

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

**MP-PMLA-4420/MUM/2024 Exemp.
MP-PMLA-4418/MUM/2024 Stay
FPA-PMLA-1915/MUM/2024**

Rajeev Salunkhe ... Appellant

Versus

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

Advocates/Authorized Representatives who appeared

For the Appellants : Mr. Parmesh Bali, Adv.
Mr. Bhriugu Dhamini, Adv.

For the Respondent : Ms. Nattasha Garg, Adv.

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JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN

FINAL ORDER
07.05.2026

By this appeal, the appellant has made challenge to the order dated 28.05.2024 passed by the Adjudicating Authority confirming the provisional attachment of the properties of many defendants. However, the present appeal has been pressed by the appellant Rajeev Salunkhe while other appellants prayed for an appropriate order.

2. The allegations against the appellant and many others are quite serious, though it would be finally determined in the trial but if it is found to be true, then the appellant and others played with the life of the patients at the time of Covid-19 and for which an FIR was registered for the offence under Section

420,406,465,467,468,471 and 304-A of IPC and finding a predicate offence, ECIR was recorded. The facts of the case are quite alarming and are required to be described in detail because apart from many offences, offence under Section 304-A IPC has also been committed. Though I would be concentrating on the predicate offence but it is only to show the seriousness of the case.

3. The present case originated from an FIR dated 24.08.2022 with Azad Maidan Police Station, Mumbai. It was alleged that during Covid-19 pandemic, the Municipal Corporations of Greater Mumbai and Municipalities of Maharashtra awarded contracts for establishing and operating various Jumbo Covid Centres. One of the contracts was given to M/s Lifeline Hospital Management Services, with its partners Dr. Hemant Gupta, Shri Sujit Mukund Patkar, Shri Sanjay Madanlal Shah and Shri Rajeev alias Raju Salunkhe. It was found that despite being a new entity established on 26.06.2020 and lacking experience in medical services, the firm remained successful to secure the tender. The firm obtained the contract for providing medical services at Worli and Dahisar Jumbo Covid Centres. The invoices for medical services were submitted to the Covid Centres for approx. 38 crores and ultimately received from BMC. It was without rendering the medical services to the department, etc. and thereby based on the fictitious bills, the amount was charged and paid to the firm.

4. After registration of the FIR, EOW authorities caused investigation where the appellant being the partner of M/s Lifeline Hospital Management Services, apart from others, were arrested on 28.02.2023 though subsequent released on bail. A charge sheet was later on filed by EOW on 27.04.2023 before the Additional Chief Metropolitan Magistrate against the appellant, apart from other partners and accused involved in the commission of crime.

5. After recording the ECIR, the investigation was conducted under the Act of 2002 where statements of all the relevant persons were recorded under Section 50(2) and (3) of the Act of 2002. In the investigation, it was revealed that M/s Lifeline Hospital Management Services through partners and mainly Shri Sunil Kadam conspired with BMC authorities and employed fraudulent means to secure the contract for supplying manpower to Dahisar and Worli Jumbo Covid Centres. During the service period, the partners failed to adhere to the Expression of Interest conditions, resulting in substantial under-deployment of staff members. Despite the deviation of the aforesaid nature, invoices were submitted and false reporting about adequate staff attendance was made though it was fabricated attendance sheets and staff records for Dahisar Jumbo Covid Centre. In fact, no record for the attendance and the staff data was submitted for the Worli Covid Centre. Nevertheless, the partners, in collusion with BMC Staff, managed to have the invoices cleared and received

Rs.32,44,86,784/- between September, 2020 to June, 2022. The respondents caused provisional attachment of the property of the partners involved in commission of crime which includes the appellant. The Provisional Attachment Order has been confirmed by the Adjudicating Authority and aggrieved by the order, this appeal has been preferred.

Arguments of counsel for the appellant:

6. The learned counsel for the appellant challenged the provisional attachment of the property and its confirmation mainly on the ground that the property in question was purchased much prior to the alleged period of crime. It has no connection with the crime and thus would not fall in the definition of “proceed of crime”. On the aforesaid ground itself, an interference should be made in the impugned order.

7. The learned counsel for the appellant further submitted that apart from purchase of the property prior to the commission of crime, the appellant has disclosed the source for purchase of the property which has no connection whatsoever with the alleged proceeds received out of the commission of crime. Thus, for the aforesaid reason also, the impugned order deserves to be set aside.

