



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NOS.1413/2017 & 9/2019

FIRST APPEAL NO. 1413 OF 2017

APPELLANT : The Joint Director, Enforcement Directorate, Panaji Zonal Office, Jeevan Vishwa Building, 1st and 2nd Floor, ED Complex, Patto Plaza, Panaji, Goa.
Through its Deputy Director, Nagpur Sub-Zonal Office, Directorate of Enforcement, 1st Floor, New Secretariat Building, Opp. VCA Stadium, Civil Lines, Nagpur-440001.

-Versus-

RESPONDENT : HDFC Bank Ltd., Kingsway Branch, Nagpur, Maharashtra.

Mr. K.N.Shukul, DSGI with Mr.PN.Hardas &
Mr.Gaurav Khatwani, Advs. for the appellent.
Mr.M.G.Bhangde, Sr.Adv. a/b Mr. S.D.Ingole, Adv. for the respondent.

FIRST APPEAL NO. 9 OF 2019

APPELLANT : The Joint Director, Enforcement Directorate, Panaji Zonal Office, Jeevan Vishwa Building, 1st and 2nd Floor, ED Complex, Patto Plaza, Panaji, Goa.
Through its Deputy Director, Nagpur Sub-Zonal Office, Directorate of Enforcement, 1st Floor, New Secretariat Building, Opp. VCA Stadium, Civil Lines, Nagpur-440001.

-Versus-

RESPONDENT : The Branch Manager, Punjab National Bank, Sitabuldi, Nagpur, Nagpur.

Mr. K.N.Shukul, DSGI with Mr.PN.Hardas &
Mr.Gaurav Khatwani, Advs. for the appellant.
Mr.E.M.Wadodkar, Adv. h/f Mr.M. Y. Wadodkar, Adv. for respondent.

**CORAM: SMT. M. S. JAWALKAR &
NANDESH S. DESHPANDE, JJ.**

**CLOSED ON : 9TH MARCH, 2026
PRONOUNCED ON : 23RD MARCH, 2026**

J U D G M E N T (Per : Smt. M. S. Jawalkar, J.)

Heard.

2. **Admit.** Heard finally with the consent of the learned counsel for the parties.

3. These appeals are filed under section 42 of the Prevention of Money Laundering Act, 2022 (For the sake of brevity hereinafter referred to as "PMLA") before this Court. The present appeal bearing First Appeal No.1413 of 2017 is preferred for challenging the order dated 28/08/2017 passed by the Appellate Tribunal under the PMLA in Appeal No.FPA-PMLA-1368/GOA/2016. By the said order, the learned Tribunal allowed the appeal filed by the respondent-HDFC Bank under section 26 of the PMLA. By the said order, the Tribunal set aside confirmation of provisional attachment order dated

30/05/2016, insofar as it affected the mortgaged properties. The Tribunal further held that secured creditors are entitled to priority in view of section 31-B of the Recovery of Debts and Bankruptcy Act, 1993 (For the sake of convenience hereinafter referred to as “RDB Act”) and section 26-E of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (For the sake of convenience hereinafter referred to as “SARFAESI Act”). The respondent-Bank was permitted to proceed with enforcement of its security interest. The main points involved in the present matters are as under:-

- (i) Whether the secured creditors would have priority of interest over the assets attached under the provisions of PMLA by virtue of provisions of the SARFAESI Act and RDB Act?
- (ii) Whether the properties of the judgment debtors attached under the provisions of PMLA would be available for the execution of the decrees against the judgment debtors in view of the provisions of SARFAESI Act and RDB Act?
- (iii) Whether property provisionally attached and confirmed under PMLA as “Proceeds of Crime” can be released in favour of a secured creditors claiming statutory priority?

4. As similar issues involved in both these appeals, they are taken up together for its disposal and First Appeal No.1413 of 2017 is taken as a lead appeal.

