

GAHC010255322025



2026:GAU-AS:4426-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A(PMLA)/1/2025

KUMAR SANJIT KRISHNA
SON OF LATE UMA CHARAN BANIA,
UMA TIRTHA, HOUSE NO 51
KACHARI BASTI, ULUBARI,
PALTAN BAZAR,
DISTRICT KAMRUP (M), ASSAM

VERSUS

THE DIRECTORATE OF ENFORCEMENT
GOVT OF INDIA,
GUWAHATI ZONE -1,
MANIK TOWER, 6TH FLOOR, CHRISTAN BASTI, GS ROAD, GUWAHATI -
781005, THROUGH SHRI SHEETI KANTHA DAS DEPUTY DIRECTOR

2:SHRI SHEETI KANTHA DAS
OFFICER IN CHARGE
DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVT. OF INDIA
GUWAHATI ZONE - 1
MANIK TOWER
6TH FLOOR
CHRISTAN BASTI
GS ROAD
GUWAHATI - 781005

Advocate for the appellant : Dr. P. Agarwal ...Advocate.

Advocates for the respondents : Ms. L. Devi, ...SC, ED

:::BEFORE:::
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date on which judgment is reserved : 26.02.2026
Date of pronouncement of judgment : 27.03.2026
Whether the pronouncement is of the : N/A
operative part of the judgment ?
Whether the full judgment has been : Yes
pronounced?

JUDGMENT AND ORDER (CAV)

(M. Zothankhuma, J)

- 1.** Heard Dr. P. Agarwal, learned counsel for the appellant. Also heard Ms. L. Devi, learned Standing Counsel, Enforcement Directorate.
- 2.** The appellant has prayed for setting aside the final order dated 13.08.2025 passed by the Appellate Tribunal under SAFEMA, New Delhi, in FPA-PMLA-1341/GWH/2024, by which the appellant's challenge to the order dated 27.05.2024, passed by the Adjudicating Authority, confirming the provisional attachment of the appellant's residential house vide order dated 20.12.2023 has been rejected.
- 3.** The challenge to the impugned final order dated 13.08.2025 is on the ground that there is no evidence or money trail established by the respondents in support of their allegation that the appellant had received an amount of Rs.

40 lakhs in the cash for leak of question paper scam. Further, the provisional attachment order dated 20.12.2023 does not show that the same had been made under Section 2(1)(u) of the Act, i.e., that the attached property was a part of the proceeds of crime. The reasons subsequently given for issuing the provisional attachment order having been explained by subsequent reasons, the provisional attachment order could not have any public effect. In this respect, the learned counsel for the appellant has relied upon the judgement of the Hon'ble Supreme Court in the case of ***Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner, New Delhi & Ors.***, reported in ***(1978) 1 SCC 405***, which in Para 8 has held as follows:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji case :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language

used in the order itself".

Orders are not like old wine becoming better as they grow older."

4. The appellant's further case is that the Enforcement Directorate could not have attached the residence of the appellant, inasmuch as, the same had been purchased by the appellant by making payments between 2008 and 2011, vide payment receipts annexed to the appeal. The said property was registered in the name of the appellant on 25.06.2019. As the appellant is alleged to have received Rs.40 lakhs from the crime proceeds of Rs.6,13,74,440/-, for a crime that took place between 11.04.2018 to 19.09.2020, the respondents could not have attached the property of the appellant having the approximate value of Rs.16.60 lakhs, which was bought prior to 11.04.2018, as the same was not permissible as per the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the "Act").

5. The learned counsel for the appellant submits that the attachment of the property is not permissible in terms of Section 2(1)(u) read with Section 2(1)(v) of the Act. She also submits that the judgment of the Supreme Court in the case of ***Pavana Dibbur Vs. Directorate of Enforcement***, reported in **(2023) 15 SCC 91**, has clearly held that properties which were bought prior to the commission of the crime are not covered by the Section 2(1)(u) of the Act, inasmuch as, they cannot be said to have any connection with the proceeds of crime, as the scheduled offence took place after the purchase of the property. "Scheduled Offence" is defined in Section 2(y) of the Act to mean:-

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value

involved in such offences is [one crore rupees] or more; or

(iii) the offences specified under Part C of the Schedule.