8. The learned counsel for the appellant submitted that the property provisionally attached by the respondents is a joint property in the name of the appellant and his wife who contributed equal amount for purchase of the property. The wife is not involved in the commission of crime yet her half

share of the property has been attached in ignorance of the fact that the property in question was purchased in the joint name. If at all, the property can be attached, then also it should have been to the extent of the share of the appellant and not of the wife who is not involved in the commission of offence. Thus, on the aforesaid ground also, the impugned order deserves to be set aside. The counsel for the appellant made a reference to the value of the property which is said to be of a sum of Rs.2.36 Crores purchased in the year 2016 and thereby provisional attachment of the entire property goes in excess to the proceeds of crime came to the share of the appellant, if any, though he has refused for receipt of the amount of proceed. The prayer was accordingly made to cause interference in the impugned order.

Arguments of counsel for the respondents:

9. The appeal was seriously contested by the learned counsel for the respondents. Elaborate arguments were made on each issue raised by the appellant. It would be referred while recording finding to each issue to avoid repetition of the same facts and for the sake of brevity.

Finding of the Tribunal:

10. In the opening paras of the order, I referred to the facts pertaining to the registration of the FIR for commission of many predicate offence which includes Section 304-A of IPC, apart from Section 420 IPC and other relevant provisions in view of the deeds of a firm constituted by the appellant and

others in the name of M/s Lifeline Hospital Management Services, which was established by the partners on 26.06.2020 and remained successful not only in tendering but getting a contract for providing medical services at Worli and Dahisar Jumbo Covid Centres. It was during the crucial period of Covid-19. The appellant along with his other partners of M/s Lifeline Hospital Management Services organized invoices for a sum of Rs.38 Crores and remained successful to receive the said amount. It was without providing adequate medical facilities and the staff, rather the claim was made and the amount was received based on the manipulated and forged documents, which was revealed during the course of investigation.

11. The allegations have not been defended by the counsel for the appellant but it would be relevant to take up the issue aforesaid. It is for the reason that during the investigation under the Act of 2002, all relevant facts pertaining to the commission of crime could reveal. The appellant in person admitted that the deed for establishment of the firm was submitted to procure the tender for supply of the medical services at Jumbo Covid Centres though the allegation of fabricated, false and forged document submitted by the firm was denied.

12. The statements of other persons were recorded which includes the employees, namely, Mr. Prince Mahendra Prasad Vishwakarma and Dr. Arvind Singh deployed at two different

Jumbo Covid Centres. In their statements under Section 50(2) of the Act of 2002, they admitted to have prepared fake and forged attendance record for submission of the invoices to the BMC authorities. However, they did it at the instructions of Mr. Surjit Mukund Patkar and other partners of the firm.

13. The statements of other staff members, Doctors, Accounts Officer and Dean were recorded and based on their statements, it was revealed that EOI conditions were not maintained by the partners of M/s Lifeline Hospital Management Services. There were huge under deployment of staff members. However, the invoices were submitted by showing adequate staff attendance as per the EOI conditions through fake and fabricated attendance sheets and records at the Dahisar Jumbo Covid Centre. It is with a further fact that no record or attendance for the staff data was submitted to the Worli Covid Centre by the firm despite the aforesaid partners of M/s Lifeline Hospital Management Services managed to receive more than 32 Crores.

14. During the course of investigation, it was found that M/s Lifeline Hospital Management Services has failed to provide adequate medical services as per the terms of contract and thus a written communication dated 09.09.2020 was issued about the cancellation of the contract awarded to the said firm due to various irregularities, etc. Though it was purposely suppressed from the Municipal Corporation Greater Mumbai by none else but the partners of the firm. The facts pertaining

to the deed of the appellant and the firm have been given though a contest on the allegation was not made by the appellant. The main argument was in regard to the justification and legality of the provisional attachment of the property. Accordingly, we would deal with the arguments of the appellant.

15. The counsel for the appellant submitted that the property under provisional attachment i.e. Flat No.8702 was purchased prior to the commission of crime thus does not fall in the definition of “proceeds of crime”. In fact, respondents could not connect the property with the commission of crime hence an interference in the impugned order be made.