5. Facts in brief are as under:

The Central Bureau of Investigation (CBI) registered FIR No.RC-219/2012/E/0013 alleging irregularities in coal block allocation involving Grace Industries Ltd. and associated entities. It was alleged that on account of irregular coal block allocation, the company derived wrongful financial gains amounting to Rs.24,92,49,850/-, which the appellant-Enforcement Directorate treated as “proceeds of crime” under section 2(1)(u) of the PMLA. The appellant initiated proceedings under the provisions of PMLA on the basis that the said gains constituted “proceeds of crime” under section 2(1)(u) of PMLA. On 08/12/2015, the provisional attachment order was issued under section 5 of the PMLA attaching certain immovable properties belonging to the accused entities. The said attachment was confirmed by the Adjudicating Authority on 30/05/2016 under section 8(3) of the PMLA. The attached properties had been mortgaged to the respondent-HDFC Bank as security for credit facilities extended prior to attachment. The respondent-Bank has classified the loan account as ‘NPA’ and initiated the proceedings under the provisions of SARFAESI Act before final confiscation under the PMLA. The respondent-Bank approached the Appellate Tribunal under section 26 of the PMLA challenging the confirmation order. The learned Tribunal allowed the appeal holding that secured creditors enjoy statutory priority under section 31-B of the RDB Act and section 26-E of the SARFAESI Act. Against that order, the appellant-Enforcement Directorate by the present appeal under section 42 of the PMLA challenging the interpretation of the Appellate Tribunal. The main grounds for challenging the order are as under:

The Tribunal erred in failing to give effect to section 71 of the PMLA which provides that the provisions of PMLA shall have overriding effect over inconsistent laws. The Tribunal incorrectly equated the attachment of “proceeds of crime” with government dues recoverable under civil statute. The Tribunal failed to appreciate that the PMLA is a Special Penal Statute aimed at confiscation of tainted property, not recovery of debt. Section 31-B of the RDB Act was applied without examining whether it operates retrospectively to defeat the attachment order dated 08/12/2015. The Tribunal did not examine the legal nature of attachment under section 5 read with section 8 of the PMLA, which operates in rem and preserves property pending criminal adjudication. The impugned order undermines the confiscatory object of PMLA by subordinating it to civil recovery proceedings. The Tribunal also failed to harmoniously construe competing non-obstante clause under section 71 of the PMLA and section 31-B of the RDB Act.

6. In view of the points involved, the present appeals turn on the reconciliation of two special statutes, i.e. the PMLA, a penal statute providing for attachment and eventual confiscation of property derived from criminal activity, whereas the SARFAESI Act and RDB Act are recovery statutes granting statutory priority to secured creditors. The Tribunal treated the secured creditors’ right as superior by invoking section 31-B of the RDB Act, thereby releasing the property attached as “proceeds of crime”.

7. The appellant contends that the attachment under PMLA is not a claim for government dues but a statutory restraint over tainted property.

Section 71 of the PMLA gives overriding effect. For the sake of convenience section 71 of the PMLA is reproduced as under:

“71. Act to have overriding effect. - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

8. It is contention of the appellant that section 31-B of RDB Act was applied without examining whether it operates retrospectively to defeat the provisional attachment order dated 08/12/2015. Section 31-B of the RDB Act inserted by way of amendment in 2016. Moreover, it is also contention of the appellant that section 31-B of the RDB Act confers statutory priority over all other debts, whereas attachment under PMLA remains provisional until conviction. It would be convenient to reproduce sections 2(1)(u), 5, 8(3) and 8(8) of the PMLA as under:

“2. Definitions.– (1) In this Act, unless the context otherwise requires,–

(u) “proceeds 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 any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country for abroad]].

[*Explanation.–* For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.”

“5. Attachment of property involved in money-laundering.– (1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that–

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in [first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act:]

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.]

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, alongwith the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under [sub-section (3)] of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.— For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.”

“8. Adjudication.—

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] or record shall—

(a) continue during investigation for a period not exceeding [three hundred and sixty-five days) or] the pendency of the proceedings relating to any [offence under this Act before a Court or under the corresponding law of any other country, before the competent Court of criminal jurisdiction outside India, as the case may be; and]

[(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58-B or sub-section (2-A) of section 60 by the [Special Court].]

