APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

1. MP-PMLA-3100/DLI/2024 (Direction)
MP-PMLA-1481/DLI/2024 (A.D.)
MP-PMLA-520/DLI/2024 (Exemp.)
MP-PMLA-518/DLI/2024 (Misc)
MP-PMLA-517/DLI/2024 (Stay)
FPA-PMLA-184/DLI/2024

M/s Diamond Liquors Pvt. Ltd. ... Appellant

2. MP-PMLA-523/DLI/2024 (Exemp.)
MP-PMLA-521/DLI/2024 (Stay)
FPA-PMLA-185/DLI/2024

Gautam Malhotra ... Appellant

3. MP-PMLA-533/DLI/2024 (Exemp.)
MP-PMLA-531/DLI/2024 (Stay)
FPA-PMLA-188/DLI/2024

M/s Gautam Wines Pvt. Ltd. ... Appellant

Versus

The Deputy Director,
Directorate of Enforcement,
Delhi ... Respondent

Advocates/Authorized Representatives who appeared

For the Appellants	:	Mr. Raghav Khanna, Advocate (for Sr. no. 1), Mr. Manu Sharma, Sr. Advocate, Mr. Nishant Bishnoi, Mr. Raghav Khanna, Advocates (for Sr. no. 2) & Mr. Chaitanya Hegde Mr. Raghav Khanna, Advocates (for Sr. no. 3)
For the Respondent	:	Mr. Zoheb Hossain, Spl. Counsel, Mr. Vivek Gurnani, Panel Counsel, Mr. Kanishk Maurya, Advocate

CORAM

JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN
SHRI G. C. MISHRA : MEMBER

FINAL ORDER
12.03.2026

The batch of three appeals have been filed under Section 26 of the Prevention of Money Laundering Act, 2002 (in short `the Act of 2002') to challenge the order dated 20.12.2023 passed by the Adjudicating Authority confirming the Provisional Attachment Order dated 03.07.2023. The appellant M/s Diamond Liquors Pvt. Ltd. was earlier known as M/s Nova Garments Pvt. Ltd. and accordingly titled in the impugned order.

2. The CBI, ACB, New Delhi registered an FIR on 17.08.2022 against Shri Manish Sisodia, Deputy Chief Minister of Government of National Capital Territory of Delhi (GNCTD) for the offence under Section 120-B read with Section 477A IPC, 1860 and Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as `the Act of 1988'). It was finding irregularities in framing and implementation of the excise policy of GNCTD for the year 2021-22. The allegation was that Shri Manish Sisodia conspired with the members of the South Group through Shri Vijay Nair to receive kickbacks to the tune of Rs.100 Crores to pass on undue benefits to the private entities. The FIR was involving many other names which may not be so relevant for the present matter because the counsel for the

appellants made reference of the allegations against the appellants and accordingly raised legal issues and, therefore, we would be referring to the gist of the allegations against the appellants which are as follows:

Shri Gautam Malhotra:

3. The allegation was for giving bribe to Shri Dinesh Arora through Shri Amit Arora which was part of the 6% kickbacks arising out of the conspiracy of Delhi Excise Policy 2021-22 for formulation and implementation. He participated in the transfer of proceeds of crime of Rs.2.5 Crores and gained profit to the tune of Rs.6.9 Crores. He invested Rs.24.25 Crores into M/s Nova Garments Pvt. Ltd. through its entities M/s Oasis Commercial Pvt. Ltd., M/s Oasis Overseas Exports Pvt. Ltd. and M/s Gautam Wines Pvt. Ltd. It has resulted in acquiring control of retail operations of liquor through M/s Nova Garments Pvt. Ltd. which was barred in the Delhi Excise Policy 2021-22. It otherwise resulted in cartelization which became possible because of conspiracy by Shri Gautam Malhotra.