16. The issue is as to whether the property acquired prior to the commission of crime can be provisionally attached or not has been recently decided by the Punjab and Haryana High Court in the case of **Dilbag Singh @ Dilbag Sandhu Vs. Union of India & Ors.** (CWP 22688-2024) dated 13.11.2024. It is while giving interpretation to the definition of “proceeds of crime” where the Hon’ble High Court has taken three limbs of the definition and out of which middle part to be for the property for “equivalent value” or “value thereof”. If the proceeds of crime is not found available with the accused and the person despite all efforts, then property of equivalent value can be attached. Relevant paras of the judgment of the High Court in the case of **Dilbag Singh** (supra) are quoted hereunder:

“3.2. In light of the Division Bench's judgment in Seema Garg's case (supra), this Bench would have been obligated to either follow it or refer the matter to a Larger Bench. However, the Supreme Court in Vijay Madanlal Chaudhary's case (supra) has interpreted the provision in para 298, which is extracted as under:

"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."

3.3. The aforesaid observations made by the Supreme Court enable this Bench to re-examine the entire issue, as in the considered opinion of this Bench, the judgment passed in Seema Garg's case (supra) is no longer a good law. This Court has taken this view due to the subsequent interpretation by the Supreme Court, which has superseded the legal principles established in Seema Garg's case (supra).

3.4. It is evident that the original (unamended) definition of phrase 'proceeds of crime' was structured into two distinct parts. The first part relates to the property derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence, whereas, the second part relates to the value of any such property where the proceeds of crime are not traceable. This clearly means that if the property derived or obtained, directly or indirectly, from the proceeds of a crime of scheduled offence is not traceable, then any property of equivalent value falls within the scope of the expression 'proceeds of crime'. In 2015, the amendment restructured the definition into three parts to cover the property taken or held outside the country. The concept of the property of equivalent value was introduced with respect to the aforementioned properties. The amendment enabled the authorities to go after any other property of a person of equivalent value. In 2019, the scope of the phrase 'proceeds of crime' was further expanded so as to include other properties which were not directly or indirectly the proceeds of crime, but were held abroad, to be liable to attachment. In 2019, the explanation has been added so as to give a wider scope to the authorities. From the objects and reasons of the '2002 Act', it becomes evident that the money laundering posed a serious threat not only to the financial system of the countries but also to their integrity and sovereignty. The '2002 Act' was enacted to prevent money laundering and connected activities. The act of money laundering is a multi-layered, complex and complicated diversion of the property, which is required to be prevented. Consequently, the definition of proceeds of crime has undergone transformative changes from time to time so as to include all the complex acts involved in the offence of money laundering.

3.5. In Axis Bank's case (Supra), the Delhi High Court has dissected the definition in three parts while covering tainted property and untainted property held in India; and the 'proceeds of crime' taken out of the country or any other property of equivalent value thereof. However, this Court is of the considered view that the definition can be divided into two broader categories namely tainted properties and untainted properties. The first part provides about the tainted properties derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. Thereafter, the untainted properties are further divided into two parts; the first

part deals with a situation where the property derived or obtained from 'proceeds of crime' is not traceable. In the aforesaid situation the competent authority is authorized to attach or confiscate any other property of accused, which is of the same value as that of the 'proceeds of crime'. The second sub-category is a result of amendment brought in 2015 and 2019 in the Act. It provides that if the property derived or obtained from the proceeds of crime has already been taken out of the Country then the property equivalent in value held within the Country or abroad can be made liable to be attached. This position has been explained by the Delhi High Court in an elaborate manner in *Axis Bank's case (supra)* and *Prakash Industries case (supra)*.

3.6. It is not disputed that the Supreme Court in *Vijay Madanlal Chaudhary's case (supra)* was examining the scope of the '2002 Act' including definition of phrase 'proceeds of crime'. The submission put forth by the learned counsel that the phrase 'or the value of any such property' is superfluous was rejected by the Court and it was held that the definition of 'proceeds of crime' is wide enough to not only include to the property derived or obtained as a result of criminal activity related to a schedule offence but also any other property of equivalent value.

3.7. While interpreting a statutory provision, it is the bounden duty of the Courts to interpret it in manner so that each word used by the statute conveys a meaning it was assigned by the Legislature. The words used in statute are of utmost significance. The Court cannot widen or restrict the provisions on its own whims and fancies. When a statute's language is clear and unambiguous, the general rule of interpretation of statute is to read the provision as a whole and the Court must adhere strictly to the ordinary, plain meaning of the words used. The words in a statute are used precisely, not loosely, and efforts must be made to interpret them in a literal manner to give effect to the objective of the Act. This approach of interpretation is based on the idea that the legislature's intent is best reflected in the exact words of the statute.

