

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

MP-PMLA-14232/DLI/2023 (Stay)
MP-PMLA-14230/DLI/2023 (Misc.)
MP-PMLA-14229/DLI/2023 (Exem.)
FPA-PMLA-7000/DLI/2023

Gopal Krishan Aggarwal ... Appellant

Versus

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

Advocates/Authorized Representatives who appeared

For the Appellant : Shri Rajiv Mohan, Sachit
Sharma, Advocates
For the Respondent : Shri Chandra Prakash,
Advocate

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JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN

FINAL ORDER
19.05.2026

By this appeal under Section 26 of the Prevention of Money Laundering Act, 2002 (in short 'the Act of 2002'), a challenge has been made to the order dated 07.08.2023 passed by the Adjudicating Authority confirming the Provisional Attachment Order dated 02.03.2023.

2. The case was originated in compliance of the directions of Delhi High Court dated 20.04.2006 in Writ Petition (Civil) No.4582/2023 (**Kalyan Sanstha Vs. Union of India and Ors.**) wherein the CBI was directed to conduct necessary enquiry into the alleged nexus between MCD officials and builders/owners, apart from politicians, which facilitated

large scale unauthorized construction in various parts of Delhi. It was with initiation of enquiry in pursuance to the directions of Delhi High Court and later on based on the recommendation in the enquiry, an FIR was registered on 27.07.2006 for the offence under Section 120-B and 420 IPC read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. It was registered naming Avinash Chandra Garg, the then Executive Engineer (Bldg), Sadar Paharganj Zone, Delhi, S.A. Khan, the then Assistant Engineer (Bldg), Sadar Paharganj Zone, Delhi and other unknown officials of the Municipal Corporation of Delhi.

3. It was alleged that Avinash Chandra Garg and other MCD officials were indulged in unauthorized retention of files relating to unauthorized construction and by way of this, they allowed unauthorized construction in spite of an order for demolition being passed. Shri Avinash Chandra Garg was thereupon dismissed from service and subsequently compulsorily retired. He had, in an unauthorized manner, retained 15 files related to the unauthorized construction at different premises in the jurisdictional area of the zone. This was including the files of appellant Gopal Krishan Aggarwal, R/o 2496, Bazar Sita Ram, Delhi related to a common property i.e. 2747-2748, Gali Arya Samaj, Bazar Sita Ram, Delhi. It was in pursuance of a criminal conspiracy with other accused persons. The appellant purchased the above said property

in the name of Mamta Nehra on 27.01.2005 against the consideration of Rs.3.5 Lakhs. The appellant Gopal Krishan Aggarwal and Mamta Nehra approached the tenants for vacation of the area and after getting it vacated, construction of a four storied building without any sanctioned building plan from the MCD was carried out. The unauthorized construction of four storied building was shown to have been completed by accused Avinash Chandra Garg in u/c file and the name of accused Gopal Krishan Aggarwal has been shown as owner/builder concerned. The Show Cause Notice and "Self Demolition Notice" were also issued in the name of the appellant followed by the demolition order dated 05.09.2005 but the same was not handed over by Avinash Chandra Garg to the office in-charge for carrying out the directions.

4. The brief allegations have been narrated above, otherwise it could have been detailed as to in what manner the things were taken up by the officials of MCD in connivance and conspiracy with the appellant and others. It is for the reason that the appellant has challenged the order on limited grounds and that too without challenging the allegations.

Arguments of counsel for the appellant:

5. The learned counsel for the appellant submitted that the predicate offence involved in the present matter was not a scheduled offence at the time when the FIR was registered

and therefore, the respondents could not have recorded the ECIR in the year 2015 though by the time aforesaid, the offence under Section 420 IPC and other offences were included in the Schedule appended to the Act of 2002 but were not in the Schedule at the time of commission of the predicate offence. On the aforesaid ground itself, a challenge to the impugned order has been made.