4. Shri Gautam Malhotra acquired proceeds of crime to the tune of Rs.0.49 Crores from M/s Brindco Sales Pvt. Ltd. through excess credit notes and has taken out cash which was given to the South Group. He facilitated the kickback transfer in conspiracy with Shri Aman Dhall of M/s Brindco Sales Pvt. Ltd. In the aforesaid manner, Shri Gautam Malhotra had acquired, used and transferred proceeds of

crime and otherwise projected tainted money as genuine business transaction.

M/s Gautam Wines Pvt. Ltd.

5. M/s Gautam Wines Private Limited is a company incorporated in April 2011. It was found involved in bidding and participating in Delhi Liquor business under the Delhi Excise Policy 2021-22 being controlled by Sh Gautam Malhotra. The shareholders and the Directors of this company had only dummy role in the operations.

6. By receiving profit of Rs. 6.9 Crores from the business operations during the year 2021-22, the accused had undertaken the activity of generation, acquisition, possession, use and projection of the proceeds of crime as untainted.

7. By transferring Rs. 20.65 Crores to M/s Nova Garments for acquiring L7 retail license and then acquiring L1 licnese itself while being beneficially owned and controlled by Shri Gautam Malhotra and being part of manufacturing, wholesale and retail operations as a result of a conspiracy, the accused company had transferred the proceeds of crime of Rs. 24.25 Crores and then projected the same as part of a business transaction and thus to be untainted.

M/s Nova Garments Pvt Ltd

8. M/s Nova Garments Private Limited is a company incorporated in May 1995. It was also involved in bidding and participating in Delhi Liquor business under the Delhi Excise Policy 2021-22. It was being controlled by Shri

Gautam Malhotra. The shareholders and the Directors of this company had only dummy role in these operations.

9. By way of receiving funds for participation in the Delhi Liquor business and for the formation of cartel, the accused acquired funds from the group companies of Shri Gautam Malhotra, Therefore, the accused company carried out the activity of acquisition of proceeds of crime to the tune of Rs. 24.25 Crores which was transferred by M/s Gautam Wines Pvt. Ltd, M/s Oasis Overseas and M/s Oasis Commercial has disguised and concealed the proceeds of crime as loan and projected it as untainted and utilized for acquiring L7 license. Thereafter, the accused has carried out the activity of acquisition, possession, use and projection of the property as untainted.

10. By way of receiving excess credit notes to the tune of Rs. 0.49 Crores from M/s Brindco Sales Pvt. Ltd, the accused company has carried out the activity of acquisition, possession, use and even projection of the same as untainted.

11. Finding involvement of the accused, the respondents caused provisional attachment of the property equivalent to the proceeds of crime. However, the appeals have been pressed in reference to the attachment of the property for equivalent to the value of Rs.24.25 Crores leaving other issues and accordingly we may refer the arguments of counsel for the appellants.

Arguments of counsel for the appellants:

12. The learned counsel for the appellants submitted that the respondents failed to differentiate between property used and property derived for the purpose of ascertaining proceeds of crime. The counsel has placed reliance on the following table as quantified by the respondents for proper ascertainment of the proceeds of crime. The table is quoted hereunder:

Sr.No.	**Accused**	**Reason**	**PoC (In Rs.)**
1.	**Gautam Malhotra**	**Profit accrued to Gautam wines**	**6.9**
		Investment in Nova Garments from related entities of Gautam Malhotra	**24.25 Cr.**
		Excess credit notes received from Brindco	**0.49 Cr.**
		Bribes paid to Sh. Amit Aroa	**Rs.2.5 Cr.**
		Total	**34.14 Cr.**