[*Explanation.*– For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any Court under any law for the time being in force shall be excluded.]”

“³[(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:]

⁴[Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.]”

3. Inserted by Act 20 of 2015, S.147.

4. Inserted by Act 13 of 2018, S.208 (w.e.f. 19-4-2018).

For the sake of convenience section 31-B of RDB Act and section 26-E of the SARFAESI Act are reproduced as under:

“[**31-B. Priority to secured creditors.**– Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.

Explanation.– For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.]”

“26-E. Priority to secured creditors.– Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

Explanation.– For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.]”

9. The appellant relied upon the judgment of Delhi High Court dated 02/04/2019 passed in **CRL.A. No.143/2018 & Crl.M.A. No.2262/2018** (*The Deputy Director Directorate of Enforcement Delhi v. Axis Bank & Ors.*) and *other connected matters* in support of his proposition that a property need not necessarily be connected with criminal activity to qualify as “proceeds of crime” under section 2(1)(u) of the PMLA. The said judgment also relied in support of his contention that RDB Act or SARFAESI Act has no overriding effect on PMLA.

10. The learned counsel for the respondent-Bank contended that the reliance placed by the appellant on the judgment of the Delhi High Court is

misplaced. The appellant has sought to argue that a property need not have any connection with criminal activity to qualify as “proceeds of crime” under Section 2(1)(u) of the PMLA, which is contrary to the scheme and intent of the Act. It is further contended that the said view has not found acceptance across High Courts in India. The Punjab and Haryana High Court as well as the Andhra Pradesh High Court have held that there must be a clear and direct nexus between the property and the criminal activity relating to a scheduled offence. Furthermore, the respondent submitted that this Court in **Ajay Kumar Chandraparkash Baheti v. Directorate of Enforcement, 2022 SCC OnLine Bom 1451** has also held that “proceeds of crime” refers to property derived or obtained as a result of criminal activity, thereby emphasizing the necessity of such a connection. This Court observed in paras-44 and 45 as under:

“44. In this case, the scheduled offence was registered on 19/07/2018, whereas, the Forensic Audit Report is for the period January 2018 to July 2018. The findings of the Forensic Audit Report, as referred above, only mention that all the said firms received amount from IMAAL with some unidentified receipts and they did not carry any business relations with IMAAL.

45. However, there is nothing to show that the proceeds of crime, in this case, is connected with the scheduled offence. All the above transactions appear to have taken place prior to registration of scheduled offence and there are no findings recorded the the Enforcement Directorate that the proceeds of crime are connected with the scheduled offence.”

11. Accordingly, the position now stands clarified by the Hon'ble Supreme Court of India in **Pavana Dibbur v. Directorate of Enforcement, (2023) 15 SCC 91**, wherein it has been held that property which has no link with the alleged criminal activity, or which was acquired prior to the commission of the scheduled offence, cannot be treated as “proceeds of crime”. The learned counsel for the respondent-Bank submitted that a plain reading of Section 2(1)(u) of PMLA makes it clear that the property must be “derived or obtained” as a result of criminal activity. Any interpretation to the contrary would stretch the provision beyond its intent and permit attachment of properties unconnected with any wrongdoing.

12. The judgments relied upon by the respondent-Bank in **PMLA No.1 of 2019 (O&M) (Seema Garg v. The Deputy Director, Directorate of Enforcement) and other connected matters** decided by Punjab and Haryana High Court on 06/03/2020 and in **Kumar Pappu Singh v. Union of India and others, 2021 SCC OnLine AP 983** of Andhra Pradesh High Court, wherein both the High Courts have held that there must be direct nexus between the property and criminal activity relating to a scheduled offence. The Bombay High Court in **Ajay Kumar Chandraparkash Baheti v. Directorate of Enforcement, 2022 SCC OnLine Bom 1451** relied on by the respondent-Bank, has also held that “proceeds of crime” as property derived or obtained as a result of criminal activity relating to a scheduled offence. It is further contended that the issue now stands clarified by the Hon'ble Supreme Court in **Pavana Dibbur v. Directorate of Enforcement, (2023) 15 SCC 91**, wherein it

is held that property having no connection with the scheduled offence cannot be treated as “proceeds of crime”. Therefore, a clear and direct link between the property and criminal activity is mandatory to treat the property as “proceeds of crime”. In the absence of such nexus, attachment under PMLA cannot be sustained. It is further contention of the respondent that provisional attachment under section 5 of the PMLA must satisfy statutory pre-condition, including existence of “proceeds of crime”. The penal consequences required strict consideration of the provisions.

