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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 12 March 2026
Pronounced on: 16 March 2026

\+ LPA 144/2016

DIRECTORATE OF ENFORCEMENT .....Appellant

Through: Mr. Zoheb Hossain and Mr. Anupam Sharma, Special Counsel with Mr. Vivek Gurnani, Panel Counsel, Mr. Satyam, Ms. Riya Sachdev and Mr. Pranjal Tripathi, Advs.

versus

M/S MAHANIVESH
OILS & FOODS PVT LTD .....Respondent

Through: Mr. Parag Tripathi, Sr. Adv. with Mr. D.S. Kohli, Ms. Rini Mehra, Mr. Yash Kadyan and Ms. Mannat Kohli, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 16.03.2026

C. HARI SHANKAR, J.

A. The *lis*, and the issue involved

1. This Letters Patent Appeal, against judgment dated 25 January 2016 of a learned Single Judge of this Court, involves the interpretation of Section 5(1)[1] of the Prevention of Money Laundering

[1] **5. Attachment of property involved in money-laundering**. –

Act, 2002[2]. The neat question that arises for consideration may be framed thus:

> "If the scheduled offence is committed and, from the proceeds thereof, property is purchased before the coming into force of the PMLA, can it be attached under Section 5(1) thereof, if the offender continues to remain in possession of, and continues to use, the property even after the PMLA came into force?"

2. The learned Single Judge has, in the impugned judgment, answered the question in the negative and has, therefore, set aside the

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(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 that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

[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 relatable to the scheduled offence;

[2] "the PMLA" hereinafter

attachment of the property in question, located at E-14/3, Vasant Vihar, New Delhi[3].

3. The Directorate of Enforcement, aggrieved thereby, is in appeal.

4. We have heard, at length, Mr. Zoheb Hossain, learned Special Counsel for the appellant, and Mr. Parag P. Tripathi, learned Senior Counsel for the respondent. Learned Counsel have also filed written submissions.

5. We now advert to the facts.

B. Facts

6. On the basis of a written complaint by Mr. S.K. Maggu, Deputy Director of the National Agricultural Marketing Cooperative Federation Ltd[4], the Central Bureau of Investigation[5] lodged a First Information Report[6] dated 8 May 2009 at New Delhi, alleging that

(i) Homi Rajvansh, the Additional Managing Director of NAFED, had, in connivance with M.K. Agri International Ltd[7] executed, on behalf of NAFED, certain Memoranda of Understanding[8] for import of raw sugar on High Seas Sale[9]

[3] "the subject property" hereinafter
[4] "NAFED" hereinafter
[5] "CBI" hereinafter
[6] "FIR" hereinafter
[7] "MKAIL" hereinafter
[8] "MOUs" hereinafter
[9] "HSS" hereinafter

basis through three HSS Agreements with M.K. International Ltd[10], a sister concern of MKAIL, without charging any cost,

(ii) *vide* MOU dated 30 November 2024 between NAFED, through Homi Rajvansh, and MIL, raw sugar was sold by NAFED to MIL under three separate HSS Agreements, which was subsequently sold by MIL in the open market,

(iii) on 10 February 2005, MIL issued cheques for ₹ 1.5 crores in favour of its holding Companies Duroroyale Enterprises Ltd[11] and Sri Radhey Trading Pvt Ltd[12],

(iv) Duroroyale and SRTPL issued two cheques for ₹ 75 lakhs each in favour of the respondent Mahanivesh Oils & Foods Pvt Ltd, of which Alka Rajvansh, wife of Homi Rajvansh, was a Director,

(v) the respondent issued cheques dated 16 February 2005 for ₹ 1,32,00,000 and 17 February 2005 for ₹ 10.81 lakhs in favour of Uppal Agencies Pvt Ltd for purchase of the subject property *vide* sale deed dated 18 March 2005, and

(vi) Alka Rajvansh, as the Director of the respondent-Company, used the funds received from Duroroyale and SRTPL for purchasing the subject property.

[10] "MIL" hereinafter
[11] "Duroroyale" hereinafter
[12] "SRTPL" hereinafter

The FIR alleged commission, by Alka Rajvansh, as the Director of the respondent-Company, of offences under Sections 403[13], 409[14] and 420[15] read with 120B[16] of the Indian Penal Code, 1860[17]. The registration of the FIR was followed by filing of a charge-sheet against the accused. Criminal proceedings, consequent thereupon, are proceeding before the learned Chief Metropolitan Magistrate, New Delhi.

7. On 24 January 2014, Provisional Attachment Order No. 01/2014, against which the respondent approached this Court, came to be passed by the Deputy Director, Directorate of Enforcement[18] under Section 5(1) of the PMLA, provisionally attaching the subject property. Inasmuch as the facts are not in dispute, and the issue is purely one of law, detailed allusion to the contents of the Provisional Attachment Order is eschewed. Suffice it, therefore, to reproduce, for

[13] **403. Dishonest misappropriation of property**.—
Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[14] **409. Criminal breach of trust by public servant, or by banker, merchant or agent**. –
Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

[15] **420. Cheating and dishonestly inducing delivery of property**. –
Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[16] **120-B Punishment of criminal conspiracy**. –
(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

[17] "IPC" hereinafter

[18] "DOE" hereinafter

our purpose, paras 14 and 15 of the Provisional Attachment Order, thus:

> "14. That, from the investigations conducted so far, it has inter-alia emerged that:-
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> (i) The sale of above mentioned raw sugar through three High Seas Agreements by Sh. Homi Rajvansh, the then Addl. Managing Director of NAFED to M/s M.K. International Ltd. of Sh. M.K. Agarwal, without charging the cost of the commodity, was well designed to share the undue benefit. The conspiracy caused/wrongful loss to NAFED and corresponding wrongful gain to themselves jointly and severally. That against the said three consignments of raw sugar sold by Sh. Homi Rajvansh to M/s M.K. International, an amount of ₹ 42,79,81,751/- excluding interest and NAFED charges is outstanding as on date. Smt. Alka Rajvansh w/o Homi Rajvansh also joined the conspiracy hatched by her husband and M.K. Agarwal. In furtherance of this conspiracy, M/s Mahanivesh Oil & Foods Ltd., New Delhi was taken over by Smt. Alka Rajvansh, as Director, in January 2005.
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> (ii) It is seen, from the HDFC bank account statement of M/s M.K. International Ltd. that they have issued cheque of ₹ 35,00,000/- and ₹ 75,00,000/- on 11.02.2005. It is also seen from the Vijay Back account of M/s M.K. International Ltd. that they have issued cheque of ₹ 40,00,000/- to M/s Duroyale on 11.02.2005. Thus, it is clear that Sh. M.K. Agarwal, Director of M/s M.K. International Ltd. issued cheques of Rs.1.50 crores on 11.02.2005 from his company's accounts with HDFC bank, Lajpat Nagar branch and Vijaya bank, Defence Colony branch, New Delhi in the name of his two holding companies namely M/s Duoroyale Enterprises Ltd.. Delhi and M/s Sri Radhey Trading Pvt. Ltd. Delhi, having thor accounts with Indian Overseas Bank, G. K. part-II, New Delhi. From the Balance Sheet of M/s M.K. International Ltd. for the year ending 31 March, 2005 and statement of Sh. M.K. Agarwal, it is seen that Sh. M.K. Agarwal is controlling M/s Duoroyale Enterprise Ltd. and M/s M.K. International Ltd. is having business transactions with M/s Duoroyale Enterprises Ltd., Delhi and M/s Sri Radhey Trading Pvt. Ltd. from time to time. The said two companies, after credit of the amount into their respective accounts, issued two cheques of ₹ 75,00,000/- each, (Total

₹ 1,50,00,000/) in the name of M/s Mahanivesh Oil & Foods Pvt. Ltd. This fact is also confirmed in the bank account statements of M/s Duoroyale Enterprises Ltd., Delhi and M/s Sri Radhey Trading Pvt. Ltd. Delhi, furnished by Indian Overseas Bank, G.K. part-II, New Delhi vide their letter dated 03.01.2014. Further M/s Mahanivesh Oil & Foods Pvt. Ltd., obtained credit of the above said amount of ₹ 1,50,00,000/- in its account No.1070383 (INR) with The Royal Bank of Scotland (RBS) (formerly ABN Amro Bank) on 15.02.2005. Smt Alka Rajvansh, W/o Sh. Homi Rajvansh purchased the immovable property that is residential unit i.e. entire basement and Ground Floor of house at E-14/3, Vasant Vihar, New Delhi, in the name of her company M/s Mahanivesh Oil & Foods Pvt. Ltd from one Sh. B.K. Uppal for sale/purchase consideration of ₹ 1,35,00,000/- plus Corporation and stamp duty charges. For the purpose of purchase of the above said immovable property, Smt. Alka Rajvansh has issued cheque No.100701 from her company's bank account no. 1070383 in the then ABN Amro Bank and now the Royal Bank of Scotland for amount of ₹ 1,32,00,000 towards sale/ purchase consideration arid another amount of ₹ 3,00,000/-from her account No.521-1-002300-1 with Standard Chartered Bank, Greater Kailash branch, New Delhi. Smt. Alka Rajvansh also issued cheque no.100702 of ₹ 10,80,000/-from her company's Bank account no. 1070383 in the then ABN Amro Bank and now the Royal Bank of Scotland towards corporation and stamp duty charges for registration of the above said property. That the said Sh. B.K. Uppal, the seller and the executer of the sale deed in question, had, prior to this, availed credit of ₹ 45 crores, extended by NAFED, under an MOU signed by Sh. B.K. Uppal and Sh. Homi Rajvansh, then AMD of NAFED.