6. Para 13 of the above judgment in ***Pavana Dibbur (supra)*** states as follows:-

“13. Clause (v) of sub-section (1) of Section 2 PMLA defines “property” to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The Explanation clarifies that the proceeds of crime include property, not only derived or obtained from 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. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime. Thus, the existence of “proceeds of crime” is sine qua non for the offence under Section 3 PMLA.”

7. Section 2(1)(u) and 2(1)(v) of the Act states as follows:-

“2(1)(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 relating to the scheduled offence.]

“2(1)(v) *“property” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.*

Explanation: For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences.”

8. Dr. P. Agarwal, learned counsel for the appellant submits that the learned Tribunal had upheld the attachment order on the basis of the 3rd limb of Section 2(1)(u) of the Act, even though there was nothing to show that any property had been taken or held outside India, which allowed for an equivalent value of some other property to be attached within the India. She accordingly submits that unless there is a finding that the proceeds of the crime are taken or held outside India, property equivalent in value cannot be attached in India. In the present case, the property in question having been bought prior to the occurrence of the alleged crime, there was no ground to attach the property of the appellant or the equivalent value of the proceeds of the crime even under the 2nd limb or 3rd limb of Section 2(1)(u) of the Act. She further submits that the attachment order does not indicate that any part of Section 2(1)(u) of the

Act had been applied, while passing the impugned provisional attachment order.

9. Ms. L. Devi, learned Standing Counsel, Enforcement Directorate on the other hand submits that the 2nd limb of Section 2(1)(u) of the Act provides for attachment of an equivalent value of the property which is a part of the proceeds of crime and which have been put into hiding by the appellant. She accordingly submits that there is no infirmity with the impugned final order dated 13.08.2025 passed by the learned Appellate Tribunal, inasmuch as, the attachment of the appellant's property has been made on the basis of 2nd limb of Section 2(1)(u) of the Act. Further, though an attached property may not have been purchased with the money received from a crime, the same did not disqualify or bar the attachment of property under Section 2(1)(u) of the Act. She accordingly submits that the appeal should be dismissed. She submits that the appellant had purchased the attached property on 25.06.2019, i.e., during the currency of the commission of the offence.

10. We have heard the learned counsels for the parties.

11. The case of the appellant is that a case under the Act was initiated against the appellant, pursuant to FIR No.21/2020 dated 20.09.2020 registered by the CID, Assam Police, for offences under Section 120B, 119,120, 166, 201, 204, 212, 406, 409, 420, 461, 506 and 34 IPC read with Section 66(B) of the Information Technology Act, apart from offences under the local laws applicable in the State of Assam and offences under the Prevention of Corruption Act, 1988. Charge-sheet and supplementary charge-sheet in the case were also filed by the CID, Assam. Charge-sheet reveals that a written test for recruitment of

597 posts of Sub-Inspector of Police (UB) of Assam Police scheduled on 20.09.2020 had to be cancelled due to the leak of the question paper/s on WhatsApp. The appellant was one amongst the 42 persons named as an accused in the case. The cash for question papers scam apparently resulted in the generation of crime proceeds amounting to Rs.6,13,74,440/-, out of which Rs.40.00 lakhs was the share of the appellant. The commission of the crime was between 11.04.2018 to 10.09.2020. However, the property that had been attached by the respondents under Section 2(1)(u) of the Act had been purchased by the appellant between 2008-2011 for an amount of approximately Rs.16.60 lakhs, though it is the case of the respondents that the said property had been purchased by the appellant on 25.06.2019, i.e, during the currency of the commission of the offence. In view of the stand of the appellant, i.e, the property had been purchased by the appellant prior to the commission of the offence, the question arises as to whether attachment of the said property could have been done under Section 2(1)(u) of Act.