13. The learned counsel for the appellants raised limited argument towards investment in M/s Nova Garments by entities of Shri Gautam Malhotra amounting to Rs.24.25 Crores. He submitted that the amount of Rs.24.25 Crores said to have been used to give shape to the conspiracy for cartelization in framing and implementation of the excise policy of 2021-22. The respondents failed to make difference between the proceeds of crime which may be generated as an outcome of the predicate offence then use of money. The amount of Rs.24.25 Crores was not derived or acquired by the appellants out of the scheduled offence, rather said to have been used to facilitate the conspiracy and separately

generated proceeds of crime. The difference should have been made between the proceeds of crime and alleged use of money for commission of crime. The use of money for commission of crime cannot be said to have been derived or obtained as a result of predicate offence unless the allegations are made so specific. The counsel for the appellants submitted that the respondents passed the order without application of mind and failed to take note that Rs.24.25 Crores was not derived or obtained directly or indirectly as a result of criminal activity relating to scheduled offence. The learned counsel for the appellants made a reference of the judgment of the Apex Court in the case of ***Nav Nirman Builders & Developers Pvt. Ltd. Vs. Union of India*** reported in 2026 SCC Online SC 161. Reference of Paras 18 and 19 of the said judgment was given and are quoted hereunder:

> ***"18.*** *We now proceed to discuss the relevant statutory provisions.*
>
> ***Section 2(1)(u) of the PMLA***
>
> ***"2. Definitions****.—(1) In this Act, unless the context otherwise requires,—*
> *xxx xxx xxx*
>
> *(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** or 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;"*
> *(emphasis supplied)*
>
> ***19.*** *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. Section 2(1)(u) of the PMLA, despite being a definition clause, indicates the very objective of the enactment to secure proceeds of crime in any form. The scope and applicability of this provision have been succinctly dealt with by this Court, in the case of Vijay Madanlal Choudhary (supra), in the following manner:

***"105.** The other relevant definition is "proceeds of crime" in Section 2(1)(u) of the 2002 Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide the Finance Act, 2015 and Finance (No. 2) Act, 2019, took within its sweep any property mentioned in Section 2(1)(v) PMLA derived or obtained, directly or indirectly, by any person "as a result of" criminal activity "relating to" a scheduled offence mentioned in Section 2(1)(y) read with Schedule to the Act or the value of any such property. Vide the Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No. 2) Act, 2019, Explanation has been added which is obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. **The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relatable to scheduled offence does not transcend beyond the original provision. In that, the word "relating to" (associated with/has to do with) used in the main provision is a present participle of word "relate" and the word "relatable" is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(v), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act.** It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e. Section 2(1)(u).*

***106. The "proceeds of crime" being the core of the ingredients constituting the offence of money laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence.** To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the case (crime) concerned, it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the tax legislation concerned prescribes such violation as an offence and such offence is included in the Schedule to the 2002 Act. **For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the scheduled offence concerned.** This distinction must*

be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money laundering under Section 3 PMLA.

107. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of the Explanation added in 2019 to the definition of the expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. *As noticed from the definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching up to the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition of "proceeds of crime". The definition of "property" also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences.*

108. *In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true.* ***Additionally, some other property if purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of the 2002 Act.***
xxx xxx xxx

172. *It was also urged before us 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. This argument, in our opinion, is tenuous.* ***For, 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. If the property is taken or held outside the country, even in such a case, the property equivalent in value held within the country or abroad can be proceeded with. The definition of "property" as in Section 2(1)(v) is equally wide enough to encompass the value of the property of proceeds of crime. Such interpretation would further the legislative intent in recovery of the proceeds of crime and vesting it in the Central Government for effective prevention of money laundering.***

173. *We find force in the stand taken by the Union of India that the objectives of enacting the 2002 Act was the attachment and confiscation of proceeds of crime which is the quintessence so as to combat the evil of money laundering. The second proviso, therefore, addresses the broad objectives of the 2002 Act to reach the proceeds of crime in whosoever's name they are kept or by whosoever they are held. To buttress this argument, reliance has been placed on the dictum in Attorney General for India v. Amratlal Prajivandas, (1994) 5 SCC 54: 1994 SCC (Cri) 1325] and Raman Tech. & Process Engg. Co. v. Solanki Traders (2008) 2 SCC 302 : (2008) 1 SCC (Civ) 539]. (emphasis supplied)"*

14. The learned counsel emphasized on the challenge to the Provisional Attachment Order for the property to the tune of Rs.24.25 Crores which was not generated out of the commission of crime so as to fall in the definition of proceeds of crime.