15. NOW THEREFORE, having reasons to believe that the immovable E-14/3, property (house) basement and Ground Floor of house at Vasant Vihar, New Delhi, purchased and acquired by Smt Alka Rajvansh W/o Shri Homi Rajvansh, in the name of her company M/s Mahanivesh Oil and Foods Pvt Ltd, against the consideration value of ₹ 1,35,00,000/- excluding stamp duty and Corpn. tax of ₹ 10,80,000/- is the Proceeds of Crime, which is likely to be concealed, transferred or dealt with in any manner which may result in frustrating in proceedings relating to confiscation of the said Proceeds of Crime, I, hereby order Provisional Attachment of the said immovable properties and further order that the same shall not be transferred, disposed, parted with or otherwise dealt with in any manner, whatsoever, until or

unless specially permitted to do so by the undersigned. Relied upon documents are mentioned in Annexure "A".”

8. The respondent challenged the above Provisional Attachment order before this Court, by way of WP (C) 1925/2014.

9. The impugned judgment of the learned Single Judge, as we have already noted hereinabove, quashes the Provisional Attachment order and allows the writ petition.

C. The Impugned Judgment

10. Given the importance of the issue involved, we deem it appropriate to reproduce the paragraphs containing the reasoning of the learned Single Judge, and also separately itemize his findings. The following paragraphs from the impugned judgment contain its *ratio decidendi*:

> “18. 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:
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> > “(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.
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> 19. Section 2(u) of the Act defines proceeds of crime and reads as under: -

> *"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;"*

20. 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.

21. Thus, plainly, the occurrence of a scheduled offence is the substratal condition for giving rise to any proceeds of crime and consequently, the application of Section 5(1) of the Act. A commission of a scheduled offence is the fundamental pre-condition for any proceeding under the Act as without a scheduled offence being committed, the question of proceeds of crime coming into existence does not arise.

22. In view of the above, the contention that the Act is completely independent of the principal crime (scheduled offence) giving rise to proceeds of crime is unmerited. It is necessary to bear in mind that the substratal subject of the Act is to prevent money-laundering and confiscate the proceeds of crime. In that perspective, there is an inextricable link between the Act and the occurrence of a crime. It cannot be disputed that the offence of money-laundering is a separate offence under section 3 of the Act, which is punishable under Section 4 of the Act. However as stated earlier, the offence of money-laundering relates to the proceeds of crime, the genesis of which is a scheduled offence. In the aforesaid circumstances, before initiation of any proceeding under Section 5 of the Act, it would be necessary for the concerned authorities to identify the scheduled crime. The First Proviso to Section 5 also indicates that no order of attachment shall be made unless in relation to a schedule offence a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 or a complaint has been filed by a person authorised to investigate the scheduled offence before a Magistrate or Court for taking cognizance of the scheduled offence. Thus, in cases where the scheduled offence is itself negated, the fundamental premise of continuing any proceedings under the Act also vanishes. Such cases where it is conclusively held that a commission of a scheduled offence is not established and such decision has attained finality pose no difficulty; in such cases, the proceedings under the Act would fail.

23. It was contended by Mr. Bhardwaj that, in terms of Section 8(5) of the Act, the attachment would continue till the conclusion of a trial of an offence under the Act before the Special Court irrespective of whether the person accused of the scheduled crime has been acquitted. In my view, this contention is also not acceptable. If the crime, which has allegedly resulted in the proceeds attached under the Act, is not established, the basis of the attachment would cease to exist and the question of proceeding further under the Act would not arise. The trial for an offence of money-laundering is also predicated on commission of a scheduled crime and would have to be terminated. It is only in cases where it is found that a scheduled crime has been committed that the question of determining whether an offence of money-laundering is made out would survive. Thus, in cases where the persons accused of a scheduled offence are acquitted, the fundamental premise that any proceeds have been derived or obtained from any activity relating to a scheduled offence by either the persons accused or any other person linked to them would also not hold good and, therefore, any proceeding initiated under the Act would have to be terminated.

24. The next issue to be examined is whether the order of provisional attachment can be issued only in respect of property that is in possession of a person accused of a scheduled offence. In view of the statutory amendment to Section 5 of the Act carried out by virtue of Prevention of Money-Laundering (Amendment) Act, 2012, this controversy does not survive. Prior to the said amendment, the concerned officer could provisionally attach proceeds of crime if he had reasons to believe that,

> "*(a) any person is in possession of any proceeds of crime; (b) such person has been charged of having committed a scheduled offence; and (c) 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*". With effect from 01.03.2013, clause (b) has been deleted and it is now no longer necessary that the person who is in possession of the property alleged to be proceeds of crime must also be charged with a scheduled offence. In the circumstances, the order of provisional attachment could be issued against any property in possession or any person even if the said person is not alleged to have committed the scheduled offence.

25. However, such powers are not unbridled and there are several conditions that must be met before any property can be attached or confiscated. First and foremost, it is necessary that the property sought to be attached is one, which the concerned officer has reason to believe is the proceeds of a scheduled crime. Secondly, a provisional attachment under Section 5 is only in aid of adjudication under Section 8(2) of the Act, which may result in the Adjudicating Authority recording a finding that the property concerned is involved in money-laundering; therefore, it is also necessary that an offence of money-laundering is believed to have been committed and the same bears a live link with the property sought to be provisionally attached. Section 5 of the Act does not stand independent of Section 3 of the Act and unless it is believed that an offence of money-laundering has been committed the question of attaching any property provisionally under Section 5 would not arise.

26. Mr. Bhardwaj had referred to the decision of the Gujarat High Court in *Alive Hositality and Foods Private Limited* (supra) wherein the court had observed that:"*On the text and authority of our Constitution while it may perhaps gainfully be contended that conviction for the offence of money-laundering cannot be recorded if the said offence is committed prior to the enforcement of Section 3 of the Act, such a contention cannot be advanced to target proceedings for attachment and confiscation as these fall outside the pale of the prohibitions of the Constitution, in particular Article 20(1)*". However, I am unable to persuade myself to concur with that view principally for the reason that Section 5 is not a standalone provision; it is in aid of adjudication under Section 8 of the Act and final vesting of the attached property with the Central Government under Section 9 of the Act. The Adjudicating Authority is required to return a finding under Section 8(2) of the Act whether the property is attached/seized/frozen. And, by virtue of Section 8(3) of the Act, if the Adjudicating Authority decides that the property is involved in money-laundering, the attachment, retention and freezing of the property shall continue during the pendency of proceedings relating to the offence under the Act or a corresponding law of any other country with whom India has a bilateral agreement. Thus, it is not possible to envisage provisional attachment of any property in absence of an offence of money-laundering. Consequently, in a given case where the offence of money-laundering cannot be made out as the acts constituting such offence were prior to the Act being brought in force, it would be impermissible for the authorities concerned to attach the property representing the proceeds of crime.

27. The central issue in the present case is not on whether the scheduled offence was committed, but whether the attachment under Section 5 of the Act can be sustained where the principal offence as well as the offence of using its proceeds is alleged to have been committed prior to the Act coming into force.

28. As stated hereinbefore, the scope of the offence of money-laundering was widened by virtue of the Prevention of Money-Laundering (Amendment) Act, 2012 and the rigor of Section 3 of the Act also extends to any person who assists or is a party or is involved in any process or activity connected with concealment, possession, acquisition or use of proceeds of crime. However, the subject of the offence continues to be the proceeds of crime and its involvement in money-laundering. This again draws one to the central controversy in this petition, that is, whether any property of any person could be attached as allegedly involved in money-laundering prior to the enactment of the Act or acquired as a result of a crime, committed prior to the Act coming into effect.

29. The Act is a penal statute and, therefore, can have no retrospective or retroactive operation. Article 20(1) of the Constitution of India expressly forbids that no person can be convicted of any offence except for the violation of a law in force at the time of the commission of the act charged as an offence. Further, no person can be inflicted a penalty greater than what could have been inflicted under the law at the time when the offence was committed. Clearly, no proceedings under the Act can be initiated or sustained in respect of an offence, which has been committed prior to the Act coming into force. However, the subject matter of the Act is not a scheduled offence but the offence of money-laundering. Strictly speaking, it cannot be contended that the Act has a retrospective operation because it now enacts that laundering of proceeds of crime committed earlier as an offence. In ***The Queen v. The Inhabitants of St. Mary, Whitechapel***[19], the Court pointed out that "*The Statute which in its direct operation of prospective cannot be properly be called a retrospective statute because a part of the requisites for that action is drawn from the time antecedent to its passing*". Thus, with effect from 1st June, 2009 laundering proceeds of crime under Section 420 of the IPC is enacted as an offence of money-laundering punishable under Section 4 of the Act. It is important to note that the punishment under Section 4 of the Act is not for commission of a scheduled offence but for laundering proceeds of a scheduled crime. The fact that the scheduled crime may have been committed prior to the Act coming into force would not render the Act a retrospective statute

[19] **(1848) 12 QB 120**

as only the offence of money-laundering committed after the enforcement of the Act can be proceeded against under the Act.

30. The respondent's contention that the relevant date would be the date of offence of money-laundering and not that of the commission of the scheduled offence is merited and the impugned order cannot be set aside only on the ground that it has been issued in respect of proceeds of a scheduled crime which was allegedly committed prior to 1st July, 2005.