13. The learned DSGI for the appellant contended that the Appellate Tribunal wrongly concluded that SARFAESI Act and/or RDB Act will prevail over PMLA and set aside the Provisional Attachment Order passed by the Adjudicating Authority confirming the said Provisional Attachment Order solely on the ground of primacy of the SARFAESI Act and/or RDB Act over PMLA. It is contention of the learned DSGI that the judgments relied on by the respondent in *Seema Garg v. Deputy Director, Directorate of Enforcement* (supra) and *Kumar Pappu Singh v. Union of India* (supra) do not address the instant legal issue and thus, the reliance thereupon is misplaced. The judgment cited by the respondent have been disagreed with by the Punjab & Haryana High Court in *Dilbag Singh v. Union of India & Ors., 2024 SCC OnLine P&H 15453*. The Punjab and Haryana High Court specifically held that the judgment in *Seema Garg* is no longer good in law, in view of the subsequent interpretation by the Hon’ble Supreme Court, which has superseded the legal principles established in *Seema Garg’s* case in **Vijay**

Madanlal Choudhary & Ors v. Union of India & Ors., (2023) 12 SCC 1. Now in recent judgment of Hon'ble Apex Court clear the position in **Writ Petition No.995 of 2019 (National Spot Exchange Limited v. Union of India & Ors.)**.

14. In *Vijay Madanlal Choudhary & Ors. v. Union of India & ors.* (*supra*), the Full Bench of Hon'ble Supreme Court rejected the interpretation that the attachment of property must be equivalent in value of the "proceeds of crime" only if the "proceeds of crime" are situated outside India. It was held that "*..... the definition of "proceeds of crime" is wide enough to not only refer to the property derived or obtained as a result of criminal activity relating to a scheduled offence, but also of the value of any such property*".

In *Seema Garg v. Deputy Director, Directorate of Enforcement* (*supra*), the Punjab & Haryana High Court in para-16 held as under:

"16.

Property purchased prior to commission of scheduled offence leaving aside date of enactment of PMLA, does not fall within ambit of first limb of definition of 'proceeds of crime', however it certainly falls within purview and ambit of third limb of the definition. Counsel for both sides have cited judgment of Delhi High Court in the case of **Abdullah Ali Balsharaf & Another Vs Directorate of Enforcement and Others 2019(3) RCR (Criminal) 798** to support their contention. As per said judgment, if property derived or obtained from scheduled offence is taken or held outside India, the property of equivalent value held in India or abroad may be attached irrespective of date of purchase. We fully subscribe to the opinion expressed by Delhi High

Court. We find that third limb of definition 'proceeds of crime' covers property equivalent to property held or taken outside India, thus date of purchase of property which is equivalent to property held outside India, is irrelevant. Any property irrespective of date of purchase may be attached if property derived or obtained from scheduled offence is held or taken outside India.

..... The definition part does not create rights and liabilities, thus it should be examined in the light of other sections which create rights and liabilities. As per Section 8(1) of the PMLA, the Adjudicating Authority has to serve notice calling upon the person to indicate the source of his income, earning or assets out of which or by means of which he has acquired the property attached under Section 5 of the PMLA. Seeking explanation about source of property and furnishing explanation is meaningless if property inspite of genuine and explained source may be attached. As per Section 24 of the PMLA, burden to prove that property is not involved in money laundering is upon the person whose property is attached. There is no sense on the part of any person to discharge burden qua source of property if any property may be attached, irrespective of its source.