15. The learned counsel for the appellants gave illustration to strengthen his argument. It was submitted that if a Car is used for commission of crime, the Motor Vehicle would not be considered to be proceeds of crime. The aforesaid illustration has been given by the Apex Court in the case of ***Vijay Madanlal Choudhary Vs. Union of India*** reported in 2022 SCC Online SC 929. The illustration is applicable to the facts of this case because Rs.24.25 Crores was not derived or acquired by the accused out of the scheduled offence, rather said to have been used to give effect to the criminal conspiracy and, therefore, provisional attachment of the property for the value equivalent to Rs.24.25 Crores becomes illegal and, therefore, deserves to be released.

16. The learned counsel for the appellants further submitted that the alleged bribe money amounting to Rs.2.5 Crores paid to Dinesh Arora through Amit Arora as a part of 6% kickback has been wrongly treated as proceeds of crime. Even so, if the bribe money given by the appellant Gautam Malhotra is treated as proceeds of crime, the property of Amit Arora or Dinesh Arora, as the case may be, should have been attached. The prayer was accordingly made to cause

interference in the impugned order on the aforesaid ground also.

17. The counsel for the appellants did not raise any other issue other than recorded by us despite an opportunity and rather showed satisfaction to what has been recorded by us.

Arguments of counsel for the respondents:

18. The learned counsel for the respondents on the other hand submitted that Rs.24.25 Crores would form part of proceeds of crime taking into consideration the allegations against the appellants. The infusion of Rs.24.25 Crores in M/s Nova Garments by the related entities of appellant Gautam Malotra was barred under Delhi Excise Policy of 2021-22. It resulted in cartelization with the conspiracy. Thus, the whole investment and its gain by the appellant Gautam Malhotra is rightly treated as proceeds of crime. It was outcome of the conspiracy for formulation and implementation of Delhi Excise Policy 2021-22. It is more so when M/s Gautam Wines Pvt. Ltd. gained profit of Rs.6.9 Crores during the period of year 2021-22 due to the cartelization in the policy, therefore challenge to it has not been pressed. It was as a result of the conspiracy of Delhi Excise Policy directly associated with the predicate offence.

19. So far as Rs.24.25 Crores is concerned, the amount was invested by M/s Nova Garments Pvt. Ltd. through its entity M/s Oasis Commercial Pvt. Ltd. apart from two other entities. The investment resulted in acquiring control on retail

operations of liquor through M/s Nova Garments Pvt. Ltd. which was barred in the Delhi Excise Policy 2021-22. The cartelization was possible because of the conspiracy by Shri Gautam Malhotra and, therefore, the investment of Rs.24.25 Crores was taken to be nothing but proceeds of crime. The amount aforesaid was projected to be untainted and accordingly, the offence under Section 3 of the Act of 2002 was made out. The appellants have not made reference of the facts which demolishes their argument. It is not a case where allegation is for use of motor vehicle for commission of crime, rather Rs.24.25 Crores was involved in giving shape to the conspiracy and was layered making out a case under Section 3 of the Act of 2002. The judgment of the Apex Court in the case of ***Nav Nirman Builders & Developers Pvt. Ltd.*** (supra) does not support the appellants.

Finding of the Tribunal:

20. It is a case where an FIR was registered against Shri Manish Sisodia, Deputy Chief Minister of GNCTD for the offences under Section 120-B read with Section 477A IPC and Section 7 of the Act of 1988. It was alleged that Shri Manish Sisodia conspired with the members of South Group through Vijay Nair to receive kickbacks to the tune of Rs.100 Crores for the purpose of passing undue benefits to the private entities. The facts and role pertaining to each appellant before us has already been narrated in the opening

paragraphs and thus are not being repeated herein for the sake of brevity.