31. The next contention to be considered is whether in the given facts and circumstances, any offence or money-laundering had been made out to warrant an issuance of the impugned order. It is alleged that on 10th February, 2005, MIL through its Director issued cheques aggregating Rs. 1.5 crores in favour of its holding companies, namely, M/s. Duoroyale Enterprises Ltd. and M/s. Shri Radhey Trading Pvt. Ltd. and these companies in turn issued two cheques of Rs. 75 lacs each in favour of the petitioner. It is suggested that these amounts were proceeds of crime received by the petitioner as a result of a criminal activity and bulk of these funds were utilized by the petitioner for paying the consideration for acquiring the property in question. It was argued that all actions of integrating the money by purchase of immovable property would fall within the definition of 'money-laundering'. In this respect it is relevant to note that the sale deed in respect of the property was executed on 18.03.2005. Thus, even if the allegations made by the respondent are assumed to be correct, the proceeds of crime had been used by the petitioner for acquisition of the property much prior to the Act coming into force. The process of activity of utilising the proceeds of crime, if any, thus, stood concluded prior to the Act coming into force. Even if it is assumed that the funds received from M/s. Duoroyale Enterprises Ltd. and M/s. Shri Radhey Trading Pvt. Ltd. were proceeds of crime and were properties involved in money-laundering, such funds had come into possession of the petitioner prior to the Act coming into force. Thus, funds were already projected as untainted funds unconnected with the crime for which Mr. Homi Rajvansh and other persons are accused. The funds had, thus, been laundered at a time when money-laundering was not an offence and proceedings under the Act cannot be initiated.

32. Although, the respondent has not contended so in clear terms, it appears that the respondents are proceeding on the basis that an offence under Section 3 of the Act is a continuing offence. According to the respondent, the possession of any property linked to a scheduled offense irrespective of when it was acquired would itself constitute the offence of money-laundering. It is important to

understand the import of such interpretation. This would mean that a person who has committed a scheduled crime; acquired proceeds therefrom; and thereafter, projected it as untainted money, prior to the Act coming into force, would nonetheless be guilty of the offence of money-laundering only for the reason that he is in possession of some property. This is so because the definition of proceeds of crime also includes the value of any property derived or obtained as a result of criminal activity relating to a scheduled crime. Further any such property - even in the hands of a person not accused of the scheduled crime or offense of money-laundering - would also be subject to the proceedings under the Act. Thus, practically, a person guilty of a scheduled offence who has acquired any benefit in relation to the scheduled offence would in effect also be guilty of the offence of money-laundering immediately on the Act coming into force. If such an interpretation is sought to be provided, the grievance of the petitioner that a penal provision is sought to be given a retrospective operation would be justified and this would clearly offend Article 20(1) of the Constitution of India as an offender of a scheduled crime would now be visited with a greater punitive measure than as could be inflicted at the time when the scheduled offence was committed. Given the wide definition of "proceeds of crime" it would be contended that irrespective of how far back in the past a scheduled offence was committed, the authorities could nonetheless try persons for an offence of money-laundering as well as confiscate the value of the property alleged to have been derived or obtained by criminal activity relating to the scheduled offence. This would be notwithstanding that the proceeds derived from a scheduled offence have undergone significant changes and have been integrated in legitimate economic activity. The properties could also be traced in the hands of persons unconnected with the scheduled offence. There is no indication from the express language of the Act, that the Legislature intended the Act to be retroactive or operative with retrospective effect.

33. The Act was enacted as the international community recognised the threat of money-laundering whereby money generated from illegal activities such as trafficking and drugs etc. was finding its way into the economic system of a country and funding further criminal activity. The expression money-laundering would ordinarily imply the conversion and infusion of tainted money into the main stream of economy as legitimate wealth. According to the respondent, there are three stages to a transaction of money-laundering : The first stage is Placement, where the criminals place the proceeds of the crime into normal financial system. The second stage is Layering, where money introduced into the normal financial system is layered or spread into various transactions within the financial system so that any

link with the origin of the wealth is lost. And, the third stage is Integration, where the benefit or proceeds of crime are available with the criminals as untainted money. There is much merit in this description of money-laundering and this also indicates that, by its nature, the offence of money-laundering has to be constituted by determinate actions and the process or activity of money-laundering is over once the third stage of integration is complete. Thus, unless such acts have been committed after the Act came into force, an offence of money-laundering punishable under Section 4 would not be made out. The 2013 Amendment to Section 3 of the Act by virtue of which the words "process or activity connected with proceeds of crime and projecting it as untainted property" were substituted by the words "any process or activity connected with proceeds of crime including concealment, possession, acquisition or use and projecting or claiming it as untainted property". The words "concealment, possession, acquisition or use" must be read in the context of the process or activity of money-laundering and this is over once the money is laundered and integrated into the economy. Thus, a person concealing or coming into possession or bringing proceeds of crime to use would have committed the offence of money-laundering when he came into possession or concealed or used the proceeds of crime. For any offence of money-laundering to be alleged, such acts must have been done after the Act was brought in force. The proceeds of crime which had come into possession and projected and claimed as untainted prior to the Act coming into force, would be outside the sweep of the Act.

34. In the circumstances, it cannot be readily accepted that any offence of money-laundering had been committed after the Act coming into force. This Act cannot be read as to empower the authorities to initiate proceedings in respect of money-laundering offences done prior to 01.07.2005 or prior to the related crime being included as a scheduled offence under the Act."

11. It would be appropriate to itemize the observations and findings of the learned Single Judge, thus:

(i) Section 5(1), read with Section 2(1)(u)[20] of the PMLA empowered the appropriate officer to attach property obtained

[20] (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

directly or indirectly as a result of criminal activity relating to a scheduled offence. Thus, the occurrence of a scheduled offence was a substratal condition for there to exist proceeds of crime, which could be attached under Section 5(1).

(ii) "Money laundering" was a separate and distinct offence under the PMLA, defined in Section 3[21] thereof. The offence of money laundering, as per Section 3, related to proceeds of crime, the genesis of which was the commission of a scheduled offence. Identification of the scheduled offence was, therefore, essential before Section 5 could be invoked.

(iii) After deletion of clause (b) in Section 5[22] by the Prevention of Money Laundering (Amendment) Act, 2015[23], it

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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 relatable to the scheduled offence;

[21] **3. Offence of money-laundering**.– Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation. – For the removal of doubts, it is hereby clarified that,—

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

(a) concealment; or
(b) possession; or
(c) acquisition; or
(d) use; or
(e) projecting as untainted property; or
(f) claiming as untainted property,

in any manner whatsoever;

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

[22] Section 5(1), before amendment, contained the following clause (b), which was later deleted:

"such person has been charged of having committed a scheduled offence;"

[23] "the 2015 Amendment Act" hereinafter

was no longer necessary that the property should be in possession of the person accused of the scheduled offence. The correctness of this finding is not in dispute.

(iv) Section 5 was required to be read with Section 3. Absent any reason to believe that the offence of money laundering had been committed, there was no question of attachment of property under Section 5.

(v) The view of the Gujarat High Court in ***Alive Hospitality & Foods Pvt Ltd v. Union of India***[24], which holds that Article 20(1)[25] of the Constitution of India would not apply to Section 5(1) of the PMLA, was not acceptable. Section 5 is not a standalone provision. Provisional attachment under Section 5 is in aid of further proceedings under Section 8(3)[26], which could culminate in confiscation of the attached property. Section 8

[24] **2013 SCC OnLine Guj 3909**

[25] **20. Protection in respect of conviction for offences**. –
(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

[26] **8. Adjudication. -**
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(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 investigation for a period not exceeding three hundred and sixty-five days or 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 58-B or sub-section (2-A) of Section 60 by the Special Court.
Explanation. – For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

applied only in the case of money laundering. Article 20(1) would, therefore, apply to Section 5(1).

(vi) The issue before the Court was not with relation to commission of the scheduled/predicate offence, but whether the attachment could sustain where the offence of money laundering, and the usage of the proceeds of the crime alleged to have been committed, were prior to the coming into force of the PMLA.

(vii) The PMLA could not apply retrospectively, as it was a penal statute.

(viii) Proceedings under the PMLA could not, therefore, be sustained in respect of an offence committed before the PMLA came into force.

(ix) Strictly speaking, the PMLA cannot be said to apply retrospectively merely because laundering of the proceeds of the crime committed prior to the PMLA coming into force was made an offence. It was held, in ***Queen v. Inhabitants of St. Mary***[27], that a statute is not retrospective merely because part of its requisites is drawn from a period prior to its passing.

(x) The next issue, therefore, was whether, on facts, the offence of money laundering was made out.

[27] **(1848) 2 QB 120**

(xi) The sale deed was executed on 18 March 2005. This meant that the proceeds of crime had been used by the respondent for acquiring property before the PMLA came into force.

(xii) The activity of utilization of the proceeds of crime, thus, stood concluded before the coming into force of the PMLA.

(xiii) Even if the funds realized from the commission of the scheduled offence were to be treated as the proceeds of crime, they came into the possession of the respondent prior to the coming into force of the PMLA.

(xiv) The subject property had already been projected as untainted prior to the coming into force of the PMLA.

(xv) The money had, therefore, been laundered before the PMLA came into force.

(xvi) The argument that the offence under Section 3 was a continuing offence was unacceptable. If this were to be accepted, it would mean that the possession of property obtained from proceeds of crime at any time would amount to money laundering, irrespective of when the property was acquired. If a person committed a scheduled offence, acquired proceeds therefrom and projected it as untainted, prior to the

PMLA coming into force, he would *ipso facto* become liable of having committed an offence under the PMLA immediately on the PMLA coming into force as he would be in possession of some property. This would result in the PMLA applying retrospectively, which would violate Article 20(1) of the Constitution of India. Moreover, irrespective of how far back in time the scheduled offence might have been committed, the person would become liable to be tried for the offence of money laundering and to confiscation of his property, even if the property might have undergone substantial changes, or even reached the hands of persons unconnected with the scheduled offence. There was nothing to indicate that the legislature intended the Act to be thus retroactive or retrospective in operation.

(xvii) Money laundering involves three stages; placement of the proceeds of crime into the normal financial system, layering of the money into transactions so as to lose the link with the origin of the wealth, and integration, where the money is available with the criminals as untainted money. The offence of money laundering is over once the stage of integration is complete.

