgments in this vein are as under,

No.	Article	Decision
1.	Article 212	Powers, Privileges and Immunities of State Legislatures, Re v. Special Reference No. 1 of 1964, ***(1965) 1 SCR 413, ¶61***
2.	Article 217	Union of India v. Jyoti Prakash Mitter, ***1971 (1) SCC 396, ¶ 32***
3.	Article 311(3)	Union of India v. Tulsiram Patel, ***(1985) 3 SCC 398 ¶¶ 130, 133***
4.	Tenth Schedule	Kihoto Hollohan v. Zachilhu and Ors., ***1992 Supp (2) SCC 651 ¶¶ 78, 143, 145***

V. Money Bills can contain only provisions dealing with matters enumerated in Clause (a)-(g) of Article 110(1) of the Constitution of India.

1. Article 110(1) of the Constitution lays down the categories of Bills that may be constituted as a Money Bill. In doing so it states,

   "*(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains* ***only*** *provisions dealing with all or any of the following matters, namely……*"

2. The usage of the word "only" denotes exclusivity in terms of limiting Money Bills to Bills whose provisions pertain to items listed in Article 110(1)(a) to 110(g) [***Puttaswamy (supra) ¶¶906, 1113***].

3. Further, any legislation sought to be supported under Article 110(1)(g), must be incidental to the matters enumerated under Article 110(1)(a)-(f). For instance, a Bill on tax may be allowed to have penal provisions on the evasion of tax. The penal provisions are ancillary to the principal subject matter of the Bill, which remains the tax [***Puttaswamy (supra) ¶1118; Rojer Mathew (supra) ¶262, Vol IX, Pg. 191***].

4. Therefore, a Bill which contains provisions that do not pertain directly to Article 110(1)(a) to 110(1)(f) cannot be understood to be a Money Bill.

5. The fact that Bills containing non-taxation proposals ought not to be passed as Money Bills has also been recognised by at least 3 Speakers of the Lok Sabha, including by the Speaker in 2016.

6. The reason cited by the Speaker in 2016 is because Rule 219 which governs the passage of Financial Bills does not bar the inclusion of non-taxation proposals in the Finance Bills. However, such prohibition is not required to

be repeated in the Rule, given that this prohibition already exists in Article 110 of the Constitution.

VI. Pure Questions of Law can be raised at any stage

1. The position of law is settled that a pure question of law can be raised at any stage before the Hon'ble Supreme Court in proceedings under Article 136 [***Saurav Jain and Anr. v. ABP Design and Anr., 2021 SCC OnLine, ¶¶ 34-39, Vol. IX, Pg. 269 Relevant at Pg. 281-282***]

2. However, this position becomes even more strong in cases of Writ Petitions challenging the constitutionality of legislation, since ordinarily the principles of constructive res judicata would not apply in cases where fundamental rights are being infringed and the grounds advanced in the subsequent challenge are different from those taken earlier [***Amalgamated Coal Fields Ltd. and Anr. v. Janpada Sabha Chhindwara and Ors., AIR 1964 SC 1013, ¶ 24, Vol. IX, Pg. 288, Relevant at Pg. 295***]

3. It will always be open to the Petitioner to file another Writ Petition taking grounds not taken at this stage. Therefore, declining to hear the Petitioner on grounds of Constitutional validity since the same were not raised at a prior point in time would only prolong litigation [***Noorulla Ghazanfarulla v. Municipal Board of Aligarh, (1982) 1 SCC 484,¶2, Vol. IX, Pg. 301***].

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