



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.P.Nos.9338, 9362, 11490, 11492,
11572 and 14336 of 2020

W.P.No.9338/2020

Between:

Kumar Pappu Singh, S/o. Kapil Deo Singh,
R/o. No.6-3-252, B Block, Flat No.504,
5th Floor, Trendset Grande,
Erramanzil Colony, Hyderabad-500 082.

... **Petitioner**

AND

\$ 1. Union of India, Ministry of Finance, rep. by its Secretary, North Block,
Central Secretariat, New Delhi.

2. The Deputy Director, Directorate of Enforcement, Government of
India, Visakhapatnam Sub-Zonal Office, D.No.39-33-93/2, Plot
No.MIG-230, Madhavadhara Vuda Layout, Visakhapatnam-530018.

3. Adjudicating Authority, Prevention of Money Laundering Act, 4th
Floor, Jeevan Deep Building, Parliament Street, New Delhi-110 001.

... **Respondents**

Date of Judgment pronounced on : 20-03-2021

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether the Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI***** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****+ W.P.Nos.9338, 9362, 11490, 11492,****11572 and 14336 of 2020****%Date: 20.03.2021****W.P.No.9338/2020**

Kumar Pappu Singh, S/o. Kapil Deo Singh,
R/o. No.6-3-252, B Block, Flat No.504,
5th Floor, Trendset Grande,
Erramanzil Colony, Hyderabad-500 082.

... Petitioner**AND**

- \$ 1. Union of India, Ministry of Finance, rep. by its Secretary, North Block,
Central Secretariat, New Delhi.
2. The Deputy Director, Directorate of Enforcement, Government of
India, Visakhapatnam Sub-Zonal Office, D.No.39-33-93/2, Plot
No.MIG-230, Madhavadhara Vuda Layout, Visakhapatnam-530018.
3. Adjudicating Authority, Prevention of Money Laundering Act, 4th
Floor, Jeevan Deep Building, Parliament Street, New Delhi-110 001.

... Respondents**W.P.No.9362/2020**

Between:

Smt. Rama Devi, W/o. Kumar Pappu Singh,
R/o. No.6-3-252, B Block, Flat No.504,
5th Floor, Trendset Grande,
Erramanzil Colony, Hyderabad-500 082.

... Petitioner**AND**

- \$ 1. Union of India, Ministry of Finance, rep. by its Secretary, North Block,
Central Secretariat, New Delhi.
2. The Deputy Director, Directorate of Enforcement, Government of
India, Visakhapatnam Sub-Zonal Office, D.No.39-33-93/2, Plot
No.MIG-230, Madhavadhara Vuda Layout, Visakhapatnam-530018.
3. Adjudicating Authority, Prevention of Money Laundering Act, 4th
Floor, Jeevan Deep Building, Parliament Street, New Delhi-110 001.

... Respondents**W.P.No.11490/2020**

Between:

Jai Maakali Pulp Pvt. Ltd., registered office at
D.No.23-14-30, H.No.192, Sangulavari Street,
Tanuku AP 534211 IN, rep. by Kumar Pappu Singh,
S/o. Kapil Deo Singh, R/o. No.6-3-252, B Block,
Flat No.504, 5th Floor, Trendset Grande,



Erramanzil Colony, Hyderabad-500 082.

... **Petitioner**

AND

- \$ 1. Union of India, Ministry of Finance, rep. by its Secretary, North Block, Central Secretariat, New Delhi.
2. The Deputy Director, Directorate of Enforcement, Government of India, Visakhapatnam Sub-Zonal Office, D.No.39-33-93/2, Plot No.MIG-230, Madhavadhara Vuda Layout, Visakhapatnam-530018.
3. Adjudicating Authority, Prevention of Money Laundering Act, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110 001.

... **Respondents**

W.P.No.11492/2020

Between:

- # Jai Maakali Poultry Products Pvt. Ltd., registered office at D.No.23-14-30, H.No.192, Sangulavari Street, Tanuku AP 534211 IN, rep. by Kumar Pappu Singh, S/o. Kapil Deo Singh, R/o. No.6-3-252, B Block, Flat No.504, 5th Floor, Trendset Grande, Erramanzil Colony, Hyderabad-500 082.