3.8. Moreover, the reasoning adopted in *Seema Garg's case (supra)* to the effect that there was no need to insert third part in the definition of the 'proceeds of crime' and that 'value of such property' is superfluous does not appear sound. It appears that transformative journey of the definition of phrase 'proceeds of crime' was not brought to the notice of the Division Bench in *Seema Garg's case (supra)*. In *Abdullah Ali Balsharaf's case (supra)*, Delhi High Court inadvertently overlooked the sub-category (i) of second part of definition of 'proceeds of crime'. Similarly, Andhra Pradesh High Court in *Kumar Pappu Singh's case (supra)* was not properly assisted. Furthermore, the attention of Patna High Court was not drawn to part 2(i) in *HDFC Bank's case (supra)*. Similar is the position in *M/s. Himachal Amta Power Limited's case (supra)*. In this case, the attention of the Bench was not drawn to the second broader category of the definition. In *Hemanshu Rajnikant Shah's case (supra)* the Court relied upon *Seema Garg's case (supra)* and held that the properties acquired before the alleged crime and before the enforcement of the '2002 Act' cannot be attached.

3.9. On the other hand the judgments passed in *Vijay Madanlal Chaudhary's case (supra)*, *Axis Bank's case (supra)* and *Prakash Industries case (supra)* completely answer the question in favour of ED.

3.10. The petitioner's counsel has also heavily relied upon *Pavana Dibbur's case (supra)*. This Bench has carefully read the aforesaid judgment. The aforementioned case involved attachment of property falling under the category of 'direct' or 'indirect' proceeds of crime. The complaint under Section 44-45 of 2002 Act was quashed by the Supreme Court. The Bench was never called upon to analyse the contentions based upon Section 2(i)(u) of 2002 Act, whereas, in *Vijay Madanlal Chaudhary's case (supra)* the Court directly answered the aforesaid question. Hence, there is no substance in the first argument of learned counsel for petitioner”.

17. The same view was earlier taken by this Tribunal in the case of **Shri Sadananda Nayak Vs. Directorate of Enforcement, Bhubaneswar** (Appeal No. 5612/2023). The relevant paras of the judgment in the case of **Shri Sadananda Nayak** (supra) are reproduced hereunder:

“8. We have considered the rival submissions raised by the counsel for both the parties and scanned the record carefully.

9. It is not in dispute that an FIR was registered for commission of the scheduled offence. It was followed by recording of the ECIR. The respondent initially frozen the bank accounts of the appellant and his sons, which was followed by the provisional attachment of the properties vide order dated 27.07.2020. The Provisional Attachment Order has been confirmed by the Adjudicating Authority finding a case of money laundering.

10. The Ld. Counsel for the appellant did not raise argument in reference to registration of the FIR and recording of the ECIR, followed by investigation where the role of the appellant for commission of crime has been found. The only argument raised was to challenge the attachment of three properties out of four. However, no argument was raised for the property acquired subsequent to the commission of crime i.e., fourth Property.

11. It was submitted that the properties acquired prior to the commission of crime had no nexus with the crime and thus could not have been attached. It was not obtained or derived directly or indirectly out of criminal activities relating to the scheduled offence. The respondent could not show nexus of three properties with the crime out of four attached by them.

12. The reference of the judgment of the Apex Court in the case of **Pavana Dibur** (supra) and also of Kerala High Court in the case of **Satish Motilal Bidri** (supra) has been given. To analyze the issue, we may quote the definition of ‘proceeds of crime’ given under Section 2(1) (u) of the Act of 2002, which is quoted thus.:

“(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;"

13. *The perusal of the definition aforesaid shows three limbs. In between every limb word "or" has been used to divide the definition into three parts. The first part refers to the property acquired or derived directly or indirectly out of the criminal activities relating to the scheduled offence. In the first part, all those properties which are acquired directly or indirectly out of criminal activities would be termed to be the proceeds of crime. The properties can be acquired directly or indirectly with the use of proceeds of crime. The use of proceeds directly or indirectly would be relevant part to fall in first part of the definition of 'proceeds of crime'. To clarify the definition, it may be illustrated. Assuming in a case of dacoit, the accused secured the money and it has been used for the purchase of property, then such a property would fall in the definition of 'proceeds of crime' having been obtained out of proceeds of crime. In other case where the property was not acquired or derived by the accused himself but he passed on money out of the crime to another person and he acquired the property, then also it would be considered to be the proceeds of crime to acquire the property. In any case, there should be an element for use of the proceeds directly or indirectly obtained out of the crime and thereby the property would have nexus with the crime.*