As per Section 8(6) of the PMLA, where the Special Court finds that offence of money laundering has not taken place or property is not involved in money laundering, it shall release such property. If contention of Respondent is upheld, there would be no need of recording findings by Special Court with respect to property attached being proceeds of crime, no sooner it is held that offence of money laundering has been committed, then the Special Court would be bound to confiscate every attached property because every property in the hand of a person, who had obtained or derived property from scheduled offence, would be proceeds of crime.

..... If all these sections are read together, phrase 'value of such property' does not mean and include any property which has no link direct or indirect with the property derived or obtained from commission of scheduled offence i.e. the alleged criminal activity.

..... Accordingly, we find and hold that phrase 'value of such property' does not mean and include any property which has no link direct or indirect with the property derived or obtained from commission of scheduled offence i.e. the alleged criminal activity.”

“In *Seema Garg v. Enforcement Directorate* decided on 6-3-2020 in PMLA Nos. 1, 2 and 3 of 2019 (O&M). These are appeals filed against the order of attachment, which had been affirmed by the Appellate Tribunal. In these cases, the property had been purchased prior to the commission of the scheduled offence. The question that arose before the court was whether such property could be brought within the definition of Section 2(1)(a) and could be attached under Section 5 of the Act. The Division Bench, after considering the judgment of the erstwhile High Court for the State of Telangana and the State of Andhra Pradesh at Hyderabad in *Satyam Computer Services Ltd.* cases and the judgment of the Delhi High Court in *Abdullah Ali Balsharaf v. Enforcement Directorate 12*, had held that the properties purchased prior to the commission of the offence would not fall within the meaning of "proceeds of crime".

15. The contention of the respondent is that the scheduled property was purchased by the accused prior to the registration of FIR and the said property was mortgaged to the respondent prior to the passing of provisional attachment order and the said order was confirmed by the Adjudicating

Authority. Thus, the said property cannot be said to be purchased out of “proceeds of crime”. These contentions were raised before the Appellate Tribunal and the Tribunal set aside the order solely on the ground that the SARFAESI Act and/or RDB Act will prevail over PMLA.

16. Learned DSGI Shri Kartik Shukul for the appellant drew our attention to section 24 of the PMLA, wherein presumption of such “proceeds of crime” is given. For the sake of convenience, section 24 of the PMLA is reproduced as under:

“**[24. Burden of Proof.**– In any proceeding relating to proceeds of crime under this Act,–

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.]”

17. The appellant placed reliance on the judgment delivered by Delhi High Court in **Shiv Murat Dwivedi v. Directorate of Enforcement, 2025 SCC OnLine Del 7818**. It is contention of the appellant that the judgment in **Ajay Kumar Chandraprakash Baheti v. Directorate of Enforcement**, (supra) and **Pavana Dibbur v. Directorate of Enforcement** (supra) on which reliance is placed are effectively overruled in view of the judgment in **Vijay Madanlal Choudhary** (supra), Therefore, the interpretation of “proceeds of crime” as

laid down in the later judgment will prevail. The interpretation of “proceeds of crime” as laid down in **Vijay Madanlal Choudhary** (supra) was also reiterated in a recent judgment by Hon’ble Supreme Court in **Nav Nirman Builders & Developers Pvt.Ltd. v. Union of India 2026 SCC OnLine SC 161**. It is held that *“The definition of “proceeds of crime” under section 2(1)(u) of the PMLA is wide enough to include a property which is equivalent in value to the property that is directly or indirectly obtained from a criminal activity relating to the scheduled offence. Thus, such a property can also be attached if the proceeds of crime, as such, are not otherwise available.”*

18. It is submitted by the learned DSGI that the respondent has an alternate remedy under section 8(8) of the PMLA, wherein the respondent may seek restoration of the property during the trial before the Special Court. Lastly, the appellant submitted that the controversy is concluded by the Hon’ble Supreme Court in a reportable judgment in **National Spot Exchange Limited v. Union of India & Ors.** (supra)