... **Petitioner**

AND

- \$ 1. Union of India, Ministry of Finance, rep. by its Secretary, North Block, Central Secretariat, New Delhi.
2. The Deputy Director, Directorate of Enforcement, Government of India, Visakhapatnam Sub-Zonal Office, D.No.39-33-93/2, Plot No.MIG-230, Madhavadhara Vuda Layout, Visakhapatnam-530018.
3. Adjudicating Authority, Prevention of Money Laundering Act, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110 001.

... **Respondents**

W.P.No.11572/2020

Between:

- # M/s. Sri Maruti Fish Farms, registered office at D.No.23-14-30, H.No.192, Sangulavari Street, Tanuku AP 534211 IN, rep. by Sadanand Singh.

... **Petitioner**

AND

- \$ 1. Union of India, Ministry of Finance, rep. by its Secretary, North Block, Central Secretariat, New Delhi.
2. The Deputy Director, Directorate of Enforcement, Government of India, Visakhapatnam Sub-Zonal Office, D.No.39-33-93/2, Plot No.MIG-230, Madhavadhara Vuda Layout, Visakhapatnam-530018.
3. Adjudicating Authority, Prevention of Money Laundering Act, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110 001.

... **Respondents**

**W.P.No.14336/2020**

Between:

Jai Maakali Fish Farms Pvt. Ltd., registered office at
D.No.23-14-30, H.No.192, Sangulavari Street,
Tanuku AP 534211 IN, rep. by Kumar Pappu Singh,
S/o. Kapil Deo Singh, R/o. No.6-3-252, B Block,
Flat No.504, 5th Floor, Trendset Grande,
Erramanzil Colony, Hyderabad-500 082.

... **Petitioner**

AND

\$ 1. Union of India, Ministry of Finance, rep. by its Secretary, North Block,
Central Secretariat, New Delhi.

2. The Deputy Director, Directorate of Enforcement, Government of
India, Visakhapatnam Sub-Zonal Office, D.No.39-33-93/2, Plot
No.MIG-230, Madhavadhara Vuda Layout, Visakhapatnam-530018.

3. Adjudicating Authority, Prevention of Money Laundering Act, 4th
Floor, Jeevan Deep Building, Parliament Street, New Delhi-110 001.

... **Respondents**

! Counsel for petitioners : Sri Vimal Varma Vasireddy

^Counsel for Respondents : Sri Josyula Bhaskara Rao

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>HEAD NOTE:

? Cases referred:

1. (2010) 4 SCC 772
2. 2015 (1) ALD 513
3. (2011) 14 SCC 337
4. 2019 Law Suit (Del) 1037 = 2019 (2) Crimes (HC) 181.
5. 2019 (3) ALD 472 = 2019 (1) ALT 355
6. (2018) 14 SCC 186
7. (1998) 8 SCC 1
8. AIR 1973 SC 1362 = (1973) (1) SCC 633¹
9. AIR 1961 SC 1506 : (1962) 1 SCR 753
10. AIR 1961 SC 372 : (1961) 41 ITR 191
11. 2019 (3) RCR (Criminal) 798

**THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO****W.P.Nos.9338, 9362, 11490, 11492,****11572 and 14336 of 2020****COMMON ORDER:-**

The petitioners in W.P.Nos.11490, 11492 and 14336 of 2020 are Private Limited Companies. The petitioner in W.P.No.11572 of 2020 is a partnership firm. The petitioners in W.P.No.9338 of 2020 and W.P.No.9362 of 2020 are individuals. All these petitioners are challenging the order or provisional attachment bearing No.2/2019 in File No.ECIR/VKSZ0/02/2018 dated 31.12.2019, passed by the 2nd respondent in all these cases.