14. *In second part "the value of any such property" the definition aforesaid starts with "or" after the first part referred and discussed in the para above. The second part of the definition is commonly considered to be attachment of property of equivalent value. The second part applies when the property obtained or derived directly or indirectly out of the criminal activities is not available or vanished and, therefore, to secure the proceeds of equivalent value till completion of trial, it would fall under "the value of any such property" which is commonly taken to be the property of equivalent value. The case in hand falls in the second category of the*

definition of “proceeds of crime” because proceeds are not available and, therefore, the property of equivalent value is attached.

15. The argument has been made in reference to the judgment of Kerala High Court in the case of **Satish Motilal Bidri** (supra) and the judgment of Apex Court in **Pavana Dibur** (supra) to hold that the properties acquired prior to commission of crime would not fall in the definition of “proceeds of crime”. We are unable to accept the arguments which may otherwise make second part of the definition of “proceeds of crime” to be redundant. It would be for the reason that if the definition is taken only in two parts leaving the middle part, then it would be difficult for the enforcement agencies to protect the property till completion of the crime to save the victim from crime committed by the accused. It would be for the reason that if the property acquired prior to commission of crime would not fall in the definition of “proceeds of crime”, then the accused would commit the crime and immediately proceeds would be siphoned off or vanished so that it may not remain available for attachment. In fact, the word “the value of any such property” was inserted by the legislature to attach the property of equivalent value, if the proceeds out of commission of crime is not available or vanished. If the second limb of the definition is made dependent on the first limb, it would be literally re-writing the provision or making it redundant to a great extent and for this, jurisdiction does not lie with any court of law which includes even the Constitutional Court. They can declare any provision to be unconstitutional but till then there remains presumption of constitutional validity.

16. At this stage, we may refer to Para 68 of the judgment in the case of **Vijay Madanlal Choudhary** (supra) which is quoted hereunder.

“68. 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.”

The perusal of the para quoted above shows that the argument of the appellant that “the value of any such property” would be only when the proceeds have been taken out of India. The argument aforesaid was not accepted and it simplifies that the definition of “proceeds of crime” has three limbs and elaborate judgment to define the “proceeds of crime” was given by the Delhi High Court in the case of **Axis Bank** (supra). The relevant paras are quoted herein.

“106. Among the three kinds of attachable properties mentioned above, the first may be referred to, for sake of convenience, as “tainted property” in as much as there would assumable be evidence to prima facie show that the source of (or consideration for) its acquisition is the product of specified crime, the essence of “money laundering” being its projection as “untainted property” (Section 3). This would include such property as may have been obtained or acquired by using the tainted property as the consideration (directly or indirectly). To illustrate, bribe or illegal gratification received by a public servant in form of money (cash) being undue advantage and dishonestly gained, is tainted property acquired “directly” by a scheduled offence and consequently “proceeds of crime”. Any other property acquired using such bribe as consideration is also “proceeds of crime”, it having been obtained “indirectly” from a prohibited criminal activity within the meaning of first limb of the definition.

107. In contrast, the second and third kinds of properties mentioned above would ordinarily be “untainted property” that may have been acquired by the suspect legitimately without any connection with criminal activity or its result. The same, however, are intended to fall in the net because their owner is involved in the proscribed criminality and the tainted assets held by him are not traceable, or cannot be reached, or those found are not sufficient to fully account for the pecuniary advantage thereby gained. This is why for such untainted properties (held in India or abroad) to be taken away, the rider put by law insists on equivalence in value. From this perspective, it is

essential that, before the order of attachment is confirmed, there must be some assessment (even if tentative one) as to the value of wrongful gain made by the specified criminal activity unless it be not possible to do so by such stage, given the peculiar features or complexities of the case. The confiscation to be eventually ordered, however, must be restricted to the value of illicit gains from the crime. For the sake of convenience, the properties covered by the second and third categories may be referred to as “the alternative attachable property” or “deemed tainted property”.

17. The judgment of the Delhi High Court makes it clear that the definition of “proceeds of crime” has three limbs and in the second limb the properties of equivalent value to the proceeds obtained out of crime can be attached which may have been acquired prior to the commission of crime but it would be when proceeds of crime has been vanished and is not available. It is sought to achieve the object of the Act of 2002.

