APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

FPA-PMLA-1792/COCHIN/2024

Shri Abdurahiman Chenoth Thiruthummal ... Appellant

Versus

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

Advocates/Authorized Representatives who appeared

For the Appellant : (Counsel Appeared)

For the Respondent : Ms. Nidhi Raman, Advocate

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JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN

FINAL ORDER
19.05.2026

This appeal has been preferred under Section 26 of the Prevention of Money Laundering Act, 2002 (in short `the Act of 2002') to challenge the order dated 24.06.2024 passed by the Adjudicating Authority confirming the Provisional Attachment Order dated 18.01.2024.

2. It is a case where an FIR was lodged against the appellant for commission of offence under Section 420 IPC and being the predicate offence, ECIR was recorded by the respondents. The allegation against the appellant was that between 04.10.2017 to 23.01.2018, he obtained a business loan from Invest Bank, Sharjah, amounting to 68.159 million UAE Dirhams for the

development of his business firm Hexa Oil & Gas Services LLC in UAE. Without making repayment of the loan borrowed from the bank, the appellant left the country and thereby cheated the bank for an outstanding amount of 42.898 million UAE Dirhams (approx. Rs.83.36 Crores).

3. The FIR was containing allegations mainly against the appellant who was operating a small-scale petroleum products refinery business in the name of Hexa Oil and Gas Services LLC. He was holding 49% shares in the company and remaining 51% owned by UAE resident Mr. Hassan Essa Hassan Murad Al Murab. Despite majority stake with the resident of UAE, he was not to bear any responsibility for the company's profit or loss as per the Memorandum of Association but was entitled to a limited income of 20,000 Dirham per annum. The entire management of the company rested solely with the appellant Abdurahiman C.T.

4. The appellant sought business loan from the Invest Bank, UAE in 2017 to develop his business. He submitted financial statements showing the assets and sale proceeds of his company, along with a personal guarantee to ensure that the loan would not be misused for personal gain. Mr. Shiju Shahul stood as a guarantor for the loan and based on the aforesaid, various credit facilities were extended by the bank to the appellant's managed entity.

5. On 01.04.2018, the appellant defaulted in four EMIs prompting the bank to visit his business premises. It was

discovered that he has not invested any funds in the business development. In an attempt to address the issue, the appellant provided post-dated cheques totalling 70 million AED, but all the cheques bounced due to insufficient funds. The subsequent investigation revealed the appellant's criminal history, including past bank fraud cases, leading to his illegal escape from UAE to Kerala, India where embezzled funds were allegedly transferred. To recover the outstanding loan, the foreign bank filed suit against the appellant and guarantor Shiju Shahul, apart from Hassan Essa in the Abu Dhabi Federal Court. The Court decreed the Suit for 41 million AED plus interest from the year 2019 onwards either from the company or the guarantors. The UAE resident was, however, discharged from the suit and Shiju Shahul was released from liability upon partial payment to the bank. Th remaining amount was to be recovered from the appellant with interest.

6. The respondents conducted a search on 07.12.2023 at six premises of the appellant in Kerala where incriminating documents and electronic devices were recovered. Finding a case against the appellant and apprehension of siphoning of funds/property, the provisional attachment of the properties was caused to the extent of Rs.2,55,81,221/-. The Provisional Attachment Order has been confirmed by the Adjudicating Authority finding a case of money laundering and aggrieved by the order, the appellant has preferred this appeal.

Arguments of counsel for the appellant:

7. The counsel for the appellant has submitted that the allegation levelled by the bank for commission of offence is not made out. The appellant left UAE on 09.10.2017 itself while loan was granted between the period of 04.10.2017 till 23.01.2018. The appellant has enclosed a passport to show that he left the country on 09.10.2017 thus he could not have been made responsible for taking loan and its non-payment.

8. The learned counsel for the appellant further submitted that the appellant had executed a power of attorney to look after the business of the company and thereupon left the country. The power of attorney was executed in favour of Shiju Shahul for running the company and managing the day-to-day affairs. After execution of the power of attorney, the appellant could not have been made responsible for the deeds of the company run by Shiju Shahul. On the aforesaid ground also, a case is made out to cause interference in the impugned order.

9. The learned counsel for the appellant further submitted that the property under attachment has no nexus and connection with the commission of crime. It was acquired prior to the crime period thus could not have been termed to be the "proceeds of crime". On the aforesaid ground also, the impugned order deserves to be set aside. It is in view of the fact that what can be attached provisionally is the property acquired or derived out of the predicate offence and not any other property.

10. The learned counsel for the appellant further submitted that a case for commission of crime is not made out against the appellant because ingredients of Section 415 IPC are not satisfied. Even for the aforesaid reason also, the impugned order needs to be set aside.

11. The learned counsel for the appellant did not raise any other argument than referred to above. It is despite an opportunity to raise any legal or factual issue. However, the counsel for the appellant restricted his argument to what has been narrated above.