2. The case of the petitioners is that M/s IDBI Bank had filed a complaint before the Central Bureau of Investigation, which was registered as FIR.No.RC03(A)/2018, dated 27.03.2018, against various persons including Sri Kumar Pappu Singh, the writ petitioner in W.P.No.9338 of 2020, who was arrayed as Accused No.3 in the said complaint. The complaint of the bank was that between the years 2009 and 2012 the bank had sanctioned Kisan Credit Card (KCC) Loans to 101 borrowers to the tune of Rs.74.99 crores without obtaining proper loan documents and without conducting pre-sanction and post-sanction inspections and without ensuring the end use of the loan. It is further stated in the complaint that these loan amounts were disbursed to the savings accounts of the beneficiaries, from where the money was transferred to the accounts of the aggregators and later misappropriated. The petitioner in W.P.No.9338 of 2020 was named as accused No.3 on the ground that he stood as guarantor for 87 KCC loans and diverted the sanctioned amounts to his savings account and bank account of his



firms/companies. These diverted amounts are said to have been used, by the petitioner in W.P.No.9338 of 2020, to fund his Pisciculture business which ran into losses.

3. As the said complaint included scheduled offences under the Prevention of Money Laundering Act, 2002 (herein after referred as "The Act"), the authorities under the Act had also registered a case bearing No.ECIR/VKSZO/02/2018 on 28.05.2018. In the course of the investigation of the said case, the 2nd respondent, by way of provisional attachment order No.2 of 2019 dated 31.12.2019, had held that a sum of Rs.69.46 crores had been diverted by the petitioner in W.P.No.9338 of 2020 and exercising his power under Section 5 of the Act the, 2nd respondent provisionally attached various properties belonging to the petitioners herein. These properties were enumerated in two tables. Table-I consists of properties acquired by the petitioners prior to September, 2010 and Table-II sets out the properties said to have been acquired by the petitioners after September, 2010 by using the proceeds of the crime.

4. The petitioners, who are aggrieved by the said attachment of their property, seek a writ in the nature of Certiorari for quashing the provisional attachment order passed by the 2nd respondent in attachment order No.2 of 2019 dated 31.12.2019 and to quash all consequential proceedings of the impugned provisional attachment including notice issued by the 3rd respondent dated 06.02.2020 in O.C.No.1253 of 2020 and further prohibit respondents 2 and 3 from exercising jurisdiction on the basis of the impugned order dated 31.12.2019.

5. The 2nd respondent has filed a counter affidavit. A preliminary objection has been taken in the counter affidavit that the impugned



provisional attachment order is pending before the Adjudicating Authority, New Delhi, and as such, the present writ petitions are not maintainable as there is an effective alternative remedy available to the petitioners. It is submitted that the petitioners had also responded to the notice of the adjudicating authority dated 06.02.2020 and had filed a reply before the adjudicating authority. Reliance is placed on the Judgment of the Hon'ble Supreme Court dated 12.04.2010 in **Raj Kumar Shivharev. Assistant Director, Director of Enforcements**¹, a Judgment of this Court in the case of **P.Trivikram Prasad v. Enforcement Directorate**² and the Judgment of the Hon'ble Supreme Court in **Nivedita Sharma v. Cellular-Operators-Association of India and Ors.**³, to contend that in such circumstances the petitioners should be relegated to the alternative remedy available under the Act.

6. On the merits of the case, the 2nd respondent goes into the details to show that the petitioner in W.P.No.9338 of 2020 had diverted huge amounts of money given to the loanees and used the diverted funds for purchase of some of the properties. He would rely upon the Judgment of the High Court of Delhi in the case of **Deputy Director, Directorate of Enforcement Delhi, Union of India v. Axis Bank &Ors; State Bank of India &Ors; IDBI Bank Ltd; Punjab National Bank &Anr.**⁴, to contend that the definition of "proceeds of crime" should be given an extensive definition, which would include the properties set out in Table-I of the impugned attachment order.

¹(2010) 4 SCC 772

²2015 (1) ALD 513

³(2011) 14 SCC 337

⁴ 2019 Law Suit (Del) 1037 = 2019 (2) Crimes (HC) 181.