(xviii) The words "concealment, possession, acquisition or use" in Section 3(1) had to be read in the context of the process or activity of money-laundering. This activity was over once the laundered money was integrated into the economy. Money-laundering could be said to be committed only when the person

came into possession or concealed or used the proceeds of crime. These acts, therefore, must have been done after the PMLA came into force. Proceeds of crime, into which the person had come into possession, and which had been projected and claimed by him as untainted prior to the coming into force of the PMLA, would be outside its sweep.

(xix) No offence of money-laundering, thus understood, could be said to have been committed in the present case after the PMLA came into force. The PMLA does not empower initiation of proceedings in respect of any offence of money-laundering done prior to 1 July 2005, or prior to the scheduled crime being included as a scheduled offence under the PMLA.

(xx) There was no evidence of satisfaction of the condition envisaged in clause (b) of Section 5(1) of the PMLA in the present case. There was no material on record which could lead to believe that the respondent was likely to transfer or conceal the subject property in any manner. The officer issuing the Provisional Attachment order could not, therefore, have any reason to so believe, as required by Section 5(1).

D. Rival Contentions

I. Submissions of Mr. Zoheb Hossain on behalf of the ED

12. Mr. Zoheb Hossain advanced a preliminary submission that the respondent had, with it, an alternate remedy by way of appeal against the Provisional Attachment Order, under the PMLA and that, therefore, the writ petition ought not to have been entertained. However, we note that, before the learned Single Judge, learned Counsel *ad idem* requested that the controversy be decided on merits, as is recorded in para 5 thereof. As such, we reject the preliminary submission.

13. Mr. Zoheb Hossain submits that, under Section 5(1) of the PMLA, property purchased using proceeds of crime, which remained in possession of the person concerned, could be attached. He took us through the reasoning contained in the Provisional Attachment Order to emphasise that there could be no dispute about the commission of the scheduled offence. He has also referred us to the definitions of "attachment" and "proceeds of crime" as contained in Section 2(1)(d)[28] and 2(1)(u) of the PMLA. He has also invited us to the following passages from the CBI chargesheet dated 30 July 2010:

> "In all the above three HSS agreements terms of payment mentioned is that M/s MKIL, New Delhi was to make payment by demand draft in favour of NAFED within a period of 180 days from the date of Bill of Lading. The due dates of payment were 22.05.2005, 04.07.2005 and 26.09.2005 respectively. This fact shows that the above agreements have been executed by accused Homi Rajvansh and M/s. MKIL, New Delhi with malafide intention and in violation of the laid down norms of NAFED Business Circular No.93 dated 17.10.2003 and also in violation of the terms of MOU/agreement signed by them earlier which stipulates delivery of commodity only after payment of 100% cost and other NAFED charges. Further to safe guard the interest of

[28] (d) "attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;

NAFED no Tri-Partile agreement was signed and no Hypothecation of material was resorted to.

Investigation further revealed that in the month of August 2005, this deal of raw sugar was transferred by NAFED HO to its Ahmedabad branch to book the business. At this stage matter relating to sale/purchase of raw sugar without charging/paying its cost came to ilght and M/s MKIL was asked to make full payment to NAFED. At this stage accused M.K.Agarwal with malafide intention to cheat NAFED got current account No.600500301000146 opened in Vijaya Bank, Defence Colony, New Delhi in the name of Shri Ram Chander Sharma working as Peon/helper in the company of accused M.K.Agarwal. After opening of the account blank cheques of this account were got signed from Shri Ramchander Sharma. Thereafter, with the intention not to make payment to NAFED Manish Kant Agarwal accused got issued 36 post dated (30.06.2006) cheques from this account totaling to an amount of Rs.56,44,18,175/- in favour of NAFED and got delivered vide letter dated 9.9.2005 to NAFED as security with malafide intention knowing fully well that there was no sufficient balance in the said account. In due course, all the said cheques were got bounced/ dis-honoured when the same were presented by NAFED as there was no balance in the account. It is pertinent to mention here that in the same bank A/c No. 600500300003544 was already held and run by M/s M.K. International Ltd. New Delhi with accused M.K. Agarwal as authorized signatory to operate this account. However, with deep malafide intention and under a premeditated design same was not used for issuance of above post dated cheques to NAFED as security."

Mr. Zoheb Hossain submits that these allegations indicate that the intention to cheat NAFED continued well beyond the coming into force of the PMLA. Mr. Tripathi seriously objected to this line of argument, stating that it was neither pleaded nor argued before the learned Single Judge, nor constitutes part of the pleadings even in the present LPA.

14. Mr. Hossain submits that the learned Single Judge has erroneously treated only the money received by Alka Rajvansh to

constitute "proceeds of crime", overlooking the fact that the subject property, purchased using the said money, also fell within the definition. He submits that proceeds of crime, in possession of a person, could be attached under Section 5(1)(a). He relies on the definitions of "proceeds of crime" in Section 2(1)(u) and "property" in Section 2(1)(v)[29] of the PMLA. On a conjoint reading of the various provisions of the PMLA, Mr. Hossain submits that there is no justification for the finding, of the learned Single Judge that the offence of money-laundering comes to an end once proceeds of crime are "integrated" into the economy.

15. To sustain the submissions, Mr. Hossain places reliance on para 269 of ***Vijay Madanlal Choudhary v. Union of India***[30], various paras from ***Pradeep Nirankarnath Sharma v. Enforcement Directorate***[31], paras 15 and 23 from ***Tarun Kumar v. Enforcement Directorate***[32] and the judgment of a learned Single Judge of this Court in ***Anand Kumar Kapur v. Union of India***[33].

16. Mr. Hossain further submits that the learned Single Judge is in error in holding that the ingredients of clause (b) of Section 5(1) are not satisfied in the present case, as there is a specific finding, in para 15 of the Provisional Attachment Order, that there was reason to believe that the subject property was "likely to be concealed,

[29] (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;

[30] **2022 SCC OnLine SC 929**

[31] **2025 SCC OnLine SC 560**

[32] **(2024) 13 SCC 788**

[33] **2025 Cri LJ 26**

transferred or dealt with in any manner which may result in frustrating proceedings relating to confiscation of the proceeds of crime".

17. Finally, Mr. Hossain submits that the Supreme Court has, in para 304 of ***Vijay Madanlal Choudhary***, held that provisional attachment, under Section 5(1), could not result in dispossession from residential properties. As such, he submits that the provisional attachment of the subject property has not resulted in any prejudice to the respondent.

II. Submissions of Mr. Tripathi

18. Mr. Tripathi submits that, by way of response to Mr. Zoheb Hossain, the finding of the learned Single Judge that, once integration of the proceeds of crime into the general economic fabric had taken place, and the property had also been purchased using the proceeds of crime prior to the coming into force of the PMLA, the offence of money laundering stood committed, is unexceptionable. Use of the subject property, too, he points out, commenced before the PMLA came into force.

19. Mr. Tripathi submits that the interpretation that the ED seeks to place on Sections 3 and 5 of the PMLA would make the provisions retrospectively applicable and would, therefore, render them violative of Article 20(1) of the Constitution of India. He drew our attention to the elements of the offence of money laundering, as envisaged in Section 3 of the PMLA, and submits that none of the judgments cited

by Mr. Hossain deals with a situation in which the offence of money laundering was complete prior to the PMLA coming into force.

20. Mr. Tripathi submits, echoing the view of the learned Single Judge, that Section 5 of the PMLA cannot be read in isolation as provisional attachment of the property under Section 5 is a step-in aid of adjudication of the offence under Section 8 which, if adverse to the accused, could result in confiscation of the provisionally attached property. Inasmuch as property which cannot be provisionally attached under Section 5 cannot be confiscated under Section 8, Mr. Tripathi submits that Sections 3, 5 and 8 constitute an integrated scheme and that, therefore, if the offence of money laundering cannot be alleged to have occurred, *ipso facto* Section 5 would also be rendered inapplicable. He reiterates the view of the learned Single Judge that, as the money had come into the possession of the respondent, used in purchase of the property and the sale deed whereunder the property was purchased also executed prior to the coming into force of the PMLA, the ED could not invoke the PMLA against the respondent.

21. Apropos the aspect of whether the offence under the PMLA is a continuing offence, Mr. Tripathi has placed reliance on Explanation (ii) in Section 3. He submits that, even if one were to proceed as per the said Explanation, all activities envisaged under the said explanation had taken place prior to the coming into force of the PMLA.

22. Mr. Tripathi submits that if the mere possession and use of the subject property by the respondent were to be construed as an offence, it would amount to a second offence coming into being on the date when the PMLA came into force, as the earlier offence of obtaining of the proceeds of crime and usage of the proceeds of crime in purchasing the subject property, as well as representing the property as untainted had all taken place prior to coming into force of the PMLA. He places reliance on the judgment of the Supreme Court in ***Rao Shiv Bahadur Singh v. State of Vindhya Pradesh***[34]**.**

23. He has taken us through paras 27 to 36 of the impugned judgment and submits that they correctly lay down the legal position.

III. Rejoinder submissions

24. As Mr. Hossain was held up in another Court, Mr. Satyam, who was assisting him in the matter, ably rejoined to the submissions of Mr. Tripathi.

25. We have already expressed, in our order reserving judgment in this matter, our satisfaction at Mr. Satyam, despite being a young Counsel, not seeking an adjournment or a passover and facilitating the conclusion of the proceedings by rejoining to Mr. Tripathi's submissions.

[34] **AIR 1953 SC 394**

26. In rejoinder, Mr. Satyam submits that the points raised by Mr. Tripathi stand covered by a very recent judgment of a learned Single Judge of the High Court of Calcutta in ***Enforcement Directorate through D.N. Poddar, Deputy Director v. Papia Rozario***[35]**,** particularly by paras 25 to 30 thereof.

