APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

MP-PMLA-5373/RP/2026 Stay
MP-PMLA-5374/RP/2026 Exemp.
MP-PMLA-5375/RP/2026 Exemp.
FPA-PMLA-1982/RP/2026
Asheesh Srivastava ... Appellant

Versus

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

Advocates / Authorized Representatives who appeared:

For the Appellant(s)	:	Mr. Rajeev Shrivastava, Sr. Advocate Mr. Sameer Shrivastava, Advocate Mr. Chiraj J, Advocate Mr. S.B. Tiwari, Advocate
For the Respondent(s)	:	Ms. Anju Kaushik, Advocate

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JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN

ORDER
04.11.2026

The appellant, Shri Asheesh Srivastava has filed the appeal invoking Section 26 of the Prevention of Money Laundering Act, 2002 (in short "**the Act of 2002**") for challenge to the order dated 16.06.2026 passed by the Adjudicating Authority confirming the Provisional Attachment Order ("**PAO**") dated 25.12.2025.

Brief facts of the case:

2. It is a case where an FIR bearing No. 04/2024 dated 17.01.2024 was registered by the Economic Offences Wing/Anti-Corruption Bureau (EOW/ACB), Raipur, Chhattisgarh, under Sections 420, 467, 471, and 120B of the Indian Penal Code, 1860 (in short "**the IPC**"), and under Sections 7 and 12 of the Prevention of Corruption Act, 1988 (in short "**the PC Act**"). The FIR was lodged against the following individuals:

(a) Shri Anil Tuteja (Retd. IAS), then Joint Secretary, Government of Chhattisgarh:

(b) Shri Anwar Dhebar;

(c) Shri Arunpati Tripathi, Managing Director, Chhattisgarh State Marketing (c) Corporation Ltd.;

(d) Shri Vikas Aggarwal alias Subbu: alia Subbu;

(e) Shri Sanjay Dewan;

(f) Others

3. The case pertains to the collection of illegal commissions and supply of unaccounted liquor through government-run liquor shops, resulting in a loss of approximately Rs.2,161 crores to the State Exchequer.

4. It was found that three manufacturers of country liquor in the State of Chhattisgarh were duly licensed to supply country liquor within the State, namely:

1. M/s Chhattisgarh Distilleries Limited.

2. M/s Bhatia Wine Merchant Private Limited, and
3. M/s Welcome Distilleries Private Limited

5. Shri Anwar Dhebar, by abusing his political influence and close association with Shri Anil Tuteja, and in connivance with Shri Arunpati Tripathi, orchestrated a mechanism whereby the rate of procurement of country liquor by the Government was artificially increased. In lieu thereof, the said accused persons obtained illegal commissions running into crores of rupees from the distillery owners. This arrangement was referred to within the liquor syndicate as "Part-A".

6. In a similar vein, a parallel and clandestine system was devised and operated alongside the existing statutory mechanism of sale of country liquor through Government-run liquor shops. Under this illegal system, distillery operators manufactured country liquor "off the records", which was thereafter affixed with duplicate holograms and unlawfully sold through Government liquor shops by the syndicate. The sale of liquor bearing duplicate holograms generated illicit proceeds amounting to crores of rupees. This operation involved the active participation of multiple stakeholders, including distillery owners, bottle-supplier agencies, duplicate hologram-supplier agencies, and cash-collection agencies. Such illicit activities

were carried out during the financial years 2019-20, 2020-21, and 2021-22 and were referred to by the syndicate as "Part-B".

7. During the tenure of Secretary Shri Niranjan Das, the concept of the FL-10(A) licence was allegedly introduced as a mechanism for collection of illegal gratification from foreign liquor manufacturers. The said FL-10(A) licences were granted to three favoured firms linked to Shri Anwar Dhebar, namely:

1. M/s Nexgen Power Engitech Private Limited, controlled by Shri Sanjay Mishra and Shri Manish Mishra;

2. M/s Om Sai Beverage Private Limited, controlled by Shri Atul Kumar Singh and Shri Mukesh Manchanda; and

3. M/s Dishita Ventures Private Limited, controlled by Shri Ashish Saurabh Kedia.

8. Pursuant to a criminal conspiracy, these licence holders were awarded tenders for the supply of foreign liquor. The said firms procured liquor from foreign liquor manufacturing companies and supplied the same to the State Government, earning a profit margin of approximately 10%. Out of the said profit, 60% was allegedly siphoned off and paid to the syndicate, while the remaining 40% was retained by the respective licence-holding entities.