7. Sri Vimal Varma Vasireddy, learned counsel for the petitioners would rely upon a Judgment of the Division Bench of the erstwhile High Court for the State of Telangana and the State of Andhra Pradesh at Hyderabad reported as **Satyam Computer Services Limited v. Government of India**⁵, the Judgment of the Hon'ble Supreme Court in **Aslam Mohd. Merchant v. Competent Authority and Ors.**,⁶ and **Whirlpool Corporation v. Registry of Trade Marks, Mumbai and Ors.**,⁷ to contend that the existence of an alternative remedy is not a bar to the jurisdiction of the High Court and is only a self imposed restriction.

8. In **Raj Kumar Shivharev. Assistant Director, Director of Enforcements**, a writ petition was filed before the Hon'ble High Court against an order of pre-deposit in a penalty appeal before the Tribunal. The Hon'ble High Court entertained the said writ petition and the same was challenged before the Hon'ble Supreme Court. The Apex Court had taken note of the fact that an appeal was available against the order of the Tribunal before the High Court itself. The Hon'ble Supreme Court also noticed the fact that a writ remedy is a part of the basic structure. However, the Hon'ble Supreme Court taking into account the above facts had held that the High court had fallen in manifest error in hearing the Writ petition when the appeal, before the very same Court, was an adequate alternative remedy.

9. In **P.Trivikram Prasad v. Enforcement Directorate** the erstwhile High Court for the State of Telangana and the State of Andhra Pradesh at Hyderabad had considered a challenge, to an order of attachment under Section 5 of the Act, on the adequacy of reasons as

⁵2019 (3) ALD 472 = 2019 (1) ALT 355

⁶(2018) 14 SCC 186

⁷(1998) 8 SCC 1



well as the merits of the case, and had held that these were issues which were best dealt with by the Adjudicating authority as the reasons for such attachment would be considered properly.

10. In **Nivedita Sharma v. Cellular-Operators-Association of India and Ors.**, the Hon'ble Supreme Court, while reiterating the principle that the Constitutional Courts should allow the alternative remedies available under the Act to be exercised and should not entertain writ petitions where effective alternative remedy is available, had also held that the exercise of Article 226 jurisdiction is a part of the basic structure of the Constitution.

11. In **Saytam Computer Services Limited v. Government of India**, a writ petition had been filed against a provisional attachment order under the provisions of the Act. The Enforcement Directorate had raised the question of maintainability of the writ petition on grounds similar to those raised in the present writ petition. The Hon'ble High Court for the State of Telangana and the State of Andhra Pradesh at Hyderabad, had while negating the contention of the Enforcement Directorate, relied upon the judgment of the Hon'ble Supreme Court in **Raza Textiles Limited v. Income Tax Officer, Rampur**⁸. In that case, the Hon'ble Supreme Court had held that an order of *quasi judicial* authority, who has conferred jurisdiction to itself, by deciding jurisdictional fact wrongly, can be challenged by way of a writ petition. Relying on the said judgment, the Hon'ble High Court had held that the writ petition is maintainable.

12. In the case of **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai &Ors.**, the Hon'ble Supreme Court, while considering the maintainability of a writ petition, in view of the availability

⁸AIR 1973 SC 1362 = (1973) (1) SCC 633



of an effective alternative remedy, in paragraph Nos.14 & 15, had held that an alternative remedy does not operate as a bar in at least three contingencies, viz., where the writ petition has been filed for the enforcement of any of the Fundamental Rights, or where there has been a violation of the principle of natural justice, or where the order or proceedings are wholly without jurisdiction, or the vires of an Act is challenged. The Hon'ble Supreme Court had considered the judgments of two Constitutional Benches of the Hon'ble Supreme Court in **A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhvani**⁹ and **Calcutta Discount Co. Ltd. v. ITO, Companies Distt.I**¹⁰ wherein the very same principle had been set down.

13. In the circumstances it cannot be held that the present set of writ petitions are not maintainable, as the challenge to the impugned order of attachment is on the ground of lack of jurisdiction.