12. With regard to the first contention of the appellant's counsel that there was nothing to show that the provisional attachment order dated 20.12.2023 had been made in terms of Section 2(1)(u) of the Act, we find that the same has been answered by the provisional attachment order itself, inasmuch as, it has been stated in Para 9.3 "That the aforesaid immovable property being the value of proceeds of crime, as defined under section 2(1)(u), is likely to be transferred or dealt with by way of sale, alienation or transfer, or creating of a third party interest, in a manner which may result into frustrating the proceedings relating to confiscation of such value of proceeds of crime under Chapter III of PMLA, 2002 and thus this immovable properties is liable for immediate provisional attachment as provided under section 5 (1) of PMLA, 2002 (first provisio)."

Thus, we are of the view that the decision of the Hon'ble Supreme Court in the case of ***Mohinder Singh Gill & Anr. (supra)*** is not attracted to the facts of this case.

13. In the case of ***Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.***, reported in ***(2023) 12 SCC 1***, the Hon'ble Supreme Court while reading down the definition "Proceeds of Crime" in Section 2(1)(u) of the Act, has held that for property to be regarded as proceeds of crime, it must be derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence. Possession of unaccounted property acquired by legal means may be actionable as a tax violation. However, it will not be regarded as proceeds of crime unless the relevant tax legislation prescribes such a violation as an offence, and such offence is included in the Schedule to the Act. The Supreme Court further held that to be classified as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained as a result of criminal activity relating to that offence. It further held that the authorities under the Act cannot resort to action against any person for money laundering based on an assumption that the property recovered by them must be proceeds of crime, or that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or is pending inquiry by way of a complaint before the competent forum.

14. The Supreme Court further held that a plain reading of Section 5(1) of the Act indicates that where the officer concerned has reason to believe, on the basis of material in his possession that any person: "(a) is in possession of any proceeds of crime; and (b) that such proceeds are likely to be concealed, transferred or dealt with in any manner that may frustrate any proceedings

relating to confiscation of such proceeds of crime under this Chapter", he may make an order for provisional attachment of "such property". The use of the word 'such' clearly indicates that the reference is to the property mentioned in the preceding portion of Section 5(1) of the Act, that is, proceeds of crime. It thus held that a conjoint reading of Section 5(1) read with Section 2(u) of the Act clearly indicates that the power to attach is only with respect to the 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 such property.

15. In the case of ***Pavana Dibbur (Supra)***, the Supreme Court held that the existence of proceeds of crime is *sine qua non* for an offence under Section 3 of the Act and that the condition precedent for the existence of proceeds of crime is the existence of a scheduled offence.

16. The Supreme Court further held that on considering whether the tainted properties of the appellant in ***Pavana Dibbur (Supra)*** could be linked with the proceeds of crime regarding the scheduled offense, would require evidence to be adduced. Further, the first property of the appellant in ***Pavana Dibbur (Supra)*** cannot be said to have any connection with the proceeds of the crime, as the acts constituting the scheduled offense were committed after the property was acquired.

17. On considering the Judgments of the Supreme Court in ***Pavana Dibbur (Supra)*** and ***Vijay Madanlal Choudhary (Supra)***, it is clear that the attached property is required to have a connection with the crime in question. The enforcement authority has to be able to trace the attached property to the criminal act relating to the scheduled offense, in terms of Section 2(1)(u) of the Act. Thus, in our view, only a property which is connected with the proceeds of

the crime can be attached and the only exception to the above, is when the property derived out of criminal activity is taken out of India and held outside India. This is clear from paragraph No. 109 of **Vijay Madanlal Choudhary (Supra)**, which is also reflected in the decision of the Supreme Court in **Pavana Dibbur (Supra)**, which is as follows:

“109. Tersely put, it. is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence that can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of the definition clause "proceeds of / crime", as it obtains as of now.”