E. Analysis

I. Sections 3, 5 and 8 constitute an integrated scheme

27. We agree with Mr. Tripathi, as well as with the learned Single Judge, that Section 5 of the PMLA cannot be read in isolation and is a part of an integrated scheme which includes Sections 3, 5 and 8. We also agree that, as a result, if no offence of money laundering, on the face of it, can be said to have taken place, there is no question of invoking Section 5 and attaching any property thereunder.

II. Three errors in impugned judgment

28. There appear, with respect, to be three fundamental errors in the views expressed in the impugned judgment.

29. Firstly, the impugned judgment treats the money earned from the commission of the scheduled offence *alone* to be the "proceeds of crime". This is contrary to the definition of "proceeds of crime" in Section 2(1)(u) of the PMLA, which includes, within the definition,

[35] **2026 SCC OnLine Cal 471**

property purchased, directly or indirectly, from the said proceeds as well.

30. Secondly, the impugned judgment deems the "coming into possession" of the property to amount to the offence of money laundering under Section 3. Section 3 does not use the expression "come into possession". It uses the word "possession". Possession of proceeds of crime amounts to money laundering. This erroneous perception has resulted in a consequential erroneous finding that the offence of money laundering stood *committed and completed* prior to the coming into force of the PMLA as the respondent had *come into possession* of the proceeds of crime prior thereto.

31. Thirdly, the impugned judgment overlooks the significance of the word "includes" in Section 3(1). The acts to which the clause alludes thereafter are, thereby, included within the definition of money laundering by legislative fiat. These include mere possession, and mere use, and militate against the finding, in para 33 of the impugned judgment, that the offence of money laundering is *complete* once the proceeds are crime are "integrated" into the financial system.

III. Facts stated in Provisional Attachment Order not disputed in arguments – even otherwise, not within limits of certiorari

32. The submissions of Mr. Tripathi were centered largely around Section 3 of the PMLA, in an attempt to convince us that no offence of money laundering, as defined in the said provision, could be said to have been taken place. His submission, which basically reiterates the

view expressed in the impugned judgment, is that the offence of money laundering took place, in its entirety, prior to the coming into force of the PMLA. Of course, Mr. Tripathi was careful in clarifying that he was making his submissions without prejudice.

33. However, Mr. Tripathi did not seek to dispute the facts alleged in the provisional attachment order. His submissions were entirely based on law and the interpretation of the statutory provisions. We, therefore, proceed on the premise that the facts stated in the provisional attachment order are correct.

34. Even otherwise, by seeking recourse to Article 226 of the Constitution of India to challenge the provisional attachment order, instead of following the statutory route of appeal available under the PMLA, the respondent itself foreclosed any chance to argue on the correctness or otherwise of the facts alleged in the provisional attachment order. The jurisdiction of the writ court, in such a matter, partakes of the nature of *certiorari*, and would be bound by the parameters outlined in the following passages from the judgment of the Supreme Court in ***Syed Yakoob v. K.S. Radhakrishnan***[36]**:**

> "7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. *A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a*

[36] **AIR 1964 SC 477**

question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. *An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised* (*vide* ***Hari Vishnu Kamath v Syed Ahmad Ishaque***[37]***, Nagandra Nath Bora v Commissioner of Hills Division and Appeals Assam***[38] *and* ***Kaushalya Devi v Bachittar Singh***[39]*.*

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. *What can be corrected by a writ has to be an error of law; hut it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no*

[37] **AIR 1955 SC 233**
[38] **AIR 1958 SC 398**
[39] **AIR 1960 SC 1168**

> *difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record*. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but *there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record*. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."
>
> (Emphasis supplied)

35. The learned Single Judge has, in the impugned judgment, not sought to question the correctness of the allegations against the respondent on facts. As we have identified at the commencement of this judgment, the issue addressed by the learned Single Judge, and which also therefore falls for consideration before us, is purely legal, i.e., whether the property purchased from proceeds of crime prior to the coming into force of the PMLA, which continues to remain in possession of the purchaser, can be confiscated under Section 5 of the PMLA.

36. We, therefore, do not proceed to return any observations or findings on the facts alleged in the provisional attachment order, which are being treated as correct.

37. Ergo, it would also follow that the money received by Alka, using which she, as a Director of the respondent-Company, purchased the subject property, constituted "proceeds of crime". Indeed, the learned Single Judge has also proceeded, in the impugned judgment, on the premise that the said money constituted "proceeds of crime". The correctness of the said observation has not been disputed before us by the respondent, nor has any cross appeal been filed, challenging the said observation.

IV. Section 3 of PMLA and para 32 of the impugned judgment

38. Adverting, now, to Section 3 of the PMLA, we are of the considered opinion that the impugned judgment errs on two counts.

39. Firstly, it fails to notice that the definition of money laundering, as contained in Section 3, is inclusive in nature. The first part of the Section, before the word "including" covers (i) directly or indirectly attempting to indulge, (ii) knowingly assisting, (iii) knowingly being a party or (iv) being actually involved, in any process or activity connected with the proceeds of crime. Any person who, therefore, indulges in any process or activity connected with the proceeds of crime, or knowingly assists in any such activity or is knowingly a party to any such activity, or is actually involved in any such activity, would be guilty of the offence of money laundering by virtue of the opening words in Section 3 of the PMLA.

40. The definition does not, however, end there. It proceeds to *include*, in the definition of money laundering, (i) concealment, (ii) possession, (iii) acquisition and (iv) use of the said property, as within the ambit of the offence of money laundering, subject to the condition that the person projects or claims the property to be untainted. We would presently advert to the aspect of whether projecting or claiming the property to be untainted is a mandatory ingredient of the offence of money laundering. Suffice it, however, for the nonce, to note that the use of the coordinating conjunction "or", between "acquisition" and "use" in Section 3, indicates that the words "concealment", "possession", "acquisition" and "use" have to be read disjunctively, and that *any one* of these acts/activities would, if present, suffice to constitute the offence of money laundering.

41. The use of the word "including", in Section 3, extends the definition of money laundering beyond the scope of the opening words "whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the "proceeds of crime". The activities/aspects following the word "includes" would also, therefore, fall within the definition of "money laundering", even if the activities preceding the word "includes" were, in a given case, to be absent.

42. The manner in which an inclusive definition is to be interpreted is by now no longer *res integra*. Craies on Statue Law, 7th Edition, states that "where an interpretation clause defines a word to mean a particular thing, the definition is explanatory and *prima facie*

restrictive and where an interpretation clause defines a term to include something, the definition is extensive". In ***Pancharatham Pillai v. Emperor***[40]***, Bapu Vithal v. Secy of State***[41] and ***Province of Bengal v. Hingul Kumari***[42], it has been held that when the expression "includes" is used in a definition, the intention is that the scope of the definition be widened by specific enumeration of certain matters which in their ordinary meaning may or may not comprise, so as to make the definition enumerative and not exhaustive. The High Court of Andhra Pradesh, in ***A. Poorna Chandra Rao v. Government of Andhra Pradesh***[43]***,*** has held that when the expression "includes" is used, the definition has to be construed as comprehending not only such things as it signifies according to its actual import but also those things which the interpretation clause declares that they shall include. The Supreme Court, too, in ***Mukesh K. Tripathi v. Senior Divisional Manager, LIC***[44] and ***Indian Handicrafts Emporium v. Union of India***[45], held that an interpretation clause which uses the word "includes" has to be given a broader meaning, keeping in mind, however, the scheme, object and purport of the statute.

43. In ***State of Maharashtra v. Reliance Industries Limited***[46], the Supreme Court was examining Section 3(a) of the Land Acquisition Act, 1894, which stated that "land includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth". The issue before the Court was

[40] **AIR 1929 Mad 487**
[41] **AIR 1932 Bom 370**
[42] **AIR 1946 Cal 217**
[43] **(1982) 1 APLJ 106**
[44] **(2004) 8 SCC 387**
[45] **(2003) 7 SCC 589**
[46] **(2017) 10 SCC 713**

whether a proceeding under the Land Acquisition Act could be launched to acquire a part of a building when the owners of the building were different from the owners of the land. The High Court of Bombay had quashed the acquisition, holding that the building could not be acquired without the land. The Supreme Court, in appeal, noted the fact that Section 3(a) was worded in an inclusive fashion. The Supreme Court held that where a statute provided an inclusive definition, "the word not only bears its ordinary, popular and natural sense, whenever that would be applicable but it also bears its extended statutory meaning". Thus reading the definition of "land" as contained in Section 3(a) of the Land Acquisition Act, the Supreme Court noted that while the owner of the land was the State, the building was owned by the respondent. As a building cannot stand without the land, the building also became part of the land. Since the owners of the building and the land were different, the State, it was held, could acquire a portion of the building, if required for public purpose.

44. In ***Ramala Sahkari Chini Mills Ltd v. Commissioner of Central Excise***[47], the issue before the Supreme Court was whether CENVAT Credit was available on Central Excise Duty paid on welding electrodes used in the manufacture of machines. Rule 2(g) of the CENVAT Credit Rules, 2002 defined "input" thus:

> "(g) 'input' means all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods

[47] **(2010) 14 SCC 744**

> used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production."

The Supreme Court held that the use of the word "includes" in Rule 2(g) indicated that the definition was to be construed expansively and that, therefore, welding electrodes would also qualify as "inputs". Apropos the use of the word "includes" in the definition, the Supreme Court observed as under:

> "The word 'include' should be given a wide interpretation as by employing the said word, the legislature intends to bring in, by legal fiction, something within the accepted connotation of the substantive part. It is also well settled that in order to determine whether the word "includes" has that enlarging effect, regard must be had to the context in which the said word appears."