14. Coming to the impugned order, certain observations in the impugned order, which would clarify the facts, are:-

"Thus, from the foregoing, Mr. Kumar Pappu Singh had fraudulently obtained KCC loans from IDBI bank, Palangi Branch, West Godavari District, Andhra Pradesh in the names of 87 borrowers to the tune of Rs.69.49 Crores from September 2010 and aggregated the entire amount of Rs.69.49 Crores and utilized it for his own personal investments and business purposes and hence the total proceeds of crime in this case is Rs.69.49 Crores."

"Enquiries conducted revealed that the KCC loans which are the subject matter of investigation were sanctioned from September 2010 onwards to the borrowers for whom Mr. Kumar Pappu Singh acted as the guarantor. Accordingly, the properties identified during the

⁹AIR 1961 SC 1506 : (1962) 1 SCR 753

¹⁰AIR 1961 SC 372 : (1961) 41 ITR 191



course of investigation are segregated into two categories as given below.”

“Investigation revealed that a major portion of the KCC loans obtained were invested by Mr. Kumar Pappu Singh in his fish farming business and suffered huge losses. In the light of the above provisions of the Act, the properties mentioned in table-I of paragraph-35 above are liable for attachment as properties of equivalent value for the exhausted proceeds of crime and are liable for attachment as per the definition of proceeds of crime under Section 2(1)(u) PMLA.”

“Enquiries conducted revealed that Mr. Kumar Pappu Singh had constructed fish tanks in the lands owned by him in the village of Dosapadu and Pothunuru in the tables in paragraph-35 above for doing fish cultivation. Further, investigation has revealed that a major portion of the said KCC loan amounts was illegally invested by Mr. Kumar Pappu Singh in his personal fish farming business and lost the money as the fish farming business suffered huge losses; that consequently, he could not repay the loans and that thus, the KCC loans became NPA.”

“Although the properties mentioned in Table-I of paragraph-35 above were acquired prior to the commission of scheduled offence, they are qualified to be treated as proceeds of crime for the remaining amount of which was exhausted by Mr. Kumar Pappusingh in his fish farming business under Section 2(1)9u) of PMLA, 2002 and therefore, the properties in table-I of paragraph-35 above are taken as deemed tainted properties for the purposes of attachment. Hence, the movable and immovable properties as detailed in paragraphs-34 & 35 are being considered for attachment under Section 5(1) of PMLA, 2002.”

15. The factual matrix as set out by the authority is that, the money said to have been obtained by Mr. Kumar Pappu Singh by committing the scheduled offences was obtained after September, 2010 and a large part of the amount was invested in aquaculture and lost.



16. The properties that have been attached under the impugned order fall into two categories. The first category consists of assets purchased prior to the commission of the offences and the second category consists of properties purchased after the commission of offences and where doubt is expressed by the authority that these properties may have been purchased from the proceeds of the offences.

17. The authority, while attaching the properties in the first category, enumerated in Table-I of the impugned order, took the view that even though the properties were acquired prior to the commission of the scheduled offences, they are deemed tainted property, for the purposes of recovery of the proceeds of the crime which were lost in the pisciculture business. The petitioners contend that the properties enumerated under Table-I cannot be attached as these are no proceeds of crime and as such the 2nd Respondent would have no Jurisdiction to pass the impugned order.

18. Before going into the issue, a quick look at some of the provisions of the Act and judgments is necessary. Section 5 of the Act, which authorizes the initiation of the confiscation process, reads as follows:

5 Attachment of property involved in money-laundering.—

“Attachment of property involved in money-Laundering.-

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,



he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided also.....

1).....

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment

Explanation.- For the purposes of this sub-section "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority."



19. After the attachment of the proceeds of the crime is carried out, the attachment order along with the material is forwarded to the adjudicating authority and the process of confiscation or release of the proceeds of the crime are conducted in the following manner, under section 8 of the Act:

8. Adjudication.- (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under subsection (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government: Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property. (2) The Adjudicating Authority shall, after- (a) considering the reply, if any, to the notice issued under subsection (1); (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and (c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering. (3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall- (a) continue during the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India,



as the case may be; and (b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Adjudicating Authority (4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (IA) of section 17, in such manner as may be prescribed: Provided that if it is not practicable to take possession of a property frozen under sub-section (IA) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of. (5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government. (6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it. (7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under subsection (3) of section 8, shall pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money laundering after having regard to the material placed before it.