18. Having stated the above, the issue to be decided is to whether the property which has been attached had been acquired by the appellant prior to the scheduled offense (crime). The stand of the appellant is that the said attached property had been purchased by making payments between 2008 to 2011, though the sale deed for the said property had been made on 17.07.2019 and the same registered on 25.06.2019. On the other hand, it is the case of the

respondents that the property had been purchased by the appellant on 25.06.2019, i.e., during the currency of the commission of the scheduled offense.

19. Ms. L. Devi, learned Standing Counsel, Enforcement Directorate on the other hand submits that the 2nd limb of Section 2(1)(u) of the Act provides for attachment of an equivalent value of the property, which may not be a part of the proceeds of crime and which has been put into hiding by the appellant. She accordingly submits that there is no infirmity with the impugned final order dated 13.08.2025 passed by the learned Appellate Tribunal, inasmuch as, the attachment of the appellant's property has been made on the basis of 2nd limb of Section 2(1)(u) of the Act. Further, though the attached property had not been purchased by the appellant with the money the appellant received from the crime, the same did not disqualify or bar the respondents from attaching the property in question, inasmuch as, Section 2(1)(u) of the Act allowed for the same. She accordingly submits that the appeal should be dismissed.

20. On perusing the official records and the "reason to believe for issuance of provisional attachment order No.03/2023 in ECIR No.GWZO/02/2021 dated 17.12.2021, attaching the property in the name Sh. Kumar Sanjit Krishna (under sub-Section (1) of Section 5 of the Prevention of Money Laundering Act, 2002 [as amended])" shows that the said property had been attached, as it represented the value of the property in terms of Section 2(1)(u) of the PMLA Act, 2002.

21. A reading of the reasons for attachment of the said property shows that the property had been attached in terms of the 2nd limb of Section 2(1)(u) of

the PMLA Act. Though the provisional attachment order has used the word "equivalent", while attaching the property of the appellant, the official records show that the attachment had been made in terms of the 2nd limb of Section 2(1)(u) of the Act. The attachment had not been made in terms of the 3rd limb of Section 2(1)(u) of the Act, just because it has used the word "equivalent" in the provisional attachment order. Though the respondents could attach property, which was equivalent to the value of the crime proceeds, it is seen that the property that has been attached is apparently valued @Rs.16.60 lakhs, while the crime proceeds alleged to have been received by the appellant from the total amount of Rs.6,13,74,440/- is alleged to be Rs.40 lakhs.

22. In the case of ***Abdullah Ali Balsharaf & Anr. Vs. Directorate of Enforcement & Ors.***, reported in ***2019 SCC OnLine Del 6428***, the Hon'ble Supreme Court held that the power to provisionally attach or seize or freeze a property can be exercised only (a) if the specified officer has material in his possession, which provides him reason to believe that the property sought to be attached or seized is proceeds of crime or related to a crime and (b) after recording the reasons in writing.

23. In the case of ***M/s Mahanivesh Oils & Foods Pvt. Ltd. Vs. Directorate of Enforcement***, reported in ***2016 SCC Online Del 475***, the Delhi High Court at Para 23 & 25 has held as follows:-

"23. In the present case, the impugned order has been made under Section 5(1) of the Act. A plain reading of Section 5(1) of the Act indicates that where the officer concerned has reason to believe, on the basis of material in his possession that any person: "(a) is in possession of

any proceeds of crime; and (b) that such proceeds are likely to be concealed, transferred or dealt with in any manner that may frustrate any proceedings relating to confiscation of such proceeds of crime under this Chapter", he may make an order for provisional attachment of "such property". The use of the word 'such' clearly indicates that the reference is to the property mentioned in the preceding portion of Section 5(1) of the Act, that is, proceeds of crime.

25. Thus, a conjoint reading of Section 5(1) read with Section 2(u) of the Act clearly indicates that the power to attach is only with respect to the 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 such property."