6. The learned counsel further submitted that the appellant had otherwise sold the property and, therefore, the impugned order has no effect on him. It is, however, with the detailed statement of fact about the filing of Civil Suit by Ms. Mamta Nehra and other facts though with admission that the CBI filed a charge sheet on 27.07.2006 against the appellant along with Avinash Chandra Aggarwal and others. It is with further admission that appellant was later on convicted for the predicate offence. The fairness of the counsel is appreciated.

7. The only issue remains to challenge the impugned order largely on the ground is that the predicate offence for which FIR was registered was not one of the offence in the Schedule appended to the Act of 2002 at the relevant time of commission of the offence. The learned counsel for the appellant thus prayed for causing interference in the impugned order on the ground aforesaid.

8. The counsel for the appellant did not raise any other argument, other than to clarify that the offence alleged to

have been committed by the appellant was not a continuing offence and, therefore, ECIR could not have been recorded in the year 2015 for a predicate offence which was not part of the Schedule at the time of commission of offence.

Arguments of counsel for the respondents:

9. The counsel for the respondents contested the issue on all the grounds taken by the appellant. Elaborate argument was made by the counsel. It would be referred while recording finding on each issue raised by the appellant to avoid repetition of one and the same facts and for the sake of brevity.

Finding of the Tribunal:

10. I have considered the rival submissions of the parties and perused the record.

11. In the opening paras of the order, I made a reference of the registration of the FIR after preliminary enquiry in pursuance to the order of the Delhi High Court in Writ Petition. It is in reference to the allegation against the officials of MCD and builder/owner, apart from politicians, which facilitated large scale unauthorized construction in various parts of Delhi. After registration of the FIR followed by the charge sheet, the accused were convicted for the predicate offence. In view of the above, the allegation levelled against the accused and the appellant was tested in the trial and found to be correct.

12. The issue, however, remains that ECIR in the case was recorded by the respondents in the year 2015. It was obviously in reference to the FIR registered on 27.07.2006 for commission of offence under Section 120-B & 420 IPC and Section 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988. The only issue raised by the appellant is that at the time of commission of predicate offence, it was not part of Schedule appended to the Act of 2002 and, therefore, the Provisional Attachment Order could not have been caused for an offence which was not part of the Schedule at the time of its commission. It is coupled with the fact that even Section 3 of the Act of 2002 has been amended from time to time and otherwise the offence alleged by the appellant was not a continuing offence.

13. I have considered the submission made by the learned counsel for the appellant. At the threshold, I am required to look into the allegation against the appellant and the accused involved in commission of crime. The allegation against the officials of MCD and the appellant remained for unauthorized construction and if the case of the appellant in person is taken up, he was involved in unauthorized construction of a four storied building. The appellant was shown to be the owner of the building and accordingly Show Cause Notice and "Self Demolition Notice" were issued in his name. The demolition order was also issued on 05.09.2005 but the same was not handed over to the officer in-charge

for its compliance. In fact, despite the demolition order, no action was taken, rather the appellant remained beneficiary of inaction by Avinash Chandra Garg, the then Chief Engineer of MCD. To continue with a criminal conspiracy, another sale deed was executed on 30.11.2005 between Naresh Kumar Sekhri and Sri Kishan Vashist in order to further disguise the sale of entire built-up property after taking consideration of Rs.2.25 Lakhs said to have been paid in cash. In fact, the property was in possession of 18 different tenants and CBI investigation established that the said building was under construction during the period of November. In any case, the act and omission of the appellant gave rise to the continuing offence. It is, therefore, only the ECIR was recorded in 2015 in reference to the predicate offence. The ECIR has not been quashed in any of the proceedings on the ground raised by the appellant i.e. at the time of commission of offence, it was not predicate offence thus ECIR could not have been recorded, rather ECIR is still alive, coupled with the fact that the appellant has been convicted, apart from others for the predicate offence. When the ECIR has not been quashed, I cannot cause interference in the impugned order on the ground urged by the appellant. It is more so when the relevant period to look into the commission of offence under the Act of 2002 is at the time when it is revealed making out a case within the four corners of the Act of 2002 which in the

present matter would be in the year 2015. Section 3 of the Act of 2002 is quoted hereunder for ready reference:

“Offence of money-laundering.