21. We have referred to the table prepared by the respondents for quantification of the proceeds of crime to the tune of Rs.34.14 Crores in the hands of the appellant. It is alleged that Rs.24.25 Crores was invested in M/s Diamond Liquors erstwhile M/s Nova Garments Pvt. Ltd. for acquisition of license. It was for cartelization despite barred under the policy of year 2021-22. Finding a case of money laundering under Section 3 of the Act of 2002, the properties of the appellants have been attached.

22. The learned counsel for the appellants has contested the appeal on the ground that the amount of Rs.24.25 Crores invested in M/s Nova Garments, as alleged to have been used to give shape to the conspiracy for cartelization is untainted money and cannot be treated as proceeds of crime. It could be apposite to refer to the definition of property under Section 2(1)(v) of the Act of 2002. It is quoted hereunder:

> "(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;*
>
> *[Explanation. - For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;*

We find that the explanation to the definition of Section 2(1)(v) of the Act of 2002 categorically clarifies that property includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences. The learned counsel for the appellants prayed to make distinction

between the property derived as defined under Section 2(1)(u) of the Act of 2002 and property used in the commission of crime. He referred to the judgment of the Supreme Court in the case of ***Vijay Madanlal Choudhary Vs. Union of India*** reported in 2022 SCC Online SC 929 and argued that the vehicle used in the commission of crime cannot be treated as proceeds of crime. At this stage, we would refer to the judgment of Delhi High Court in the case of ***Directorate of Enforcement Vs. Prakash Industries Ltd. and Anr.*** (LPA 588 of 2022) dated 17.10.2025 wherein the Division Bench of the Delhi High Court considered the definition of property in light of the explanation appended to it and Section 2(1)(u) of the Act of 2002. Relevant paras of the said judgment are quoted hereunder for ready reference:

> ***"B. SECTION 2(1)(V) OF THE PMLA: WHETHER THE ALLOCATION LETTER CONSTRUES AS 'PROPERTY'?***
>
> *31. The word "property" has been defined under Black's Law Dictionary, as, "one which is peculiar or proper to any person; which belongs exclusively to one; in the strict legal sense, an aggregate of rights which are guaranteed and protected by the government. "It also goes on to define it as, "the word commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate. It extends to every species of valuable right and interest and includes real and personal property, easements, franchises and incorporeal hereditaments".*
>
> *32. The definition of "property" as provided under Section 2(1)(v) of the PMLA, is inclusive and expansive, broadly including every description of asset provided thereunder, in form of a deed or instrument evidencing title or interest in such assets. To put it simply, the definition of „property" as provided under the PMLA is broad and inclusive in its approach towards what constitutes as property within the contours of the Act. This statutory definition is further supported by the constitutional jurisprudence of India, reiterating the understanding of what constitutes as property in India under Article 300A of the COI, which recognizes property as inclusive of intangible interests and rights created through incorporeal assets.*

33. Additionally, it is apposite to note that, in the contemporary world, dominated by a commercial landscape where economic transactions are shaped by intangible rights and digital assets, to construe the definition of „property" in a narrow or traditional sense, would not only amount to restricting the approach of the Court to the innovative nuances of the modern commercial world but also create an impediment for the judiciary to keep up its pace with the evolving jurisprudence. Therefore, it becomes essential to embrace a broader and more dynamic understanding of what constitutes "property".

34. In the modern era, as also evidenced by the usage of terms to define property under Section 2(1)(v) of the PMLA, intangible property has assumed immense legal and commercial significance. The evolution of Intellectual Property laws now comprehends rights such as copyrights, trademarks, design rights, patents, licenses, digital assets and contractual entitlements, all of which are firmly recognised as valuable forms of property within the framework of common law.

35. In view of the aforestated, an allocation letter, especially when it confers upon the beneficiary an exclusive right to gain commercial advantage, enabling the beneficiary to derive economic gains, must be examined through this widened legal lens.