24. In the case of ***Omar Ali Obaid Balsharaf Vs. Deputy Director Directorate of Enforcement, Delhi***, reported in ***2019 SCC Online ATPMLA 49***, the Appellate Tribunal for Prevention of Money Laundering Act, Delhi has held that in the definition of proceeds of crime, only the following properties can be categorized as proceeds of crime and consequently attached:

- a) property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence
- b) value of any such property
- c) property equivalent in value held within the country, where such property is taken or held outside the country

The learned Tribunal held that the attached property being value of such

property', has to have a link or nexus with the actual property derived from criminal activity and it cannot merely be a 'property equivalent in value', attachment of which is only permissible if the proceeds of crime is taken or held outside India.

Therefore, when the case of the ED falls under equivalent in Value of any such property', it cannot take any unrelated property which has no nexus or link with the actual proceeds of crime and attach the same as 'property equivalent in value' in the absence of evidence."

25. In the case of ***Pavana Dibbur (Supra)***, the Hon'ble Supreme Court in Para 13, 15, 19 & 31.3 has held as follows:-

"13. Clause (v) of sub-section (1) of Section 2 PMLA defines "property" to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The Explanation clarifies that the proceeds of crime include property, not only derived or obtained from 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. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime. Thus, the existence of "proceeds of crime" is sine qua non for the offence under Section 3 PMLA.

15. The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. On this aspect, it is necessary to refer to

the decision of this Court in Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] . In para 109 of the said decision [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] , this Court held thus : (SCC p. 166)

“109. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence that can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.”

26. In the case of ***Davy Varghese & Anr. Vs. Deputy Director, Directorate of Enforcement, Department of Revenue & Ors.,*** reported in ***2024 SCC OnLine Ker 7343***, the Kerala High Court held that the definition of the term 'proceeds of crime' explicitly states that when the proceeds of a crime is a property, such property must have been obtained or derived directly or indirectly as a result of any criminal activity relating to a scheduled offence. No doubt, even if the property was obtained indirectly, it can still be regarded as proceeds of crime. Assuming that a property derived out of a criminal activity mentioned is not available, still, attachment can be effected to the extent of the equivalent value of such property. The term 'value' in S. 2(1)(u) can only mean the monetary worth of the property that was derived from the criminal activity. This is evident from the words 'value of any such property'. The only method, when a property, which is unconnected with the proceeds of crime, can be attached, is when the property derived out of the criminal activity was taken out of India or is held outside the country. Under no other circumstance does the statute mandate attaching a property unconnected with the proceeds of crime.

The Kerala High Court further held in Para 22 and 23 as follows:

“22. The statute never intends to attach or confiscate all properties of a person connected with the crime. Moreover, the consequences of a crime cannot have a retroactive implication. Arbitrariness will loom large if the implication of a crime is extended to anything done before the crime itself was committed. The principle of ex post facto law, enshrined in Article 20 of the Constitution of India, protects against punishment or penalty for anything which was not an offence at the time it was committed. Though the said principle may not have application stricto

sensu in relation to proceeds of crime, still the philosophy behind the concept cannot be brushed aside.

23. Further, the Supreme Court had, in Pavana Dibbur v. Directorate of Enforcement [2023 SCC OnLine SC 1586], specifically considered the question of attaching property acquired prior to the commission of the crime and held, in the negative."

27. As can be seen, Section 2(1)(u) of the Act is divided into 3 (three) parts/limbs. The decisions mentioned above, especially the Supreme Court Judgment in ***Pavana Dibbur*** (Supra) and ***Vijay Madanlal Choudhary*** (Supra), go to show that the attached property have to have some connection with the crime/proceeds of crime. However, in the present case, the learned Appellate Tribunal has held that in terms of paragraph No. 68 (which is paragraph No. 172), the Judgment of the Supreme Court in ***Vijay Madanlal Choudhary*** (Supra) and the decisions of the Delhi High Court ***in Enforcement Directorate vs. Axis Bank, 2019 SCC Online DEL-7854*** and ***Prakash Industries Ltd. vs. Directorate of Enforcement, 2022 SCC Online DEL-2087***, Section 2(1)(u) of the Act would include within its ambit the property of the appellant, even if it did not have any connection with the crime in question. In other words, even if the property was acquired prior to the crime, then also the said property was liable to be attached, if the proceeds of crime had vanished could not be traced.