45. Similarly, in ***Oswal Oils and Fats Limited v. Additional Commissioner***[48], the Supreme Court was concerned with Section 154(1) of the UP Zamindari Abolition and Land Reforms Act, 1950, which referred to "person" but did not define the expression. The Supreme Court, therefore, referred to Section 4(33) of the UP General Clauses Act, 1904, which read:

> "4. *Definitions*. – In all Uttar Pradesh Acts, unless there is anything repugnant in the subject or context, -
>
> *****
>
> (33) 'persons' shall include any company or association or body of individuals, whether incorporated or not;"

[48] **(2010) 4 SCC 728**

Apropos Section 4(33), and the use of the expression "includes" therein, the Supreme Court held, in paras 36 to 39 of the decision, as under:

> "36. A reading of Section 3(1) reproduced above makes it clear that the provisions contained in the U.P. General Clauses Act are applicable to all Uttar Pradesh Acts including the Act with which we are concerned. To put it differently, by virtue of Section 3(1) of the U.P. General Clauses Act, the definition of the word "person" contained in Section 4(33) will be deemed to have been engrafted in the Act and the same cannot be given a restricted meaning as suggested by the learned counsel. Rather, in view of the definition contained in Section 4(33) of the U.P. General Clauses Act, the word "person" appearing in Section 154(1) would include any company or association or body of individuals, whether incorporated or not. This view of ours is strengthened by the language of Explanation added to Section 154(1) whereby it was declared that the expression "person" shall include a cooperative society. The word "include" is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. The word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions used. It may be equivalent to "mean and include" and in that case it may afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to those words or expressions. (***Dilworth v. Stamps Commr.***[49])
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> 37. In ***State of Bombay v. Hospital Mazdoor Sabha***[50] Gajendragadkar, J. observed:
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> > "10. … It is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. … Where we are dealing with an inclusive definition, it would be inappropriate to put a restrictive interpretation upon terms of wider denotation."

[49] **1899 AC 99**
[50] **AIR 1960 SC 610**

> 38. In ***CIT v. Taj Mahal Hotel***[51] this Court interpreted the word "plant" used in Section 10(2)(vi-b) of the Income Tax Act, 1922. Speaking for the Court, Grover, J. observed:
>
> > "6. … The very fact that even books have been included shows that the meaning intended to be given to 'plant' is wide. The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include."
>
> 39. Moreover, if the word "person" used in Section 154(1) is interpreted keeping in view the object of legislation and by applying the rule of contextual interpretation, the applicability of which has been recognised in ***Poppatlal Shah v. State of Madras***[52], ***S.K. Gupta v. K.P. Jain***[53], ***RBI v. Peerless General Finance and Investment Co. Ltd.***[54]and ***Central Bank of India v. State of Kerala***[55], it becomes clear that the same would include human being and a body of individuals which may have juridical or non-juridical status."

46. The position that the use of the expression "includes" widens the clause beyond its normal ambit was also reiterated by the Supreme Court in ***Bharat Diagnosis Centre v. Commissioner of Customs***[56], ***Kotak Mahindra Bank v. A Balakrishnan***[57], and ***Jay Pee Infratech Ltd Interim Resolution Professional v. Axis Bank***[58].

47. Applying this principle to Section 3(1) of the PMLA, the offence of money laundering cannot be restricted, as is envisaged by the "pre-includes" part of the sub-section, to directly or indirectly

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[51] **(1971) 3 SCC 550**
[52] **AIR 1953 SC 274**
[53] **(1979) 3 SCC 54**
[54] **(1987) 1 SCC 424**
[55] **(2009) 4 SCC 94**
[56] **(2014) 9 Scale 461**
[57] **(2022) SCC Online SC 706**
[58] **(2020) 8 SCC 401**

attempting to indulge, or knowingly assisting, or knowingly being a party, or being actually involved in, any process or activity connected with the proceeds of crime, but would also include concealment of proceeds of crime, possession of proceeds of crime, acquisition of proceeds of crime and use of proceeds of crime.

48. The expression "proceeds of crime" is defined in Section 2(1)(u) of the PMLA. It means any property derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence. The scope of the definition is explained in the explanation to Section 2(1)(u) by clarifying that the property in question need not be derived or obtained *from* the scheduled offence but may also derived or obtained *as a result of any criminal activity relatable to* the scheduled offence.

49. "Scheduled offence" is defined in Section 2(1)(y)[59] of the PMLA as meaning the offences specified in Parts A, B or C of the Schedule to the PMLA, with the caveat that in respect of offences specified in Part B, the total value involved in the offence should be ₹ 1 crore or more.

50. Among the offences alleged to have been committed by Alka Rajvansh are offences under Section 120B and 420 of the IPC which are enlisted as offences in Part A of the Schedule to the PMLA. There

[59] (y) "scheduled offence" means—
(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.

cannot, therefore, be any dispute about the fact that Alka Rajvansh was charged with having committed scheduled offences.

51. "Property" is defined in Section 2(1)(v) of the PMLA as meaning any property or asset of every description, corporeal or incorporeal, moveable or immovable, tangible or intangible, wherever located. The Provisional Attachment order specifically alleges that the subject property had been acquired out of the funds which came into the possession of Alka Rajvansh, following a trail starting from the scheduled offence of cheating committed by her husband Homi Rajvansh. The subject property, therefore, constitutes "proceeds of crime" within the meaning of Section 2(1)(u) of the PMLA.

52. Though Mr. Tripathi, very fairly, did not seek to argue that the subject property does not constitute "proceeds of crime" within the meaning of Section 2(1)(u), 3 or 5 of the PMLA, the impugned judgment indicates that the learned Single Judge has proceeded, at more than one point, on the premise that the "proceeds of crime", in the present case, were the amounts received by Alka Rajvansh as director of the respondent-company, and that the subject property was been acquired *using* the proceeds of crime. Proceeding from this premise, the impugned judgment holds that, with the acquisition of the subject property, the proceeds *stood entirely used* prior to the enactment of the PMLA. This finding appears to us to be incorrect as the subject property also partakes of the character of "proceeds of crime" and continued to remain in possession of, and used by, the respondent, even after the PMLA came into force.

53. This, according to us, is one of the apparent errors in the impugned judgment.

54. We are unable to accept Mr. Tripathi's submission, or the corresponding finding in the impugned judgment, that activity and use of the proceeds of crime in the present case were completed and, thereby, the offence of money laundering also stood completed, prior to the PMLA coming into force. The learned Single Judge has, in this regard, accepted the respondent's submission that use of the proceeds of crime came to an end once the subject property was purchased and thereby the money received by Alka Rajvash on behalf of the respondent-Company was expended in purchasing the subject property.

55. The fallacy in this finding, again, stems from the fact that the learned Single Judge has presumed the "proceeds of crime" to be the money received by Alka and used in the purchase of the subject property. Once the subject property is also recognized as constituting "proceeds of crime", there can be no question of the offence of money laundering having been *completed* prior to the enactment of the PMLA, as the respondent was in possession of, and was using, the subject property, on the date when the PMLA came into force.

56. Use and possession of proceeds of crime, by virtue of the post-"including" part of Section 3, independently constitute the offence of money laundering. Any person who, therefore, uses, or is in

possession of, proceeds of crime, *ipso facto* commits the offence of money laundering. Inasmuch as the subject property also constitutes "proceeds of crime", and the respondent was in possession of the subject property, and continued to remain in possession thereof, and was using the subject property till the issuance of the Provisional Attachment order, the respondent was, even on the date of passing the said order, committing the offence of "money laundering" within the meaning of Section 3 of the PMLA.

57. The learned Single Judge has, as we have already noted, referred, at more than one point in the impugned judgment, to "coming into possession" of the subject property. Section 3 does not use the expression "coming into possession". *The very factum of possession of proceeds of crime* – which would include the subject property – suffices to constitute the offence of money laundering. The offence of money laundering does not, therefore, end on the date when the person *comes into possession* of the proceeds of crime. It continues so long as the person remains in possession of the proceeds of crime. This is yet another error, in our respectful opinion, in the impugned judgment, which conflates the concept of "possession" with "coming into possession". Section 3 envisages the former, whereas the impugned judgment presumes the latter.

58. We now proceed to the Explanations in Section 3, which are also of significance.

59. Both the Explanations to Section 3 make it clear that *claiming or projecting the proceeds of crime to be untainted is not a sine qua*

non for the offence of money laundering to be said to have been committed. Explanation (i), in fact, places this position beyond the pale of controversy, by providing that a person who is found to have directly or directly attempted to indulge, or knowingly assisted, or is knowingly involved, or *is actually involved in <u>one or more</u> of the activities enumerated in (a) to (f) thereunder would be guilty of money laundering*, and concealment, possession, acquisition, use, *projection as untainted property* and *claiming as untainted property* are *separately* indicated in the said six clauses (a), (b), (c), (d), (e) and (f). Similarly, Explanation (ii), again, clarifies that the process or activity connected with proceeds of crime is a continuing activity, which continues till such as the person enjoys the proceeds of crime by concealment *or* possession *or* acquisition *or* use <u>*or*</u> projecting it as untainted property <u>*or*</u> claiming it as untainted property in any manner.

60. Explanation (ii) to Section 3, on which Mr. Tripathi relies, in fact, further supports our interpretation of Section 3 and militates against the view expressed in the impugned judgment. The Explanation has been provided for removal of doubts, and is expressly clarificatory in nature. It clarifies that (i) the process or activity connected with proceeds of the crime is a continuing activity and (ii) the process or activity *continues till the time* the person is directly or indirectly enjoying the proceeds of crime by (a) concealment or (b) possession (c) acquisition or (d) use or (e) projecting it as untainted property or (f) claiming it as untainted property in any manner whatsoever.

61. Viewed thus, so long as the person is in possession or in use of the proceeds of crime, which would include, in the present case, the subject property – the offence of money laundering continues.