36. In the present case, the coal block allocation letter, although subsequently cancelled by the Supreme Court in ML Sharma (Supra), is an instrument evidencing a right or interest, namely, a right to obtain mining lease from the Government and extract coal through its utilisation. In accordance with, the definition of „property" provided under both Black"s Law Dictionary and Section 2(1)(v) of the PMLA, such a right, once exercised and converted into economic gain becomes a form of property and the very foundation for what the Directorate has identified as proceeds of crime. Moreover, it is undisputed that the allocation letter was neither dormant nor kept in abeyance rather was utilised by PIL to derive substantial financial gains through coal excavation, leading to form the very foundation for the economic generation stated to be proceeds of crime by the Directorate.

37. Moreover, as explained in detail in the succeeding paragraphs, the allocation letter was one of the core essential elements to initiate the offence of money laundering, whereby it acted as a conduit to derive the proceeds of crime. Further, the allocation letter was attained through misrepresentation and suppression of material facts, which if revealed truly would have led PIL to not be in the possession of the allocation letter, amounting to criminal activity relating to scheduled offences under the PMLA. Since, the allocation letter enabled the commission of money laundering, the letter is not only relevant but also constitutes property involved in money laundering under the scheme of the Act.

38. In view of the aforestated, the finding of the LSJ under Paragraph No.86, whereby the LSJ while relying upon the procedure for allotment of coal blocks as explained in the judgment of ML Sharma, has highlighted that the allocation of a coal block cannot be construed either as property or conferment of a right in property, falls short of nuanced understanding of the

rights conferred upon the allotee through the allotment letter. The LSJ erred in coming to such a finding, specifically when in the present case the allotment letter leading to allocation of coal block is alleged to have been obtained through criminal means. The mere fact that subsequent statutory clearances are to be obtained by the allotee (PIL) does not negate the legal character of the initial allocation. These statutory clearances are expedited on a prima facie presumption that the allotment was attained legally. Against this backdrop, where the foundation of such allotment is vitiated by criminal activity, any and/or every benefit arising from it in favour of PIL, including the interest in the coal block arising therefrom, cannot be treated as legally inconsequential.

39. It is pertinent to note that, the act of allocation, in itself, may not constitute a complete offence; rather, it is the first step in a chain of subsequent events, carrying a cascading effect. These events begin with the procurement of the allocation, which is then followed by the actual extraction of coal, an act, if done on the basis of an unauthorised allocation, constitutes a separate illegal act. The allocation sets in motion the process through which the State Government is expected to act upon the recommendation made by the Central Government and facilitate the formalities flowing therefrom. This process leads to an initiation of series of administrative actions, which, if found to be tainted by criminality at the origin, ultimately results in usurpation of a public resource, which otherwise would rightfully vest in the State as a natural resource belonging to the general public at large.

C. SECTION 2(1)(U) AND SECTION 3 OF THE PMLA: WHETHER MISREPRESENTATION IN ALLOCATION OF COAL BLOCK LEADS TO PROCEEDS OF CRIME MAKING IT AN OFFENCE OF MONEY LAUNDERING?

40. Section 2(1)(u) of the PMLA covers any property derived or obtained, directly or indirectly, by any person as a result of any criminal activity in relation to a scheduled offence and includes within its meaning, the „value of such property". As explained in the preceding paragraphs under Part B of this judgement, the definition of „property" is broad, which includes the tangible and intangible property and the property used in the commission of a scheduled offence.

41. Section 3 of the PMLA defines the offence of money laundering as an involvement in any process or activity connected with the proceeds of crime, including concealment, possession, acquisition, use and its projection as untainted or to claim it as untainted. Whereas, explanation (ii) of the said provision highlights that such process or activity connected with the proceeds of crime is a continued activity and continues till such time a person enjoys such proceeds by concealing or being in possession or acquiring or using or projecting or claiming it as an untainted property.