Arguments of counsel for the respondents:

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

Finding of the Tribunal:

13. I have considered the rival submissions and scanned the matter carefully.

14. In the preceding paras of this order, I have made a reference of the registration of the FIR against the appellant for the commission of predicate offence. The complaint was lodged by the authorized person of Invest Bank alleging that the appellant fraudulently obtained loan for the business purpose of his

company Hexa Oil & Gas Services LLC with an assurance of repayment but he defaulted in making the repayment. Rather, the funds obtained for the business purpose were laundered and used for other purpose. It was realized by the bank on inspection of the premises of Hexa Oil & Gas Services LLC that no part of the loan or credit facility extended to the appellant was spent on the development of business. Rather, the amount was diverted by the appellant. The learned counsel for the appellant has questioned the allegations levelled against the appellant mainly on the ground that he left the country UAE on 09.10.2017 while loan said to have been extended from 04.10.2017 till January, 2018 when the appellant was not even in the country.

15. I have considered the submission aforesaid and find no substance in view of the fact that if the appellant is not involved in commission of crime, what prevented him to challenge the ECIR or proceedings and to remain successful. I do not find any order for quashing the proceedings pursuant to the ECIR and even for the predicate offence. Criminal case is still pending against the appellant. The aforesaid is only one part otherwise the facts on record shows that the appellant had taken loan from the bank for the development of his company Hexa Oil & Gas Services LLC. If the appellant left the country before extending loan, then why did he issue post-dates cheques for 70 million AED. The counsel for the appellant could not answer the

aforesaid and it is also when the cheques were given once the appellant defaulted in making the payment of four EMIs as on 01.04.2018. In fact, subsequent investigation revealed that the appellant has a criminal history which includes past bank fraud cases, etc. He illegally escaped from UAE to embezzle the funds taken from the bank. To recover the amount, the foreign bank filed a suit and decreed against the appellant. It could not be clarified that if the appellant had not taken loan, why the suit was decreed against him and as to why it was not contested thereupon. The facts aforesaid are sufficient to show involvement of the appellant for commission of crime and he has projected the tainted money to be untainted thus he is an accused even under Section 3 of the Act of 2002. Thus, the first argument raised by the appellant that he left the UAE after or during the loan period is of no consequence.

16. The learned counsel for the appellant then submitted that a power of attorney was executed by the appellant in favour of Shiju Shahul and he disassociated him from the day-to-day business of the company. The learned counsel for the appellant could not clarify as to whether execution of the bank guarantee absolved the appellant from his deeds, rather the act and omission of the appellant would survive even if the power of attorney is executed for looking after the day-to-day business of the company. The power of attorney does not absolve an accused from his deeds, rather it remains co-extensive and it is more so

when the appellant had endorsed the loan by extending post-dated cheques for an amount of 70 millions AED. It could not have been if a power of attorney was executed and has sanctity in the present matter. The fact about execution of power of attorney thus remains for the sake of it. It is more so when the appellant was the main player to run the company because majority share holders were only dummy to get yearly payment without profit and loss. The appellant got loan and credit facilities to layer and lauder the money. It was not the first case of the nature, rather appellant was found involved earlier in similar matter of fraud against the bank and embezzled the funds.

17. The learned counsel for the appellant submitted that the properties under attachment were acquired before the commission of crime thus it has no nexus or relation with the crime. The argument has been raised in ignorance of the definition of "proceeds of crime" defined under Section 3 of the Act of 2002. It has three limbs out of which the middle part covers the property for "value thereof" or said to be for "equivalent value" when the proceeds are not found available with the accused or the person in possession of the proceeds having been vanished or laundered and in that case, the property of equivalent value can be attached. The aforesaid has now been settled by a recent Court in the case of ***Dilbag Singh @ Dilbag Sandhu Vs. Union of India & Ors.*** (CWP 22688-2024) dated

13.11.2024 where the High Court held that its earlier judgment in the case of ***Seema Garg*** is not laying down a good law. The relevant paras of the judgment in the case of ***Dilbagh 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:*
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> > *"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."*
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> *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).*
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> *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 buty 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 properly 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".

18. In the light of the paras of judgement (supra) quoted above, the argument of the appellant that the property acquired prior to the commission of crime could not have been attached does not have any force and is accordingly rejected. In fact, appellant has vanished and laundered the proceeds and finding it to be not available or traceable, the property of equivalent value has been attached. It is more so when the appellant was involved in similar cases of bank fraud thus designed laundering of money in such a manner immediately after extension of loan or credit facilities and the money was diverted and not used for the promotion of the company. A case under Section 415 IPC was thus made out.

19. In the light of the discussion made above, I do not find any of the grounds raised by the appellant worth acceptance. Appeal accordingly fails and is dismissed.

(Justice Munishwar Nath Bhandari)
Chairman

New Delhi,
19th May, 2026
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