28. In the case of ***Deputy Director, Directorate of Enforcement, Delhi Vs. Axis Bank & Ors.***, reported in ***2019 0 Supreme (Del) 930***, the Delhi High Court has held that Section 2(1)(u) of the Act is in three parts, which are as follows:-

“(i). property derived or obtained (directly or indirectly) as a result of criminal activity relating to scheduled offence; or

(ii). the value of any such property as above; or

(iii). if the property of the nature first above mentioned has been "taken or held" abroad, any other property "equivalent in value" whether held in India or abroad.”

The Delhi High Court held that while the first part of the said section deals with tainted property, which had been acquired through tainted money, the second and third part of the section would ordinarily deal with untainted properties. They could have been acquired legitimately, without any connection with criminal activity or its result. The same were however intended to fall in the net, because their owner was involved in the proscribed criminal action and the tainted assets held by him were not traceable or could not be reached. While some of the properties could be held in India or abroad, a rider was put by law, insisting on equivalent in value in the property to be attached. It was this inclusive definition of proceeds of crime in respect of property of the second and third kind mentioned in Section 2(1)(u) of the Act that the equivalent value of those properties of the second and third category could be attached, even though the use of the word "equivalent in value" had not been used in the second part/limb of Section 2(1)(u) of the Act. It thus held in Para 109 and 110 as follows-

“109. The inclusive definition of "proceeds of crime" respecting property of the second above-mentioned nature - i.e. "the value of any such property" - gives rise (as it has done so in these five appeals) to potential multi-

layered conflicts between the person suspected of money-laundering (the accused), a third party (with whom such accused may have entered into some transaction vis-a-vis the property in question) and the enforcement authority (the State). Since the second of the above species of "proceeds of crime" uses the expression "such property", the qualifying word being "such", it is vivid that the "property" referred to here is equivalent to the one indicated by the first kind. The only difference is that it is not the same property as of the first kind, it having been picked up from among other properties of the accused, the intent of the legislature being that it must be of the same "value" as the former. The third kind does use the qualifying words "equivalent in value". Though these words are not used in the second category, it is clear that the said kind also has to be understood in the same sense.

110. Thus, it must be observed that, in the opinion of this court, if the enforcement authority under PMLA has not been able to trace the "tainted property" which was acquired or obtained by criminal activity relating to the scheduled offence for money-laundering, it can legitimately proceed to attach some other property of the accused, by tapping the second (or third) above-mentioned kind provided that it is of value near or equivalent to the proceeds of crime. But, for this to be a fair exercise, the empowered enforcement officer must assess (even if tentatively), and re-evaluate, as the investigation into the case progresses, the quantum of "proceeds of crime" derived or obtained from the criminal activity so that proceeds or other assets of equivalent value of the offender of money-laundering (or his abettor) are subjected to attachment to such extent, the eventual order of confiscation being always restricted to take over by

the Government of illicit gains of crime, the burden of proving facts to the contrary being on the person who so contends."

It also held that in cases where the enforcement authority seeks to attach other properties, suspecting them to be "proceeds of crime", not on the basis of the fact that they are actually "derived or obtained" from criminal activity, but because they are of equivalent "value" as to the proceeds of crime which cannot be traced, it is essential that there be some nexus or link between such property on one hand and the person accused of or charged with the offence of money-laundering on the other hand. Para 160 of the said judgment provides as follows:-