Whosoever 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 ¹[proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

[Explanation.--For the removal of doubts, it is hereby clarified that,--

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:--

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever”.

14. The case advanced by the respondents is for commission of crime under Section 3 of the Act of 2002 and

accordingly at the time of recording of the ECIR, it was for the scheduled offence.

15. In the case of **Vijay Madanlal Choudhary v. Union of India**, reported in 2022 SCC Online SC 929, Hon'ble Supreme Court settled the legal position that even in cases where the predicate offence (which is the originating trigger for an offence of money laundering) may have been committed prior to inclusion of the said offence in the schedule of PMLA; the person who was involved in any activity connected in relation to the proceeds of crime shall be held liable for the same. The relevant observations are hereunder:

"43.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...."

The Hon'ble Supreme Court in the case of **Pradeep Nirankarnath Sharma vs Department of Enforcement**,

reported in 2025 SCC OnLine SC 560, while dealing with the case of an Applicant who canvassed an identical submission that during the period of commissioning of the act, the said offence was not characterized as a scheduled offence so as to bring it under the ambit of PMLA. Rejecting the argument of the Applicant/Petitioner therein, the Hon'ble Supreme Court ruled that it' is well established that offences under the PMLA are of a continuing nature, and the act of money laundering does not conclude with a single instance but extends so long as the proceeds of crime are concealed, used, or projected as untainted property. The legislative intent behind the PMLA is to combat the menace of money laundering, which by its very nature involves transactions spanning over time.

16. The Hon'ble High Court of Kerala, after appreciation of law laid down in **Vijay Madanlal and Pradeep Nirankarnath Sharma** (supra), in the case of **A.K Samsuddin v. Union of India**, reported in 2025:KER:24506 [order dated 26.03.2025] decided the following issues of law:

“At the time when the act of money laundering was allegedly committed:

(i) Either the PMLA itself was not in force; or

(ii) The predicate offences were not included in the schedule of the said Act, and thus all the proceedings initiated against them by the Enforcement Directorate are in the teeth of Article 20(1) of the Constitution of India.

The said issues were answered in the following words:

"4. The question whether the offence of money laundering under Section 3 of the PMLA can be extended to a predicate offence which happened prior to the coming into the force of PMLA or before the inclusion of such offences in the schedule of the PMLA, is no longer re integra. In *Vijay Mandalal Chaudharay and Others v. Union of India & Ors.* [(2023) 12 SCC 1], the Apex Court held that it is possible, as the offence under Section 3 is a continuing offence. However, the learned counsel appearing for the appellant/petitioners forcefully submitted that the question of retrospective application of Section 3 of the PMLA was not directly in question in the said case. However, the Honourable Supreme Court in its judgment dated 17.03.2025 in *SLP(Crl.)6185/2023 (Pradeep Nirankarnath Sharma v. Directorate of Enforcement & Another)* answered this question pointedly and in the affirmative. The Court held that money laundering is not a static event but an ongoing activity, as long as illicit gains are possessed, projected as legitimate, or reintroduced into the economy and thus if the accused commits any of the acts as defined in Section 3 of the PMLA after its commencement, the Enforcement Directorate could maintain a criminal action against him, irrespective of the fact that the predicate offence allegedly took place before the commencement of the PMLA. The court held thus:

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5. The appellant/petitioners assailed the act of the Enforcement Directorate on the ground that penalising a person for any act done in the past on the basis of subsequent legislation is prohibited by Article 20(1) of the Constitution of India. In fact, going by the pleadings and records produced [11:25 am, 21/5/2026] Sita Ram Dherr: before us, it appears that the appellant/petitioners are not being proceeded against under the PMLA for any criminal act done by them before the commencement of the PMLA. In relation to an act done by a person before the

commencement of the PMLA or the amendment to its schedule, the penal consequences will follow only if the accused uses/puts into circulation the tainted money obtained by the past act, or when he projects that it is untainted money or when he does any other acts as defined in Section 3, after the commencement of the PMLA and the amendment to its schedule in 2009.