18. In the light of judgment of the Apex Court in **Vijay Madanlal Choudhary** (supra), we are unable to apply the judgment of Kerala High Court in the case of **Satish Motilal Bidri** (supra). The Ld. counsel did not refer the relevant para of the judgment in the case (supra), rather he referred Para 66 of the judgment of the Apex Court in **Vijay Madanlal Choudhary** (supra) which permits attachment only of the proceeds of crime. There cannot be any dispute that attachment can be only of the proceeds of crime but what would fall in the definition of “proceeds of crime” and clarified in Para 68 of the same judgment has not been taken into consideration whereas judgement of the Apex Court on the issue is binding on the High Court.

19. The reference to the judgment in the case of **Pavana Dibur** (supra) has been given where the Ld. Counsel for the parties did not refer Para 68 of the judgment in the case of **Vijay Madanlal Choudhary** (supra) decided by three judges of the Apex Court. In fact, elaborate arguments to define “proceeds of crime” on the issue were not raised by the parties after referring to the object of the Act of 2002 which was enacted out of the international convention. The Delhi High Court has discussed the issue elaborately and otherwise if we apply the judgement of Kerala High Court in the case of **Satish Motilal Bidri** (supra,) it would be making the second limb of the definition of “proceeds of crime” to be redundant. The counsel who appeared before the Kerala High Court did not argue that the definition of “proceeds of crime” has three limbs and unfortunately the view expressed by Delhi High Court in **Axis Bank** (supra) was

not discussed elaborately while it was cited by the counsel.

20. The Ld. Single judge of Kerala High Court did not subscribe the judgment aforesaid, rather applied the judgment of Punjab and Haryana High Court in the case of **Seema Garg Vs. Deputy Director, Directorate of Enforcement**, reported in 2020 SCC OnLine Punjab & Haryana 738. With due respect, we are unable to apply the judgment of Kerala High Court going against Para 68 of the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra). The judgment of **Seema Garg** (Supra) has been dealt with by the Delhi High Court in the case of **Prakash Industries Ltd. v. Directorate of Enforcement** reported in 2022 SCC OnLine Del 2087. The relevant paras are quoted hereunder:

“76. Seema Garg principally holds that the phrase value of any such property and property equivalent in value held within the country or abroad cannot be ascribed the same meaning and effect. The learned Judges comprising the Division Bench then proceeded to hold that even if the intent of the legislature was to include any property in the hands of a person within the ambit of the expression proceeds of crime¹, there would be no need to create three limbs of definition of proceeds of crime.

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79. Regard must also be had to the fact that the legislation itself is dealing with contingencies where proceeds of crime are layered and their origins camouflaged and masked enabling the accused to project or claim it to be untainted property. The Act clearly as does Axis Bank take into consideration a situation where a person who has obtained proceeds of crime by commission of a scheduled offence has managed to ensure that a property directly or indirectly connected to criminal activity is rendered untraceable. It is to confer authority upon the Directorate to proceed further in such a situation that Section 2(1)(u) uses the expression or the value of any such property. The safeguard which stands constructed in Section 2(1)(u) in such a contingency is that in case the Directorate does proceed against any other property, it must be equivalent in value to the illegal pecuniary benefit or gain that may have been obtained as a result of criminal activity.

80. In the considered opinion of this Court to tie the Directorate's power to move forward in this direction only in cases where property is taken or held outside the country would not only do violence to the plain language of Section 2(1)(u), it would clearly whittle down the scope

