

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

WRIT PETITION No.30097 OF 2023

% Dated 10.01.2025

#W.P.No.19038 OF 2023  
Eluri Prasad Rao,  
s/o late Sri Govindaiah Eluri,  
flat No.405, Sri Rama Residency, 3rd Line,  
Syamala Nagar, Guntur

..... Petitioner

Vs.

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The Union of India,  
Rep by its Union Principal Secretary,  
Ministry of Finance and Revenue Department,  
New Delhi, India and others

..Respondents

JUDGMENT PRONOUNCED ON: 10.01.2025

**THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

Whether Reporters of Local newspapers  
may be allowed to see the Judgments?

Whether the copies of judgment may be marked to  
Law Reporters/Journals

Whether Their Ladyship/Lordship wish to see THE  
fair copy of the Judgment?

**\*THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

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! Counsel for the petitioner : Smt. M.V. Ramana Kumari

^ Counsel for the respondent : Ms. Divya Datla

&lt;GIST:

&gt; HEAD NOTE:

? Cases referred

1. SLP (Cri) No.4636 of 2014 dated 27.07.2022
2. AIR 1969 SC 556
3. (1998) 8 SCC 1
4. (2003) 2 SCC 107
5. W.P.A No.12335 of 2023 dated 16.06.2023
6. W.P (c) 2191/2023 dated 20.02.2023
7. W.P.No.11454 of 2018 dated 03.01.2019
8. AIR 1997 SUPREME COURT CASES 1125
9. Civil Appeal No.5393 of 2010 dated 01.02.2023
10. 2008 (12) SCC 675
11. (2016) 11 SCC 31
12. (2014) 1 SCC 603
13. AIR 1958 SC 86
14. (1983) 2 SCC 433
15. (2003) 2 SCC 107
16. (2005) 6 SCC 499

17. AIR 2006 SC 975
18. AIR 1961 SC 1506
19. AIR 1961 SC 372
20. 2023 livelaw (SC) 70
21. Civil Appeal no.5654 of 2019 @ Special Leave Petition  
(C) No.29040 of 2018 dated 29.07.2019
22. I.A.No.1 of 2022 in W.P.No.41133 of 2022 dated  
13.03.2023
23. W.A.No.611 of 2023 dated 12.02.2024
24. (2012) 4 CTC 225 (Mad)
25. W.P. (Criminal) No.12 of 2025 dated 07.02.2023
26. 2022 SCC Online SC 1490
27. CrI.A.N.2779 of 2023 dated 29.11.2023
28. 2019 (2) Crimes (HC) 181 (Del)
29. 2018 (5) RCR (Criminal) 507

APHC010370992023



**IN THE HIGH COURT OF ANDHRA PRADESH** [3329]  
**AT AMARAVATI**

**(Special Original Jurisdiction)**

**FRIDAY ,THE TENTH DAY OF JANUARY**

**TWO THOUSAND AND TWENTY FIVE**

**PRESENT**

**THE HON''BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

**WRIT PETITION NO: 19038/2023**

**Between:**

**Eluri Prasad Rao**

**...PETITIONER**

**AND**

**The Union Of India and Others**

**...RESPONDENT(S)**

**Counsel for the Petitioner:**

**1.M.V.RAMANA KUMARI**

**Counsel for the Respondent(S):**

**1.DIVYA DATLA(CENTRAL GOVERNMENT COUNSEL)**

**The Court made the following:**

**ORDER:-**

1. This writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in Order dated 14.06.2023 in O.C.1890/2023 in PAO No.04/2022 dated 30.12.2022 in ECIR/HYZO/03/2017 passed by the Adjudicating Authority/2<sup>nd</sup> respondent herein and to declare the same as illegal, arbitrary, unjust and without jurisdiction of PMLA, besides violative of fundamental rights of the petitioner guaranteed under Articles 14 & 21 of the Constitution of India and quash the order dated 14.06.2023.

2. The petitioner herein is a Director of M/s. Sri Bhuvanewari Agri Processing & Marketing Private Limited and also engaged in public service activities. The General Manager, Retail Banking Group, IDBI Bank Limited, Hyderabad Zonal office had initially filed 3 written complaints dated 07.01.2017 to the Superintendent of Police, Head of the Branch, CBI, Anti Corruption Bureau, Visakhapatnam. Later, filed another complaint dated 15.12.2017 to the Superintendent of Police, Head of the Branch, CBI, Anti Corruption Bureau, Hyderabad complaining about the large scale fraud in the Guntur Branch of IDBI bank in the matter of processing and sanctioning loans under Kisan Credit Card (KCC) Short

Term Loans for construction of ponds/tanks to farmers of fish farming/pisciculture.