6. Article 20(1) of the Constitution declares that a person shall not be convicted for any offence except for violation of a law in force at the time of commission of the act. The expression 'law in force' refers to a law that is factually in operation at the time when the offence is committed, in contrast to a law 'deemed to be in force' due to the retrospective operation of a subsequently enacted law. This interdiction cannot be extended to a case of the above nature where a person is allegedly using the proceeds of crime or projecting or claiming it as untainted property, after the commencement of the relevant statutory provision. In that case, there is no question of retrospective operation of a penal law. There is only a reference in the statute to a past action, which is only for the identification of the subject - the proceeds of crime. There is no penal consequence for the past act done by him, under the PMLA.

7. In view of the authoritative pronouncement made by the Apex Court and in the light of the above discussion, the main contentions raised in the above matter do not survive."

Further, the Division Bench of the Hon'ble Delhi High Court in Directorate of Enforcement vs Prakash Industries Ltd., LPA 102 of 2023, was pleased to hold that it would not be imperative and/or reasonable to compartmentalize the offence of money laundering and limit its scope only to an isolated event. It was held that the offence shall rather be construed or viewed as a series of connected acts which begins from the generation of proceeds by unlawful means extending through their subsequent lawful layering or projection".

17. The view is supported even by the judgment of the High Court of Karnataka at Bangaluru in the case of **Dyani Antony Paul Vs. Union of India** dated 11.12.2020. The relevant paras are quoted hereunder:

77. Article 20 of the Constitution prohibits conviction except for violation of a law in force at the time of commission of an offence. In other words, there cannot be prosecution under the PML Act for laundering of money acquired by committing the schedule offences prior to the introduction of the PML Act. Therefore, the time of commission of scheduled offences would not be relevant in the context of the prosecution under the PML Act. What would be relevant in the context of prosecution is the time of commission of the act of money laundering. The question would be, whether a person involved in money laundering as provided under Section 3 of the PML Act has indulged in the said act or not has to be decided by the competent authority. What is the date of laundering of money will have to be decided on facts of each case and there cannot be any prescribed straight jacket formula. This is an important fact which the authority will have to examine and it is a mixed question of law and fact.

78. A person acquiring assets through illegal means who comes before the society and claims that said money was acquired by proper means, then he would be guilty of the offence of money laundering. A person might have committed an offence long back and the proceeds of it is being placed, layered or sought to be integrated to the main stream of economy, then also, he is said to have committed the offence of money laundering. Incorporation of certain offences in the Schedule is to bring it within the net of PML Act namely, proceeds of that crime within the provisions of the Act. For constituting an offence under Section 3 of PML Act, it is the connection of transaction to proceeds of crime which is sufficient and not the crime.

105. Thus, in case of the proceeds of crime are being projected as being untainted and thereby ploughing such tainted money to the economy of

the country, it would definitely have delirious effect and impact on the economy and as such the offence which has been committed and continuing would not wipe-out the offence committed on the premise that act is prospective and cannot have retrospective effect. It would be that date when a person is found involved in any process or activity connected with the proceeds of crime and projecting as untainted property, which would be the relevant date for the purposes of prosecution under [Section 3](#) of the PML Act and not the date when the scheduled offence was committed. What is being targeted by [Section 3](#) is the "laundering" of money which would be relevant. The expression "laundering" as used in [Section 3](#) comprises of involvement in any process of activity by which the illicit money is being projected as untainted. In that view of the matter, the relevant date is not the date of acquisition of illicit money but the dates on which such money is being processed and projected it as untainted".

18. In the light of the facts aforesaid and even judgments (supra), I do not find a case in favour of the appellant to cause interference in the impugned orders. Appeal accordingly fails and is dismissed.

(Justice Munishwar Nath Bhandari)
Chairman

New Delhi,
19th May, 2026

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