[(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed may also direct the Central Government to estore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering]:

[Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.]

20. The jurisdictional fact whereby these provisions can be invoked is that the properties sought to be attached and confiscated must



be proceeds of crime. The expression "proceeds of the Crime" is defined in

Section 2 (1)(u) of the Act as follows:

2(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 [(3) or where such property is taken or held outside the country, then the property equivalent in value held within the country] [(4) or abroad];

[(5) Explanation.- for the removal of doubts, it is hereby clarified that "proceeds of crime" including 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;]

(3) Inserted by the Finance Act, 2015 (20 of 2015), Section 145(i) (w.e.f. 14-05-2015);

(4) Inserted by Act 13 of 2018, Section 208(a) (w.e.f. 19-04-2018), vide G.S.R. 383 (E) dated 19.04.2018)

(5) Inserted by the Finance (No.2) Act, 2019, section 192(iii) (w.e.f. 01.08.2019)

21. This provision has been interpreted by a learned Single Judge of the Hon'ble High Court of Delhi in **Deputy Director, Directorate of Enforcement Delhi, Union of India v. Axis Bank &Ors; State Bank of India &Ors; IDBI Bank Ltd; Punjab National Bank &Anr.** The learned Single Judge held that the definition consists of 3 parts, viz., –

"104. The above definition may be deconstructed into three parts:-

(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."

22. After splitting the definition into three parts, the learned Single Judge went on to hold that the second and third limbs have to be taken together and on that basis, the learned judge held that even the property, which is not obtained on account of the crime, will also be liable



for attachment and confiscation, to the extent of the value of the property derived from the crime:-

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 of 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 the 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 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.

23. The same provision came up for interpretation before a Division Bench of the High Court of Punjab and Haryana in the case of **Seema Garg v. The Deputy Director, Directorate of Enforcement** decided on 06.03.2020 in PMLA No.1, 2 & 3 of 2019 (O&M). These are appeals filed against the order of attachment, which had been affirmed by the Appellate Tribunal. In these cases, the property had been purchased prior to the commission of the scheduled offence. The question that arose before the Court was whether such property could be brought within the definition of Section 2 (1)(u) and could be attached under Section 5 of the Act. The Division Bench, after considering the judgment of the erstwhile High Court for the State of Telangana and the State of Andhra Pradesh at Hyderabad in the case of **Satyam Computers** and the judgment of the Delhi High Court in **Abdullah Ali Balsharaf&Anr., v. Directorate of Enforcement and Ors.**¹¹, had held that the properties purchased prior

¹¹ 2019 (3) RCR (Criminal 798



to the commission of the offence would not fall within the meaning of "proceeds of crime". The Division Bench also held that there are three limbs to Section 2(1)(u), viz.,

- i) Any property derived or obtained directly or indirectly as a result of criminal activity relating to scheduled offence;
- ii) Value of property derived or obtained from criminal activity;
- iii) Property equivalent in value held in India or outside where property obtained or derived from criminal activity is taken or held outside the country.

24. The Division Bench held that the property derived from the offence would be proceeds of the crime and as such any property purchased or acquired before the commission of the offence would not fall within the first limb of the definition of "proceeds of crime". It also held that if such property is moved abroad, any property of the accused available within India, irrespective of the date of acquisition, can be attached as proceeds of crime, as the same would fall within the third limb of the definition. However, the Division Bench held, on the ambit of "value of such property", that this term is not the same as the term "property equivalent in value held within the Country or abroad", which appears in the third limb, and the same meaning cannot be given to both terms. While explaining the scope of the term "value of such property", the division bench took the view that if some properties are obtained by committing an offence and are sold prior to the registration of the F.I.R or ESIR, the money generated from sale or transfer of such property in the form of cash or any other form of property, which is available for attachment would answer the description "value of such property". I am in respectful agreement with the view taken by the Division bench of the Hon'ble High Court of Punjab and Haryana.