and intent of the definition itself. It would essentially amount to erasing the expression value of any such property as appearing in Section 2(1)(u) altogether. The Court further notes that in *Seema Garg* the learned Judges themselves observed that the phrase value of any such property would not mean and include any property which has no link, direct or indirect, with property derived or obtained from commission of a scheduled offence. The Court observes that Section 2(1)(u) clearly and in unambiguous terms includes not only property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence but also the value of any such property. *Seema Garg* thus seems to gloss over the statutory imperatives underlying the deployment of the phrase —or the value of any such property and the concept of deemed tainted properties enunciated in *Axis Bank*. On a plain textual interpretation of Section 2(1)(u) as well as in the backdrop of the amendatory history of that provision, this Court finds itself unable to agree with the line of reasoning adopted in *Seema Garg*. As held hereinbefore, affirmation of *Seema Garg* would amount to virtually deleting the phrase —or the value of any such property from Section 2(1)(u). That would not only violate the well settled tenets of statutory construction but would clearly amount to the Court rewriting the provision itself in a manner that it stands deprived of vital and purposive content. The Court further notes that *Axis Bank* had enunciated important safeguards which would apply in respect of third-party interests in deemed tainted property. Those caveats duly secure and protect bona fide third-party interests created for valid consideration. This Court, thus, reaffirms those defences as were culled out in *Axis Bank*. The Court thus reiterates the interpretation accorded to Section 2(1)(u) by this Court in the aforesaid decision. Consequently, and for all the aforesaid reasons this Court finds itself unable to agree with the principles as laid down in *Seema Garg* as well as the subsequent decisions rendered by the Andhra Pradesh High Court in *Kumar Pappu Singh Vs. Union of India* and the Patna High Court in *HDFC Bank Limited Vs Government of India, Ministry of Finance*.

81. The Court also takes note of the position that although SLP (Crl) No. 28906/2019 is pending before the Supreme Court against the decision rendered in *Axis Bank*, the judgement of this Court has not been stayed or placed in abeyance. The interim order of 30 August 2019 passed in the aforesaid Special Leave Petition only requires parties to maintain status quo. Insofar as the judgement of the Punjab and Haryana High Court in *Seema Garg* is concerned, although SLP (C) No.14713-14715/2020 preferred against the same came to be

dismissed, while doing so the Supreme Court recorded that the petition was being rejected in the peculiar facts and circumstances of the case. The dismissal of the aforesaid Special Leave Petition cannot in any case be interpreted or understood as being an affirmation of the view as expressed by the Punjab and Haryana High Court.

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105. It would be pertinent to recall that properties which were acquired prior to the enforcement of the Act may not be completely immune from action under the Act in light of what this Court had held in *Axis Bank*. As was explained by the Court in *Axis Bank*, the expression proceeds of crime envisage both –tainted property as well as –untainted property with it being permissible to proceed against the latter provided it is being attached as equal to the “value of any such property” or “property equivalent in value held within the country or abroad”. However, both the italicised categories would be liable to be invoked in cases where the actual tainted property cannot be traced or found out. It is only where the respondents are unable to discover the tainted property that they can take the statutory recourse to move against properties which may fall within the ambit of –value of any such property or –property equivalent in value held within the country or abroad. To the aforesaid limited extent, properties purchased prior to 01 July 2005 may also become vulnerable and subject to action under the Act. However, enforcement action against such properties would have to satisfy the tests and safeguards as propounded in *Axis Bank* with the learned Judge observing that in such a situation it would have to be established that the person accused of money laundering had an interest in such property at least till the time that he indulged in the proscribed criminal activity. The learned Judge further observed that bona fide rights acquired by third parties prior to the commission of the predicate offense would stand saved.”

21. The issue aforesaid was not raised in the case of **Pavana Dibur** (*supra*). The counsel appeared therein did not elaborately argue the issue by referring to the definition of “proceeds of crime” having three limbs to give meaning to each limb for the interpretation of the definition of the “proceeds of crime”. The reference of Para 68 of the judgment of three judges Bench of the Apex Court in the case of **Vijay Madanlal Choudhary** (*supra*) was not cited and thus counsel for the respondent submitted that the judgment in the case of **Pavana Dibur** (*supra*) does not propound ratio on definition of “proceeds of crime” and, therefore, direction for the property

acquired prior to commission crime is to be taken on facts of that case.

22. It has already been clarified by us that if the definition of “proceeds of crime” is given interpretation by dividing it into two parts or by taking only two limbs, then it would be easy for the accused to siphon off or vanish the proceeds immediately after the commission of scheduled offence and in that case none of his properties could be attached to secure the interest of the victim till conclusion of the trial. This would not only frustrate the object of the Act of 2002, but would advance the cause of the accused to promote the crime of money laundering. The Judgment in the case of **Vijay Madanlal Chaudhary** (supra) is of three judges bench while the judgment in the case of **Pavana Dibur** (supra) is of two judges bench. The issue has otherwise been dealt with by this Tribunal in the case of FPA-PMLA-2909/CHD/2019 **M/s. Besco International FZE vs. The Deputy Director Directorate of Enforcement, Chandigarh** dated 31.07.2024. The relevant para of the said judgment is quoted hereunder:

“It is not that only those properties which have been were derived or obtained directly or indirectly out of the crime can be attached rather in case of non-availability of the property derived or obtained directly or indirectly rather when it is vanished or siphoned off, the attachment can be of any property of equivalent value.