9. By involving combined modus operandi of inflated procurement pricing, parallel manufacture, and supply of

duplicate liquor under the F.L.10-A licence, the syndicate extracted illegal commissions from distillery owners, resulting in unlawful earnings of approximately Rs.22,161 crore during the period from February 2019 to June 2022.

10. On 29.06.2024, the EOW/ACB, Raipur, filed its first charge sheet before the ACB Court, Raipur, under Sections 420, 467, 468, 471, and 120B of the IPC and Sections 7 and 12 of the PC Act. EOW/ACB has filed supplementary charge sheets on 26.09.2024, 17.11.2024, 27.06.2025, 30.06.2025, 24.08.2025 & 24.11.2025 against multiple accused persons.

11. As the offences under Sections 120B, 420, 467, and 471 of the IPC and Sections 7 and 12 of the PC Act are scheduled offences under the Prevention of Money Laundering Act, 2002 (in short "**the Act of 2002**") as defined under Section 2(1)(y) of the Act of 2002, an ECIR bearing No. ECIR/RPZO/04/2024 was recorded on 11.04.2024 by the Enforcement Directorate, Raipur Zonal Office.

12. The respondent, during the course of the investigation, recorded statements under Section 50(2) & 50(3) of the Act of 2002 elaborating the *modus operandi* of the generation of the proceeds of crime and deployment thereof.

13. The "reason to believe" under Section 5(1) of the Act of 2002 has been recorded and submitted before the Adjudicating Authority in sealed cover along with materials in possession, along with PAO.

14. From the analysis of the OC and RUDs along with the contents of the alleged scheduled offences under the Act of 2002, it has been noted that the Excise Officers named therein have knowingly assisted, have been knowingly parties to, or have been directly involved in processes and activities connected with the proceeds of crime, including their concealment, possession, acquisition, use, and projection as untainted property thereby attracting the provisions of the Act of 2002. In the case of the appellant herein, the proceeds of crime has been quantified during investigation, as under:

Sr.No.	Name of the Excise Officer	POC (Rs.)
1 – 21	xx xx xx xx xx	xx xx
22.	Shri Ashish Shrivastava (Flying Squad / Head Office)	54,00,000
23- 31	xx xx xx xx xx	xx xx

15. Accordingly, an immovable asset (75% of the land) situated at Khasra No. 296300/2-5 Area-3526 sqft. A-109, PHN 110/40 Amaseoni Swaarna Bhumi Raipur Residential House property

amounting to Rs.54,00,000/- purchased by the appellant herein on 28.03.2015 has been attached which is duly confirmed by the Adjudicating Authority vide its order 16.06.2026.

16. Aggrieved by the aforesaid, the present appeal has been filed by the appellant herein.

Arguments of Ld. Counsel for the appellant:

17. Ld. Counsel for the appellant submitted that there is no material on record to show involvement of the appellant in commission of crime to cause provisional attachment of his property. In view of the aforesaid, the impugned order deserves to be set-aside. Also, in view of the fact that the foundational fact to establish commission of crime has to be led by the respondent.

18. Ld. Counsel for the appellant further submitted that the property under provisional attachment was purchased much prior to the crime period. It is in view of the fact that the property was purchased on 28.03.2015 while the period of crime is between the year 2019 to 2022. Thus, property under provisional attachment has no nexus with the crime, yet, it has been provisionally attached by the respondent.

19. Ld. Counsel for the appellant further submitted that the property purchased by the appellant worth Rs. 72 lakhs while proceeds of crime quantified in the hands of the appellant is only for a sum of Rs. 54 lakhs. Thus, the provisional attachment of the property in the hands of the appellant is disproportionate to the amount of alleged proceeds of crime in the hands of the appellant. Thus, on the aforesaid ground also, the impugned order deserves to be set-aside.

20. Ld. Counsel for the appellant did not raise any other arguments than referred to above. It is despite an opportunity to raise any legal or factual issues to press the appeal. Ld. Counsel for the appellant had shown his satisfaction to the issues raised by him during the course of the arguments as recorded above and accordingly closed his argument.