19. Admittedly, provisional attachment by the appellant-Joint Director of Enforcement Directorate, Panaji, Goa was ordered on 08/12/2015. The same was confirmed by Adjudicating Authority under PMLA on 30/05/2016. The FIR was registered by CBI on 20/09/2012. The attached properties in question have been mortgaged to the respondent-HDFC Bank. In the judgment passed by Delhi High Court in *The Deputy Director Directorate of Enforcement Delhi v. Axis Bank & Ors.* (supra), wherein similar issue was

involved and appeal of the Punjab National Bank was allowed and the attachment order has been set aside. The reasons set out in the said judgment, the Tribunal arrived at a conclusion that the provisions of SARFAESI Act and the RDB Act prevail over PMLA. In the said matter, the Tribunal has also observed that the property in question had not been acquired out of any “proceeds of crime”, their acquisition being prior to the commission of offence of money laundering. It was also noted that there was no nexus between those indulging in money laundering on the one hand and the PNB on the other hand, its claim under the mortgage being a charge which merited priority. As observed by Delhi High Court that newly inserted provision contained in sections 26-B to 26-E in Chapter on registration by secured creditors and other creditors of the SARFAESI Act are yet to be notified and brought in force. It is held in *Axis Bank & Oths. (supra)* in para 169 as under:

“169. In view of above-noted legislative scheme, it must be clarified that if the order confirming the attachment has attained finality, or if the order of confiscation has been passed or, further if the trial of a case for the offence under Section 4 PMLA has commenced, the claim of a party asserting to have acted *bonafide* or having legitimate interest will have to be inquired into and adjudicated upon only by the special Court.” *(emphasis supp.)*

20. For the sake of convenience, Section 26 of the PMLA is reproduced as under:

“26. Appeals to Appellate Tribunal.– (1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any [reporting entity] aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.”

21. In view of the judgment in *The Deputy Director Directorate of Enforcement Delhi v. Axis Bank & Ors.* (*supra*), there is no overriding effect to SARFAESI Act on the provisions of the PMLA. The Delhi High Court in *Axis Bank & Oths.* (*supra*) concluded as under:

“(i).

(ii).

(iii). The empowered enforcement officer has the authority of law in PMLA to attach not only a "tainted property" that is to say a property acquired or obtained, directly or indirectly, from proceeds of criminal activity constituting a scheduled offence but also any other asset or property of equivalent value of the offender of money-laundering, the latter not bearing any taint but being alternative attachable property (or deemed tainted property) on account of its link or nexus with the offence (or offender) of money-laundering.

(iv).

(v).

(vi). The objective of PMLA being distinct from the purpose of RDBA, SARFAESI Act and Insolvency Code, the latter three legislations do not prevail over the former.

(vii). The PMLA, by virtue of section 71, has the overriding effect over other existing laws in the matter of dealing with "money-laundering" and "proceeds of crime" relating thereto.

(viii).

(ix). If the property of a person other than the one accused of (or charged with) the offence of money-laundering, i.e. a third party, is sought to be attached and there is evidence available to show that such property before its acquisition was held by the person accused of

money-laundering (or his abettor), or it was involved in a transaction which had inter-connection with transactions concerning money-laundering, the burden of proving facts to the contrary so as to seek release of such property from attachment is on the person who so contends.

(x).

(xi).

(xii). An order of attachment under PMLA is not illegal only because a secured creditor has a prior secured interest (charge) in the property, within the meaning of the expressions used in RDBA and SARFAESI Act. Similarly, mere issuance of an order of attachment under PMLA does not *ipso facto* render illegal a prior charge or encumbrance of a secured creditor, the claim of the latter for release (or restoration) from PMLA attachment being dependent on its *bonafides*.”

It is also held in para-139 as under:

“139. From the above discussion, it is clear that the objects and reasons of enactment of the four legislations are distinct, each operating in different field. There is no overlap. While RDBA has been enacted to provide for speedier remedy for banks and financial institutions to recover their dues, SARFAESI Act (with added chapter on registration of secured creditor) aims at facilitating the secured creditors to expeditiously and effectively enforce their security interest. In each case, the amount to be recovered is "*due*" to the claimant i.e. the banks or the financial institutions or the secured creditor, as the case may be, the claim being against the debtor (or his guarantor). The Insolvency Code, in contrast, seeks to primarily protect the interest of creditors by entrusting them with the responsibility to seek resolution through a professional (RP), failure on his part leading eventually to the liquidation process.”