It is necessary to clarify that the proceeds of crime would not only include the property derived or obtained directly or indirectly out of the criminal activity relating to the scheduled offence but any other property of equivalent value. The word “or” has been placed before “the value of any such property” and is of great significance. Any property of equivalent value can be attached when the proceeds directly or indirectly obtained out of the crime has been vanished or siphoned off. Here, the significance would be to the property acquired even prior to commission of crime. It is for the reason that any property acquired subsequent to the commission of crime would be directly or indirectly proceeds of crime and then, it would fall in the first limb of the definition of proceeds of crime. In the second limb, which refers to “the value of any such property” would indicate any other property which was acquired prior to the commission of crime and it would be attached only when the proceeds directly or indirectly obtained or derived out of the criminal activity is not available. It may be on

account of siphoning off or vanished by the accused. In those circumstances the property of equivalent value can be attached. The word “the value of any such property” signifies without any embargo that it should be the property purchased after the commission of crime or prior to it rather it would apply in both the eventuality in the given circumstance. Thus, we are not in agreement with the counsel for the appellant who has questioned the attachment in reference to the property acquired prior to commission of crime. We are not going even further that the properties have nexus with the proceeds out of the crime but even in given circumstances and scenario that the property was acquired prior to commission of crime then, also under certain circumstances, it can be attached for “the value of any such property.”

23. At this stage, it is reiterated that any other interpretation other than the one taken by Delhi High Court in the cases of **Axis Bank** (supra) and **Prakash Industries** (supra) for the definition of “proceeds of crime” would defeat the object of the Act of 2002. It is more especially when the arguments raised by the appellant that the property acquired prior to the commission of crime would not fall in the definition of “proceeds of crime”. In that case, the task of the accused would become very easy to first commit the scheduled offence and after obtaining or deriving the property out of the criminal activities, immediately siphon off or vanish so that it may not remain available for attachment and otherwise the contingency aforesaid would satisfy only the first limb of definition of “proceeds of crime” leaving the second. We are thus unable to accept the argument raised by the appellant so as to make the middle part of the definition of “proceeds of crime” to be redundant.

18. In the light of the paras quoted above, a challenge to the provisional attachment of the property purchased prior to the commission of crime cannot be accepted when proceeds in the hands of the appellant were not found available and it is for that reason that the property of “equivalent value” or “value thereof” has been attached.

19. The second issue raised by the appellant is disclosure of source for purchase of the property. It may be that the appellant has disclosed the source for purchase of the property in the joint name of the appellant and his wife though disclosure of source indicates it to be entirely in the name of the appellant. In any case, disclosure of source remain material when it is taken to be a proceed of crime either direct or indirect. However, it would not be so relevant when the property is attached for the “equivalent value” or “value thereof”. Though disclosure of source is a material defence but cannot be accepted if the provisional attachment is for the value thereof, otherwise it would give a room to the accused to launder and route the proceeds elsewhere if the other property cannot be attached. Thus, even the second argument raised by the appellant cannot be accepted.

20. The last argument is about the joint name of the property in the name of the appellant and his wife. The perusal of the order reveals it to be in the joint name. However, the provisional attachment of the property is only for a sum of Rs.1,54,62,900/-; the proceeds in the hands of the appellant. It is not for the entire property. According to the appellant, property was purchased by him in the year 2016 for a value greater than Rs.2.36 Crores. On questioning him about the current value, it was fairly submitted that it is much greater than the amount on which it was taken. If that is so, than the attachment of the property cannot be said to be for the full

value but only to the extent of proceeds of crime in the hands of the appellant and in that circumstance, half of the property does not remain under attachment i.e. to the extent of the share of the wife though strictly speaking, the appeal could have been preferred by the wife aggrieved by the order of provisional attachment of the property. In any case, we find attachment of the property only to the extent of Rs.1.54,62,900/-, which is much lesser to the value of the property at the present and thus does not remain attached to the share of the wife or half the share. Since the appellant did not raise any other argument than referred to above and dealt with by me, I do not find any merit in the argument of the appellant. Appeal fails and is dismissed.

(Justice Munishwar Nath Bhandari)
Chairman

New Delhi,
07th May, 2026

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