Arguments of Ld. Counsel for the respondent:

21. Ld. Counsel for the respondent contested the appeal. Elaborate arguments were made on the issues raised by the Ld. Counsel for the appellant and would be referred while recording the finding. It is to avoid repetition of facts and otherwise for the sake of brevity.

Findings of the Tribunal:

22. I have considered the rival submissions of the parties and perused the records carefully.

23. Ld. Counsel for the appellant has challenged the order alleging that without establishing foundational fact alleging involvement of the appellant in commission of crime, the provisional attachment order has been caused.

24. The argument aforesaid was contested by the respondent with the submission that the appellant himself admitted about receipt of Rs.1.5 lakh per month out of the liquor supplied. It was for a period of 36 months and thereby the amount comes to Rs.54 lakh. The appellant was having the position to get involved in commission of crime being the Deputy Commissioner, Excise in Raipur during the relevant period of sale of Part-B liquor. He allowed sale of Part-B liquor for his illegal financial gains. It was supported by his statement recorded under Section 50 of the Act of 2002. Thus, the argument that the appellant was not involved in commission of crime cannot be accepted against the appellant's own admission for allowing liquor of sale in his area of posting. Thus, the first argument raised by the Ld. Counsel for the appellant cannot be accepted.

25. Ld. Counsel for the appellant questioned the provisional attachment of the property acquired prior to the period of crime being April-May, 2019 to June, 2022 while the property under provisional attachment was acquired in the year 2015 for a sum of Rs.72 lakhs. It was with the statement that any property acquired prior to the period of crime would not fall within the definition of "proceeds of crime".

26. The argument aforesaid was contested by the Ld. Counsel for the respondent. It was submitted that as per the admission of the appellant himself, he had acquired Rs.54 lakhs out of commission of crime and thus the amount aforesaid becomes proceeds of crime.

27. The amount aforesaid was laundered by the appellant and accordingly when it was not found available with him having being vanished, the property of "value thereof" or "equivalent value" was attached because it would fall within the definition of "proceeds of crime" defined under Section 2(1)(u) of the Act of 2002. The counsel for the respondent cited the recent judgment of the Hon'ble High Court of Punjab and Haryana in the case of ***Dilbag Singh @ Dilbag Sandhu Vs. Union of India & Ors.***(CWP 22688-2024) dated 13.11.2024. It was with the prayer for dismissal of the appeal as the property for value

equivalent can be attached for the reason that the proceeds of crime were not found available with the appellant having been vanished or laundered.

28. The issue for consideration is as to whether the respondent could have attached the property for "value thereof" even if it is not directly or indirectly connected with the crime. I find that the issue aforesaid has been recently decided by the Hon'ble High Court of Punjab and Haryana in the case of ***Dilbagh Singh*** (supra). Relevant paras of the judgment 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."

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 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".

29. The Hon'ble High Court of Punjab and Haryana in the case of ***Dilbagh Singh*** (supra) had considered its earlier judgment in the case of ***Seema Garg*** (supra) and held the latter to be not laying down good law. The judgment in the case of ***Dilbagh Singh*** (supra) has considered the judgment of the Supreme Court in the case of ***Vijay Madanlal Choudhary Vs. Union of India*** 2022 SCC OnLine SC 929

and ***Pavana Dibbur Vs. Directorate of Enforcement*** reported in 2023 SCC OnLine SC 1586.

30. Similar issue was also taken by this Tribunal in the case of ***Shri Sadananda Nayak Vs. Directorate of Enforcement, Bhubaneswar*** (Appeal No. 5612/2023)**.** The relevant paras in the case of ***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.*
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> *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.*
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> *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.*
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> *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;*
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> *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.*
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> *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 crime||, there would be no need to create three limbs of definition of proceeds of crime.*
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> *xxxx*
>
> *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.*
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> *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".

31. The paragraphs quoted above not only give interpretation to the definition of "proceeds of crime" but make a reference to the object of the Act of 2002 justifying the provisional attachment of property for "value thereof" to the proceeds of crime when the proceeds of crime are not found available having been vanished or laundered. Therefore, the respondent was within its right to provisionally attach the property for value thereof as the proceeds of crime were not found available with the appellant.

32. In the light of the discussion made above, I do not find any reason to cause interference in the impugned order, rather the order is confirmed and with the aforesaid, appeal is dismissed.

(Justice Munishwar Nath Bhandari)
Chairman

NEW DELHI
04.11.2026
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