42. The Statement of Objects and Reasons of the PMLA also highlights certain important recommendations made by the Financial Task Force held in Paris in 1989, which also forms the foundation of the present-day legislation of PMLA dealing with offence of money laundering in India, which are:

(i) declaration of laundering of monies carried through serious crimes as criminal offence;

xxxx xxxx xxxx
(iii) confiscation of the proceeds of crime;

43. These two recommendations forming part of the objects of the PMLA when read together, reveal the legislative intent behind the Act. It means that the offence of money laundering as envisaged under Section 3 of the PMLA is a stand-alone offence and not just a byproduct of crimes; rather it is a crime in itself and the illicit financial gains arising from the criminal activities forming a part of money laundering is subject to confiscation. To put it succinctly, the intent of the Act is not only to punish the accused found to be guilty under the offence of money laundering, but also to deprive them of the illegal financial gains. The PMLA not only recognizes the illegal financial gains but also sustainably targets the conduct, in the form of serious economic offences, that results in the generation of such illegal financial gains.

44. The aforestated intent of the PMLA is also corroborated with the preamble of the Act, which defines PMLA as, "an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto".

45. Sections 2(1)(u) and 3 of the PMLA, when put together leads us to infer that Section 3 criminalises any process or activity connected with proceeds of crime, which in turn includes property derived or obtained, directly or indirectly, by any person, as a result of criminal activity, relating to a scheduled offence and the value of such property.

46. The aforesaid position has also been rendered by the Supreme Court in Vijay Madanlal Chaudhary Judgement and the relevant paragraph is reproduced hereunder: —

> *"382.8. 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 moneylaundering. 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 anyone claiming such property being the property linked to stated scheduled offence through him".*

47. The view taken by the Supreme Court was further reiterated in a recent judgment passed by the Supreme Court in Union of India through the Assistant Director v Kanhaiya Prasad14, and the relevant paragraph is as follows: —

> *"19. We also do not find any substance in the submission made by learned Senior Advocate Ranjit Kumar for the respondent that the respondent has not been shown as an accused in the predicate offence. It is no more res integra*

that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime, which had been derived or obtained as a result of criminal activity relating to or in relation to a schedule offence. Hence, involvement in any one of such process or activity connected with the Proceeds of Crime would constitute offence of money laundering. This offence otherwise has nothing to do with the criminal activity relating to a schedule offence, except the Proceeds of Crime derived or obtained as a result of that crime. The precise observations made in Vijay Madanlal (supra) in this regard may be reproduced hereunder: —

"270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence, or if we may say so, the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31-7-2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of clause (ii) in the Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

271 to 405.....

406. It was urged that the scheduled offence in a given case may be a non-cognizable offence and yet rigours of Section 45 of the 2002 Act would result in denial of bail even to such accused. This argument is founded on clear misunderstanding of the scheme of the 2002 Act. As we have repeatedly mentioned in the earlier part of this judgment that the offence of money laundering is one wherein a person, 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. The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a noncognizable offence, would make no difference. The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence

and then indulges in process or activity connected with such proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected".

48. In the present case, PIL misrepresented facts and figures in the process of obtaining coal block allocations, which typically attracts offences under Sections 420 and 467 of the IPC and Section 13(1)(d) of the PCA. Thereafter, the coal block allocation letter obtained through such criminal activity conferred valuable rights in favour of PIL which enabled the party to secure mining leases from the government and subsequently undertake coal excavation. As a result, it led PIL to obtain financial benefits in the form of profits earned from the extraction and sale of coal or through the usage of the financial benefits to substitute or derive assets, which qualifies as proceeds of crime within the meaning of Section 2(1)(u) of the PMLA.

49. Subsequently, since any process or activity connected with such proceeds of crime including possession, use, concealment, layering, projection or claim as untainted, constitutes money-laundering, the aforesaid proceeds, having been possessed, used, concealed, projected such as untainted property by PIL, brings the case squarely within the scope of the offence of money laundering as defined under Section 3 of the PMLA. Additionally, it is pertinent to note that explanation (ii) to Section 3 of the PMLA clearly states that the process of money laundering is a continuing offence linked to the existence of proceeds of crime.