"160. But, in cases where the enforcement authority seeks to attach other properties, suspecting them to be "proceeds of crime", not on the basis of fact that they are actually "derived or obtained" from criminal activity but because they are of equivalent "value" as to the proceeds of crime which cannot be traced, it is essential that there be some nexus or link between such property on one hand and the person accused of or charged with the offence of money-laundering on the other. In cases of this nature, the person accused of money-laundering must have had an interest in such property at least till the time of engagement in the proscribed criminal activity from which he is stated to have derived or obtained pecuniary benefit which is to be taken away by attachment or confiscation. It is with this view that PMLA provides for a possible presumption to be drawn, under Section 24(b) using the expression "may presume", about a property being "involved in money-laundering" in the case of person other than the one who is charged with the offence of money-laundering. There

is no doubt that such presumption, if drawn, may also be rebutted by evidence showing facts to the contrary."

29. In the case of ***Prakash Industries Ltd. and Another vs. Directorate of Enforcement, 2022 SCC Online DEL-2087***, the Delhi High Court held that in a situation where a property which may be said to have a direct or indirect link to proceeds to crime is untraceable, property equivalent in value may also be attached.

30. The learned Appellate Tribunal in the case of ***Shri Sadananda Nayak*** (Supra), held that Section 2(1)(u) of the Act being in 3(three) parts, the second part/limb of Section 2(1)(u) could not be made dependent on the first part, as the second limb was in respect of a separate scenario altogether, not connected with the first part of the section.

The learned Tribunal in ***Shri Sadananda Nayak*** (Supra), held in paragraph No. 15 as follows:

"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."

31. The decision in ***Shri Sadananda Nayak*** (Supra), was reached by the learned Appellate Jurisdiction by taken into consideration paragraph No. 68 of the Judgment of the Supreme Court in ***Vijay Madanlal Choudhary*** (Supra). It may be stated here that this Court on going through the decision of ***Vijay Madanlal Choudhary*** (Supra), found that paragraph No. 68 of the Judgment in ***Vijay Madanlal Choudhary*** (Supra), which is reproduced in the decision of ***Shri Sadananda Nayak*** (Supra), is actually at paragraph No. 172, which is as follows:

"172. It was also urged before us that the attachment of property must be equivalent in value of the proceeds of crime only if the proceeds of crime are situated outside India. This argument, in our opinion, is tenuous. For, the definition of "proceeds of crime" is wide enough to not only refer to the property derived or obtained as a result of criminal activity relating to a scheduled offence, but also of the value of any such property. If the

property is taken or held outside the country, even in such a case, the property equivalent in value held within the country or abroad can be proceeded with. The definition of "property" as in Section 2(1)(u) 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."

32. The learned Tribunal in ***Shri Sadananda Nayak*** (Supra), held that a perusal of paragraph No. 68/172 of ***Vijay Madanlal Choudhary*** (Supra) clarified that attachment can be only of the proceeds of crime and that the definition of the proceeds of crime included the value of the property, which were not traceable. The learned Tribunal held that if the definition of the proceeds of crime did not include of the value of the property which was not related to a criminal activity, the second paragraph/limb of Section 2(1)(u) would become redundant, as otherwise, an accused would commit a crime and simply make the proceeds of crime vanish, so that it was not made available for attachment. The learned Tribunal also held that the decision of ***Vijay Madanlal Choudhary*** (Supra) was made by a 3 Judges Bench and as the same was in conflict with the 2 Judges Bench of the Supreme Court in ***Pavana Dibbur*** (Supra), the decision of the larger bench would have to be followed.

33. The present appeal is with regard to the impugned Final Order dated 13.08.2025, passed by the learned Tribunal in FPA-PMLA-1314/GWH/2024, wherein it has followed the earlier decision of the Appellate Tribunal in FPA-PMLA-5612/BBS/2023 and paragraph No. 68/172 of the Judgment of the Supreme Court in ***Vijay Madanlal Choudhary*** (Supra) and the 2 Delhi High

Court judgments is ***Axis Bank (Supra)*** and ***Prakash Industries Ltd. (Supra)***.