62. The result is that, on the date when the PMLA came into force, i.e., 1 July 2005, the respondent was committing the offence of money laundering as the respondent was in possession of, and was using, the subject property, which constitutes 'proceeds of crime' within the meaning of Section 2(u) of the PMLA.

63. The impugned judgment, in para 32, purports to specifically address the contention that the offence of money laundering, under the PMLA, is a continuing offence. The learned Single Judge has rejected this argument. However, the argument has not been rejected as contrary to the words used in the statute or as being incompatible therewith. It has been rejected on the ground that accepting the argument would result in consequences which the PMLA could not be said to have envisaged. The learned Single Judge holds that if the argument were to be accepted, any person who commits a scheduled crime, acquires proceeds therefrom and projects it as untainted *money* (thereby again indicating that the impugned judgment treats the money received by Alka Rajvansh as the proceeds of crime), prior to coming of the PMLA into force, would nonetheless be guilty of the offence of money laundering "only for the reason that he is in possession *of some property*".

64. With great respect, we are entirely unable to subscribe to this observation. The use of the words "some property" indicate that the impugned judgment ignores the significance of the fact that the subject property was not just "some property", but property purchased using the monies paid to Alka Rajvansh, which were directly relatable to the crime committed by Homi Rajvansh which, in turn, was a scheduled offence. At the very least, therefore, the subject property was, if not directly, certainly indirectly obtained as a result of the criminal activity relating to the scheduled offence committed by Homi Rajvansh. The reference to the property as "some property" is, therefore, incompatible with the words used in the PMLA as well as the very definition of "proceeds of crime" as contained in Section 2(1)(u) thereof. Referring to the property as "some property" purchased from the proceeds of crime fails to notice the fact that the property itself constitutes 'proceeds of crime'. The person concerned, therefore, would not be, merely in possession of "some property" but would be in possession of proceeds of crime *per se.*

65. Para 32 of the impugned judgment goes on to observe that if such property is in possession of a person who is not accused of the scheduled crime or the offence of money laundering, he would also be subject to proceedings under the PMLA and, that, therefore, practically, a person guilty of a scheduled offence who has acquired any benefit in relation to the scheduled offence would in effect also be guilty of the offence of money laundering immediately on the PMLA coming into force. In view of the definition of "proceeds of crime", especially read in the light of the Explanation thereto, which includes,

within the definition of "proceeds of crime", any property which is directly or indirectly derived or obtained as a result of any criminal activity relatable to the scheduled offence, the hypothetical gentleman to whom para 32 of the impugned judgment refers, would certainly be guilty of the offence of money laundering, immediately on the PMLA coming into force, as the paragraph itself observes.

66. There is nothing incongruous in this.

67. If the person continues to remain in possession of, or continues to use, the proceeds of crime, which would include properties directly or indirectly obtained received from proceeds of crime, he would certainly be guilty of the offence of money laundering immediately on the PMLA coming into force. This is in tune with the intent and purpose of the PMLA as a statute which is intended at curbing serious economic offences, which tarnish the fiscal fabric of the country.

68. This is perfectly permissible, in view of the decision in ***Queen v. Inhabitants of St Mary***, on which the learned Single Judge himself places reliance. Though the coming into possession of the moneys paid by Duroroyale and SRTPL, and the acquisition of the subject property using the said moneys, are *part* of the offence of money laundering, the offence continued to be committed so long as the respondent remained in possession of, and continued using, the subject property. As has been held by the learned Single Judge, the mere fact that *part of the ingredients of an offence antedate the*

enforcement of the statute, would not result in the statute being applied retrospectively.

69. Para 32 goes on to state that accepting the interpretation advanced by the Directorate of Enforcement to Section 3(1) would result in the provision being given a retrospective operation and would thereby offend Article 20(1) of the Constitution of India "as an offender of a scheduled crime would now be visited with a greater punitive measure than as could be inflicted *at the time when the scheduled offence was committed."* We are unable to accept this reasoning. The PMLA does not intend to punish for the commission of scheduled offence. It punishes for commission of the offence of money laundering. Infliction, for committing the offence of money laundering, of a punishment which may be greater than the punishment which attaches the commission of the scheduled offence does not, therefore, in any manner violate Article 20(1) of the Constitution of India.

70. It is clear that the scheduled offence and the offence of money laundering are distinct and different. There can be no comparison, therefore, of the punishments, which may visit the commission of these two offences. Nor can Article 20(1) be said to be infracted if the punishment visiting the commission of offence of money laundering is greater than the punishment visiting the commission of scheduled offence.

71. Article 20(1), to our mind, is not infracted in any manner, by the interpretation of the provisions as placed on them by the

Directorate of Enforcement, and as accepted by us in the present judgment. This is because the offence of money laundering does not, as the impugned judgment, seeks to hold, stand committed and concluded on the date when the subject property was purchased by the respondent. Inasmuch as the respondent continued to remain in possession of, and continued to use, the subject property even after the PMLA came into force, the offence of money laundering also continued. It was not as though, therefore, any provision of the PMLA was being given retrospective effect.

72. Para 32 of the impugned judgment goes on to say that, irrespective of when the scheduled offence was committed, and how far prior to the enactment of the PMLA it was committed, the authorities could not attach and confiscate properties derived or obtained by criminal activity relating to the scheduled offence. Indeed, we may observe, they could. There is, again, nothing irrational or incongruous in this. As we have already noted and as the impugned judgment also acknowledges, the PMLA does not punish for the commission of the scheduled offence. The date and time of commission of the scheduled offence are, therefore, irrelevant, in so far as the PMLA is concerned. Commission of the scheduled offence alone is enough. We are unable to regard the date of commission of the scheduled offence as of any relevance whatsoever.

73. Similarly, even if the property, which is included within the definition of proceeds of crime undergoes "significant changes" or "is integrated in legitimate economic activity" or "is in the hands of

persons unconnected with the scheduled offence", that would not militate against the applicability of Section 3 of the PMLA. All that has to be shown is that the alleged offender is in possession of, or is using, the property.

IV. Our other differences with the impugned judgment

74. Apart from the above observations and findings in para 32, to which, to our greatest regret, we are unable to agree, we may also note, as under, the other observations and findings in the impugned judgment, which, in our view, cannot be accepted:

(i) In para 31, the impugned judgment holds that "even if the allegations made by the respondent are assumed to be correct, the *proceeds of crime had been used* for acquisition of the property much prior to the Act coming into force". This observation omits to note the fact that the subject property itself fell within the definition of "proceeds of crime" and that, therefore, it could not be said that the proceeds of crime *had been used by the respondent for acquisition of the subject property* prior to the coming into force of the PMLA. This observation of the learned Single Judge is contrary to the definition of "proceeds of crime" as contained in Section 2(1)(u) of the PMLA.

(ii) The immediately succeeding finding that "the process of activity of utilizing the proceeds of crime, if any, thus stood concluded prior to the Act coming into force" is also resultantly

unsustainable as the proceeds of crime also included the subject property and it, could not, therefore be said that the activity of utilizing the proceeds of crime stood concluded prior to the PMLA coming into force.

(iii) The further observation in para 31 that, assuming the funds received by Alka Rajvansh from Duroroyale and SRTPL to be "proceeds of crime", "such funds had come into possession of the petitioner prior to the Act coming into force" and "thus … were already projected as untainted funds connected with the crimes for which Mr. Homi Rajvansh and other persons were accused … and had thus been laundered at a time when money laundering was not an offence" are also unsustainable, as the learned Single Judge proceed again on the erroneous premise that the funds received by Alka Rajvansh from Duroroyale and SRTPL constituted the "proceeds of crime", without noticing that the subject property purchased using the said funds was also "proceeds of crime" for the purposes of the PMLA.

(iv) Proceeding now to para 33, the impugned judgment holds that the offence of money laundering is complete once the money representing the proceeds of crime are integrated into the mainstream of the economy. This finding ignores the fact that Section 3 is worded in an inclusive fashion and includes, within the ambit of the offence of "money laundering", mere possession and mere use of the subject property. Inasmuch as the respondent continued to remain in possession and continued to use the

property even after the PMLA came into force, it cannot be said that the activity of money laundering was over, or concluded, prior thereto.

(v) Para 33 goes on to note that "unless such acts have been committed after the Act came into force, an offence of money laundering punishable under Section 4 would not be made out". There can be no cavil with this proposition. However, when applied to the facts of the present case, they clearly make out a case of commission of an offence of money laundering on the part of the respondent, as the act of being in possession of, and using the subject property, which constitutes "proceeds of crime" continued to be committed by the respondent even after the PMLA came into force.

(vi) Para 33 goes on to observe that 'the words "concealment, possession, acquisition or use'' must be read in the context of the process or activity of money laundering and "*this is over* once the *money* is laundered or integrated with the economy". With the observation that "this is over", we regret our inability to agree. The finding that the offence of money laundering was over once the money was laundered is again predicated on the premise that the money alone constitutes proceeds of crime. We have already expressed our disagreement with that proposition.

(vii) Interestingly, para 33 also observes as under:

> "… The 2013 Amendment to Section 3 of the Act by virtue of which the words "process or activity connected with proceeds of crime and projecting it as untainted property" were substituted by the words "any process or activity connected with proceeds of crime including concealment, possession, acquisition or use and projecting or claiming it as untainted property."

The impugned judgment, therefore, notes that by the 2013 Amendment, the words "including concealment, possession, acquisition or use" were inserted in Section 3(1) of the PMLA. This, to our mind, is clearly demonstrative of the legislative intent not to restrict the offence of PMLA to the process or activity connected with the proceeds of crime, or projection of the proceeds of crime as untainted property, but also to include, within the ambit of the offence, possession, acquisition and use of the proceeds of crime. We are of the considered opinion that the interpretation placed on the provisions of the PMLA by the impugned judgment, if allowed to stand, would defeat the intent and purpose of the amendment of the Section 3 of the PMLA by the 2013 Amendment.