50. The Supreme Court in Satyendar Kumar Jain v. Directorate of Enforcement15, has clarified that the offence of money laundering is not limited to the final act of integration and remains ongoing as long as the proceeds are being dealt with. Accordingly, the continuing nature of money laundering, sustains the liability arising out of the PMLA for post-enactment activities involving such proceeds.

51. It is undisputed that the coal block was obtained fraudulently through misrepresentation, whereas the subsequent extraction of coal, generated revenue. As such, the initial illegality breaks the entire chain of financial transactions, including any expenditure incurred therefrom. PIL is attempting to apply a net benefit theory to substantiate that the losses cancel out the gains, such an attempt is wholly misplaced in the context of established money laundering jurisprudence through statutes and various judgements of the Supreme Court. Such argument made by PIL, if accepted, would defeat the objective of the Act, which is to trace, identify and attach the property derived from a criminal activity, irrespective of subsequent financial performances.

52. Moreover, the source of funds stated to be spent by PIL remains unexplained, as such in the absence of a clear financial trail showing that the expenditure incurred by PIL was funded through untainted and legitimate means it cannot merely be presumed that the losses absolve the liability under the Act. In substance, the fallacious premise that "a negative plus a negative result in positive" cannot be invoked to defeat the legislative intent and mandate of the PMLA, since the statute focuses on the derivation of use of property obtained through a criminal activity and not on the eventual profit or loss incurred by a party".

23. In light of the judgment quoted above, we find no ground to cause interference in the impugned order. Even if the argument of counsel for the appellants is accepted, the explanation to Section 2(1)(v) of the Act of 2002 has not been challenged alleging conflict with Section 2(1)(u) of the Act of 2002 and more so we do not find any finding to that effect in the case of ***Vijay Mandanlal Choudhary*** (supra).

24. The counsel for the appellant submitted that the alleged bribe money of Rs.2.5 Crores given to Dinesh Arora as a part of 6% kickback cannot be treated as proceeds of crime because nothing came in the hands of the appellant and thus it does not qualify the ingredients of the definition of "proceeds of crime" under the Act of 2002. It was further submitted that what could have been attached was the property of Dinesh Arora or Amit Arora who have been alleged to have received the bribe money and thus were beneficiary of the proceeds of crime. We find that the argument has been made without realizing that giving bribe is punishable under the Act of 1988 and is also listed in the scheduled offences under the Act of 2002. We may refer to the judgment of the Supreme Court in the case of ***Directorate of Enforcement Vs. Padmanabhan Kishore*** reported in MANU/SC/1412/2022 dated 31.10.2022 wherein the Apex Court held that the intent to hand over the money as bribe would be involved in the process or activity and is connected with the proceeds of crime and thus a case of money

laundering would be made out. The relevant paras of the judgment are quoted hereunder:

> "*14. The further question to be answered is whether the role played by Respondent could come within the purview of Section 3 of the PML Act?*
>
> *15. Said Section 3 states, inter alia, that whoever knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use shall be guilty of offence of money-laundering*
>
> *(emphasis added by us).*
>
> *16. It is true that so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money. If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the public servant, the offence would be of misappropriation or species thereof but certainly not of bribe. The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before amount is handed over. Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of crime" including inter alia, the aspects possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person.*
>
> *17. On a bare perusal of the complaint made by the Enforcement Directorate, it is quite clear that the Respondent was prima facie involved in the activity connected with the proceeds of crime".*

25. We find that the intent of the appellant Gautam Malhotra in giving the bribe money is substantiated by the statement of Dinesh Arora before the learned Magistrate under Section 164 of the Cr.PC who has confirmed receipt of

bribe money to the tune of Rs.2.5 Crores as part of kickback from the appellant. The counsel for the appellant did not make any other arguments other than the one referred and discussed by us.

26. In light of the findings recorded by us, we do not find a case to cause interference in the impugned order and thus the appeals fail and are dismissed.

(Justice Munishwar Nath Bhandari)
Chairman

(G. C. Mishra)
Member

New Delhi,
12th March, 2026
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