25. Apart from the above reasons, I would supplement with the following:

The rule in Heydon's case as explained by the Hon'ble Supreme Court in **Bengal Immunity Co. v. State of Bihar**¹² is:

23. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon's case* [3 Co. Rep 7a : 76 ER 637] was decided that—

"... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and

4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privatocommodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bona publico*."

In *In re Mayfair Property Company* [LR (1898) 2 Ch 28 at p. 35] Lindley, M.R. in 1898 found the rule "as necessary now as it was when Lord Coke reported *Heydon case*". In *Eastman Photographic Material Company v. Comptroller General of Patents, Designs and Trade Marks* [LR (1898) AC 571 at 576] Earl of Halsbury reaffirmed the Rule as follows:

"My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion."

It appears to us that this rule is equally applicable to the construction of Article 286 of our Constitution. In order to properly interpret the provisions of that article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief.

26. The original definition of Section 2 (1) (u) is:

¹²(1955) 2 SCR 603 : AIR 1955 SC 661 : (1955) 6 STC 446



Proceeds of Crime: "Proceeds of Crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to scheduled offences or the value of any such property.

27. At the inception, the legislative intent was to bring within the fold of the definition, such property, whose source of acquisition can be traced, directly or indirectly, to the benefits obtained from the commission of the scheduled offences. At that stage, the question of the proceeds of the crime not being available for being attached/confiscated, either on account of their dissipation in the hands of the person holding the property or on account of the property being moved out of India and the reach of the authority under the Act, does not appear to have been contemplated. This issue was addressed by Act 20/2015, whereby the words "or where such property is taken or held outside the country, then the property equivalent in value held within the country" were added. This amendment contemplates only one situation, namely the proceeds of the crime being moved out of India. In such a situation, the amended definition permitted the attachment of property, in India, equivalent to the value of the proceeds of the crime, which were moved out of India. Later, by Act 13 of 2018 the words "or abroad" were added. By virtue of this amendment the property, which was moved abroad, could also be attached and confiscated. This amendment did not envisage a situation of dissipation of the property in the hands of the person holding the property.

28. Viewed from this perspective, the amendments would be unnecessary if the term "or the value of such property" was understood to authorize the attachment of any property, when the actual proceeds of the crime are not available.



29. The explanation to this provision which was brought in by Act No.2 of 2019 also speaks only of properties derived or obtained from the proceeds of a crime and expands the scope of the definition to include properties obtained not only from the scheduled offences but also criminal activity relatable to the scheduled offence. The explanation did not expand the definition to include any other property of equivalent value where the proceeds of the crime are lost even by the offender.

30. In that view of the matter, the properties purchased before the commission of the offence, cannot fall within the definition of "proceeds of crime" and cannot be attached or confiscated under the Act. Consequently, the attachment and subsequent proceedings before the Adjudicating authority for confiscation of the properties in Table -I of the impugned order would be without jurisdiction and would have to be struck down.

31. The properties set out in Table -II of the impugned order would be within the jurisdiction of the 2nd respondent and the said attachment would require adjudication before the Adjudicating authority under Section 8 of the Act.

32. In view of the above discussion, the impugned order of provisional attachment passed by the 2nd respondent in attachment order No.2 of 2019 dated 31.12.2019 and all consequential proceedings to the impugned provisional attachment including notice issued by 3rd respondent dated 06.02.2020 in O.C.No.1253 of 2020 to the extent of the properties attached under Table-I are set aside, leaving it open to the Respondents No. 2 and 3 to continue proceedings against the Petitioners



in relation to the properties set out in Table -II. The Writ petitions are disposed of accordingly. There shall be no order as to costs.

As a sequel, pending miscellaneous Petitions, if any, shall stand closed.

JUSTICE R.RAGHUNANDAN RAO

20th March, 2021
Rjs/Js.

LR Copy to be marked



THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO

W.P.Nos.9338, 9362, 11490, 11492,
11572 and 14336 of 2020

20th March, 2021

Rjs/Js.