(viii) In para 34 of the impugned judgment, it is held that the PMLA cannot empower the authorities to initiate proceedings in respect of money laundering offences "done prior to 1 July 2005". We agree. If the PMLA is invoked for an offence of money laundering done prior to the PMLA coming into force on 1 July 2005, it would undoubtedly amount to retrospective application of the PMLA and would violate Article 20(1). In the present case, however, as the respondent continued to remain in

possession of, and continued to use, the subject property, even on the date when the PMLA came into effect and even thereafter, the offence of money laundering was being committed even on the date of the coming into force of the PMLA and continued to be committed thereafter. The order of provisional attachment does not, therefore, invoke the PMLA in respect of an offence of money laundering done prior to 1 July 2005 but invokes it for an offence which was being done even on that date and continued to be done thereafter till the date when the order came to be passed.

(ix) Para 34 further observes that the PMLA cannot be invoked in a case in which the offence of money laundering was committed prior to the related crime being included as a scheduled offence under the PMLA. We may note that Mr. Tripathi did not advance any such submission before us. Nonetheless, we are unable to agree with this finding of the learned Single Judge. The PMLA, as we have noted, and as the impugned judgment itself acknowledges, does not punish for the commission of scheduled offence. It punishes for the commission of the offence of money laundering. While assessing whether the offence of money laundering was committed, the date of commission of offence of money laundering is what matters, and not the date of commission of scheduled offence. In fact, even the scheduled offence in the present case was committed much prior to the PMLA coming into effect, as is apparent from the facts alleged in the provisional attachment order. This finding of

the learned Single Judge, therefore, is not of significant moment in so far as the controversy in issue is concerned.

(x) The last finding of the learned Single Judge in the impugned order is that the ingredients of clause (b) of Section 5(1) of the PMLA were not satisfied as there was no material forthcoming on the record which could lead to a belief that the respondent was likely to transfer or conceal the subject property in any manner. We must note, in this context, that what Section 5 envisages is the reason for such belief being entertained by the Deputy Director or other officer who passes the order of provisional attachment. The arrival at such a reasoned belief is essentially a subjective decision of the concerned officer. If the decision is completely baseless or based on no material whatsoever, perhaps a court could interfere. However, given the manner in which, starting from the MOUs executed by Homi Rajvansh on behalf of NAFED with MKAIL till, followed by the incorporation of MIL and Alka becoming a Director therein, the tainted money was transferred to Duroroyale and SRTPL, from whom it was paid to Alka Rajvansh and used in the purchase of the subject property, we are of the opinion that, in exercise of certiorari jurisdiction under Article 226 of the Constitution of India, it would not be open to the learned Single Judge to sit in appeal over the subjective decision of the Deputy Director in the order of provisional attachment, that the property was likely to be concealed, transferred or dealt with in a manner which could

frustrate the proceedings relating to confiscation of the proceeds of crime.

(xi) A *prima facie* case of commission of offence of money laundering clearly exists. The subject property clearly constitutes "proceeds of crime" within the meaning of the PMLA. In such circumstances, if the trial which is presently proceeding against Alka Rajvansh and other accused for commission of the offence of money laundering results in any outcome adverse to the accused, confiscation of the subject property under Section 8 would follow. In such circumstances, we cannot treat the provisional attachment of the subject property as vitiated by any error of fact or law or unsustainable in law for any other reasons. It goes without saying that if the property were to be alienated, or not to be available for confiscation, it would be impossible to implement Section 8 in the event of the outcome of the criminal trial being adverse to the accused.

(xii) We therefore, feel that the Deputy Director was justified in his view that it was necessary to provisionally attach the subject property as, otherwise, there was a danger of the property being so dealt with as would frustrate proceedings for confiscation of the property, representing the proceeds of crime, in exercise of power conferred by Section 8 of the PMLA.

V. The decisions in ***Vijay Madanlal Choudhary*** and ***Pradeep Nirankarnath Sharma***

75. We find our aforesaid conclusions fortified by the judgments of the Supreme Court in ***Vijay Madanlal Choudhary*** and ***Pradeep Nirankarnath Sharma***, on which Mr. Hossain placed reliance.

76. ***Vijay Madanlal Choudhary*** has in paras 134 and 135, explained the legal position thus:

> "134. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. *The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.*
>
> 135. Needless to mention that such process or activity can be indulged in *only after the property is derived or obtained as a result of criminal activity (a scheduled offence)*. It would be an offence of money laundering *to indulge in or to assist or being party to the process or activity connected with the proceeds of crime*; and *such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence*. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in *or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted*. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence, or if we may say so, the predicate offence has been committed. *The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime*. These ingredients are

> intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31-7-2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of clause (ii) in the Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."
>
> (Emphasis supplied)

77. The opening sentences of para 134 of ***Vijay Madanlal Choudhary*** are, in fact, by themselves to completely discountenance the submissions of Mr. Tripathi, as well as the findings in the impugned judgment.

78. Para 134 first holds that that money laundering is an independent offence which deals with the process or activity connected with the proceeds of crime *which had been derived or obtained as a result of criminal activity* relating to a scheduled offence. When this enunciation of the law is read in conjunction with the stipulation in Section 2(1)(u) of the PMLA, that the proceeds of crime could have been obtained "directly or indirectly", there is no escape from the position that the subject property *itself* constitutes "proceeds of crime", and not merely property obtained from proceeds of crime.

79. Para 134 further proceeds to hold, in the next sentence, that the process or activity of dealing with the proceeds of crime can be in any form – concealment, possession, acquisition or use thereof, *as much as* projecting or claiming the proceeds of crime to be untainted property. Even *de hors* any projection, or claiming, of the property constituting the proceeds of crime to be untainted, therefore, the *very*

possession, or use, of the property would constitute the offence of money laundering.

80. We fail to understand how, in view of this unequivocal exposition of the law by the Supreme Court, the impugned judgment can be sustained.

81. The Supreme Court has further clearly held, in para 135, that continuing to possess proceeds of crime or retaining possession of proceeds of crime or using of proceeds of crime until they are fully exhausted, amounts to money laundering. It is also clarified, in the same paragraph that the relevant date for determining when the offence has been committed is the date when the person indulges in the process or activity connected with the proceeds of crime. Inasmuch as usage and possession of the proceeds of crime is also covered under the definition of "money laundering", the fact that the subject property was in the possession of and continued to be used by, the respondent on and after the date when the PMLA came into force, *ipso facto* makes the PMLA applicable.

82. The same position is reflected from paras 21, 22, 24 and 25 of ***Pradeep Nirankarnath Sharma***, which may be reproduced thus:

> "21. A significant ground raised by the appellant pertains to the nature of the alleged offence under the PMLA. The appellant has contended that the alleged acts do not constitute an offence under the PMLA as the same was not in force during the relevant period, or the predicate offences as alleged were not included in the schedule to the PMLA at the relevant time and, therefore, cannot be subject to proceedings under the PMLA. It has also been argued that these instances do not constitute continuing offences. This

contention, however, is untenable. It is well established that offences under the PMLA are of a continuing nature, and the act of money laundering does not conclude with a single instance but extends so long as the proceeds of crime are concealed, used, or projected as untainted property. The legislative intent behind the PMLA is to combat the menace of money laundering, which by its very nature involves transactions spanning over time.

22. The concept of a continuing offence under PMLA has been well-settled by judicial precedents. An offence is deemed continuing when the illicit act or its consequences persist over time, thereby extending the liability of the offender. Section 3 of the PMLA defines the offence of money laundering to include direct or indirect attempts to indulge in, knowingly assist, or knowingly be a party to, or actually be involved in any process or activity connected with the proceeds of crime. Such involvement, if prolonged, constitutes a continuing offence.

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24. In the present case, the material on record establishes that the misuse of power and position by the appellant, coupled with the alleged utilization and concealment of proceeds of crime, has had an enduring impact. The act of laundering money is not a one-time occurrence but rather a process that continues so long as the benefits derived from criminal activity remain in circulation within the financial system or are being actively utilized by the accused. The respondent has submitted that fresh instances of the utilization of the proceeds of crime have surfaced even in recent times, thereby extending the offence into the present and negating the appellant's contention that the act was confined to a particular point in the past.

25. The law recognizes that money laundering is not a static event but an ongoing activity, as long as illicit gains are possessed, projected as legitimate, or reintroduced into the economy. Thus, the argument that the offence is not continuing does not hold good in law or on facts, and therefore, the judgment of the High Court cannot be set aside on this ground. Even if examined in the context of the present case, the appellant's contention does not hold water. The material on record indicates the continued and repeated misuse of power and position by the appellant, resulting in the generation and utilization of proceeds of crime over an extended period. The respondent has successfully demonstrated *prima facie* that the appellant remained involved in financial transactions linked to proceeds of crime beyond the initial point of commission. The utilization of such proceeds, the alleged layering and integration, and the efforts to project such funds as untainted all constitute elements of a continuing offence under the PMLA. Thus, the

proceedings initiated against the appellant are well within the legal framework and cannot be assailed on this ground."

83. The impugned judgment was rendered prior to the decisions in ***Vijay Madanlal Choudhary*** and ***Pradeep Nirankarnath Sharma***. Had the learned Single Judge had the advantage of these decisions, we are sanguine that the judgment would have ruled differently.

F. Conclusion

84. In view of the aforesaid discussion, we find ourselves unable to sustain the impugned judgment of the learned Single Judge, which is, accordingly, quashed and set aside. The Provisional Attachment order dated 24 January 2014 stands upheld, and WP (C) 1925/2014, filed by the respondent, would stand dismissed.

85. The appeal is, accordingly, allowed with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MARCH 16, 2026*/aky/yg*