Section 31-B of the RDB Act and Section 26-E of the SARFAESI Act, both the provisions give precedence to realization of "*debts due to*" the

"*secured creditor*". Each of these provisions renders secondary "*all other debts*" and "*revenues, taxes, cesses*" and "*rates*" enforced by "*the Central Government, State Government or local authority*".

What is held by Delhi High Court in para-141 as under:

“141. This court finds it difficult to accept the proposition that the jurisdiction conferred on the State by PMLA to confiscate the "*proceeds of crime*" concerns a property the value whereof is "*debt*" due or payable to the Government (Central or State) or local authority. The Government, when it exercises its power under PMLA to seek attachment leading to confiscation of proceeds of crime, does not stand as a creditor, the person alleged to be complicit in the offence of money-laundering similarly not acquiring the status of a debtor. The State is not claiming the prerogative to deprive such offender of ill-gotten assets so as to be perceived to be sharing the loot, not the least so as to levy tax thereupon such as to give it a colour of legitimacy or lawful earning, the idea being to take away what has been illegitimately secured by proscribed criminal activity.”

22. The Hon’ble Apex Court in *National Spot Exchange Ltd.* (*supra*) also confirmed that no priority of interest can be claimed by the secured creditors against the properties attached under the PMLA by virtue of the provisions of SARFAESI Act and RDB Act. It is held in paras 23, 35 and 36 as under:

“23. So far as PMLA is concerned, as transpiring from its objects and reasons, since money laundering had posed a serious threat not only to the financial systems of the countries but also to their integrity and sovereignty, some of the international communities had taken the initiatives to obviate such threats. The Parliament therefore considering the resolutions and declarations passed by the General Assembly of United Nations, and to prevent money laundering and to

provide for confiscation of property derived from, or involved in money laundering and for the matters connected therewith and incidental thereto, had passed the PMLA, which came into force w.e.f. 01.07.2005. Section 71 thereof pertaining to the overriding effect of the Act, reads as under:-

"71. Act to have overriding effect. - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

“35. The PMLA was enacted to implement the international resolutions and declarations made by the General Assembly of United Nations, and prevent money laundering as also to provide for confiscation of properties derived therefrom or involved in money laundering. The subject matter of PMLA therefore is traceable or relatable to the Entry-13 of Union List (List-I) of Seventh Schedule.

36. So far as the SARFAESI Act is concerned, the constitutional validity of the said Act was upheld by a three-Judge Bench in the case of *Mardia Chemicals Ltd. and Ors. vs. Union of India and Ors.* The said Act was enacted by the Parliament to regulate securitization and re-construction of financial assets and enforcement of security interest and to provide for a central database of security interest created on property rights. The RDB Act was enacted to provide establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for the matters connected therewith or incidental thereto. Therefore, both SARFAESI and RDB Act have been enacted with regard to the matter pertaining to “Banking,” which subject matter is relatable to the Entry 45 “Banking” falling in the Union List (List-I) of Seventh Schedule.”

23. Though the Hon’ble Apex Court mainly discussed the issue of overriding effect of SARFAESI Act in relation to MPID, the Hon’ble Apex Court