34. On a consideration of paragraph No. 68/172 in ***Vijay Madanlal Choudhary*** (Supra), it appears that the Supreme Court has defined proceeds of crime to not only cover 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 which is acquired prior to the commission of the offence. The 3rd part of the definition of proceeds of crime no doubt includes attachment of property of equivalent value in India, if the property is taken or held outside the country. Thus, what is clear from the above is that when the property is relatable to a scheduled offence, the property can be attached. In both the cases, there is a prior requirement of identifying and coming to a finding that the property attached is part of the proceeds of crime. The problems arises with the second part of the definition of proceeds of crime where it only speaks of "or the value of any such property" in Section 2(1)(u) of the Act. It is no doubt true that if an accused commits a crime and wipes out all traces of the proceeds of crime, then there would be nothing left to attach, if the proceeds of crime has been made untraceable. However, the fact remains that the definition of proceeds of crime, as defined by the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary*** (Supra) has been followed in paragraph No. 15 of ***Pavana Dibbur*** (Supra).

35. Though the learned counsel for the respondent has relied upon paragraph No. 68/172 of ***Vijay Madanlal Choudhary*** (Supra), in support of her submission that when the proceeds of crime is untraceable, the value of any property of an accused can be attached, we find that the said paragraph has to

be read in conjunction with other paragraphs, such as paragraph Nos. 105 – 109, 169 and 170 of the said Judgment, wherein it has been held that the precondition for being proceeds of crime is that the property has been derived or obtained directly or indirectly, by any person, as a result of criminal activity relating to a scheduled offence. The attachment must be only in respect of property which appears to be proceeds of crime and not all the property belonging to the person concerned who would eventually face the action of confiscation of proceeds of crime, including prosecution for the offence of money laundering. Also, paragraph No. 109 has specifically stated that it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence, that can be regarded as proceeds of crime.

Further, paragraph No. 169 of the Judgment is reproduced as follows:-

“169. As aforesaid, in this backdrop Amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. The sweep of Section 5(1) is not limited to the accused named in the criminal

activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act."

36. Though paragraph No. 68/172 of **Vijay Madanlal Choudhary** (Supra), appears to support the interpretation given by the learned Tribunal with regard to the definition of proceeds of crime, the Judgments as a whole shows that there is no conflict between the decision in **Vijay Madanlal Choudhary** (Supra) and **Pavana Dibbur** (Supra), where only property which has been derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be attached. As such, we are of the view that attachment of property, acquired prior to the commission of the crime, would not fall within the definition of the proceeds of crime.

37. In view of the above reasons and the fact that the Supreme Court in **Pavana Dibbur** (Supra), has clearly held that the decision in **Vijay Madanlal Choudhary** (Supra) has held that only such property which is derived or obtained, directly or indirectly, as a result of criminal activity, relating to a scheduled offence can be regarded as proceeds of crime, we hold that properties which have no nexus to a criminal activity relating to a scheduled offence cannot be regarded as proceeds of crime. For example, if an accused had bought a house 20 years earlier, and the scheduled offence had commenced 20 years later, it would be unreasonable to consider the 20 year old house to be proceeds of crime.

38. The above being said, there is a factual dispute with regard to whether the attached property of the appellant had been acquired prior to the commission of the crime, inasmuch as, the crime had occurred between 11.04.2018 and 19.09.2020. As per the stand taken by the appellant, he had bought the attached property and paid the cost of the property between 2008 and 2011. However, the said property was registered in the name of the appellant only on 25.06.2019. On the other hand, the respondents stand is that the property had been purchased by the appellant on 25.06.2019, i.e., during the currency of the commission of the offence.

39. In view of there being a disputed question of fact with regard to when the property had been purchased and keeping in mind the fact that the property had allegedly been registered in the name of the appellant only during the period of commission of the crime, the said disputed question of fact would have to be proved by way of evidence. Till the time it is proved that the property had been bought prior to the commission of the crime/offence, we are not inclined to allow the present petition.

40. The appeal is accordingly dismissed.

JUDGE

JUDGE