also concluded the issue in respect of overriding effect of SARFAESI Act *qua* the provisions in PMLA. The provisions in both the Enactments cannot be said to be having overriding effect to each other. The objects of both the Enactments are altogether different, therefore, they are required to be reconciled. In our considered opinion, provisions of RDB Act or section 37 of the SARFAESI Act would not render PMLA subservient to it because of the different objects and reasons of both enactments. The objective of the legislation in PMLA being distinct from the purposes of two other enactments viz. RDB Act and SARFAESI Act, the latter cannot prevail over the former. Their objects and purposes are different. Therefore, we confirm the view taken by the Delhi High Court in *The Deputy Director Directorate of Enforcement Delhi v. Axis Bank & Ors. (supra)* that an order of attachment under PMLA is not rendered illegal only because the secured creditor has a prior secured interest in the subject property. Conversely, mere issuance of the order of attachment under PMLA cannot, by itself, render illegal the prior charge or encumbrance of a secured creditor, this subject to such claim of the third party being *bona fide*. In these conflicting claims, a balance has to be struck. On account of exercise of the prerogative of the State under PMLA, the lawful interest of a third party which may have acted *bona fide* and with due diligence, cannot be put in jeopardy. The claim of *bona fide* third party claimant cannot be sacrificed or defeated. In section 8(8) of PMLA, power is conferred on the Special Court to direct the Central Government to “restore” a

property to the claimant with a legitimate interest even after an order of confiscation has been passed. A “hypothecatee” or a “mortgagee” has a limited interest in the property, he has only equitable and notional charge to have his claim realized by sale of goods hypothecated. The provisional order of attachment is subject to confirmation by the Adjudicating Authority. The order of Adjudicating Authority in turn is amenable to appeal to the Appellate Tribunal. The Appellate Tribunal has power to pass an order confirming modifying or setting aside the order appealed against. At the same time, the PMLA confers jurisdiction on the Special Court to entertain such claim for the purposes of restoration of the property during the trial of the case. Thus, the Appellate Tribunal as well as Special Court both have jurisdiction to deal with the order of attachment passed by the Adjudicating Authority. However, if the order of attachment is confirmed or order of confiscation has been passed, or trial of a case for the offence under section 4 of the PMLA is commenced, the claim of a party asserting to have legitimate interest will have to be inquired to and adjudicated upon only by the Special Court.

24. Admittedly, charge-sheet bearing No.41 of 2014 is filed on 28/10/2014 before the Special Judge. It appears that the Tribunal proceeded to pass order on presupposition that the SARFAESI Act is having overriding effect on the provisions of PMLA. This presupposition is unsustainable. As discussed earlier, provisions of both the Acts are required to be interpreted so as to reconcile both the provisions. The Appellate Tribunal failed to point out

how there is no reasoning or material for attachment of property in question, which is mortgaged with the respondent-Bank. Thus, the order of cancelling attachment by the Appellate Tribunal is illegal, arbitrary and contrary to law. There is no discussion by the Appellate Tribunal on how the decision of Adjudicating Authority for attachment of property in question is without any material on record. At any rate, once the charge-sheet is filed, the respondent-Bank was having remedy under section 8(8) of the PMLA to get released the property attached. We are of the considered opinion that the Adjudicating Authority has claimed that they have their own material to show that the property though purchased in 2005, the "proceeds of crime" were utilized to repay the loan of the bank. Admittedly, the property in question is mortgaged property. Therefore, whether loan availed is for purchase of the said property, when repayment is made all questions required to be gone into. However, whether such reasoning is founded on any evidence connecting the scheduled offence and conversion of "proceeds of crime" in other form is concerned, we will not go into that aspect as the Special Court is empowered to deal with this aspect of release of property from attachment even during the pendency of trial. As such, the impugned orders passed by the Tribunal are liable to be quashed and set aside. However, in view of above discussion, we do not wish to relegate the matter back to the Tribunal. However, we grant liberty to the respondent-Bank to move appropriate application for release of attachment of property before the Special Court under section 8(8) of the PMLA.

25. In view of above discussion, both the appeals are allowed.
26. The impugned order dated 28/08/2017 passed by the Appellate Tribunal, Prevention of Money Laundering Act in Appeal No.FPA-PMLA-1368/GOA/2016 (in First Appeal No.1413 of 2017) and other order challenged in First Appeal No.9 of 2019, dated 25/01/2018 in Appeal No.FPA-PMLA-1373/GOA/2016 are hereby quashed and set aside.
27. The appeals are disposed of in the above terms. No costs.

(NANDESH S. DESHPANDE, J)

(SMT. M. S. JAWALKAR, J)