3. The allegations made in 4 complaints in substance are that the Assistant General Manager & Relationship Manager (RM) of IDBI Bank Limited, Guntur Branch, Andhra Pradesh along with other unknown bank officials entered into criminal conspiracy with 2 mediators i.e. Mr. Ganduri Mallikarjuna Rao and Mada Srinivasa Rao and had processed, sanctioned loans by way of Kisan Credit Cards/Short Term Loans to 105 borrowers in and around Guntur District, without considering the eligibility norms, without verifying documents, without conducting any proper pre-sanction and post-sanction inspections, proper visit, without obtaining proper loan documents and securities, and without ensuring the end use of the loan; that after the sanction of loans, the loan amounts were disbursed to the savings accounts of the beneficiaries and that the loan proceeds were then diverted from the accounts of beneficiaries to the accounts of the aggregators and were later misappropriated causing pecuniary loss to tune of Rs.27.82 crores to the bank.

4. Based on 3 complaints, 3 F.I.Rs were registered by the Superintendent of Police, Head of the Branch, CBI, Anti Corruption

Bureau, Visakhapatnam against accused therein for the offences punishable under Sections 120B, 420, 468, 471 of Indian Penal Code r/w Sections 13(2), 13(1)(d) of the Prevention of Corruption Act and single charge sheet dated 29.06.2018 wherein Central Bureau of Investigation, Anti Corruption Bureau, Visakhapatnam alleging that there was common conspiracy to cheat IDBI Bank, as the offences under Sections 120B, 420, 468, 471 of IPC are the offences under Indian Penal Code and offences under Sections 13(2), 13(1)(d) of the Prevention of Corruption Act are schedule offences by virtue of Sections 2(1) & 2(1)(y) of PMLA Act, a case in Enforcement Case Information Report vide ECIR/HYZO/03/2017 was registered and investigation was initiated under PML Act, 2002, based on 3 F.I.Rs dated 23.01.2017.

5. It is further submitted that the petitioner is shown as 6<sup>th</sup> defendant and M/s. Sri Bhuvaneshwari Agri Processing & Marketing Private Limited is shown as 7<sup>th</sup> defendant in O.C.No.1890 of 2023, basing on the complaint given by the 4<sup>th</sup> respondent to the 2<sup>nd</sup> respondent Authority.

6. It is further submitted that the petitioner is a resident of Guntur and he is a Director of M/s. Sri Bhuvaneshwari Agri Processing & Marketing

Private Limited. The General Manager, IDBI Hyderabad Zonal Office gave complaint to the Superintendent of Police, Head of Branch, CBI, ACB, Hyderabad and the same was registered vide RC 07/(A)/2018 dated 22.03.2018 arraying the petitioner as Accused No.4 along with other persons for the offences punishable under Sections 120B, 420, 468, 471 of Indian Penal Code r/w Sections 13(2), 13(1)(d) of the Prevention of Corruption Act, 1988, alleging that the loan amounts computing to Rs.4-00 crore was transferred to bank account No.0447102000001618 of M/s. Sri Bhuaneswari Agri Processing & Marketing Private Limited in bulk. The petitioner is one of the Directors and the said amount has been misappropriated by the petitioner and acquired the immovable properties with the said amount alleged to be proceeds of the crime and later, were also utilized to settle a loan borrowed by M/s. Sri Bhuaneswari Agri Processing & Marketing Private Limited and till date, no charge sheet is filed.

7. It is submitted that, ECIR was registered only based on 3 F.I.Rs and in the 4<sup>th</sup> F.I.R, the petitioner is shown as accused No.4 which had come to the knowledge of 4<sup>th</sup> respondent subsequent to the registration of ECIR. During investigation of the 3 F.I.Rs, the petitioner's statement under Section 50 of PML Act was recorded, wherein, the petitioner had

expressly in unequivocal terms denied the allegations made against him. Without proper appreciation of the statement given by the petitioner, the 4<sup>th</sup> respondent had filed the Original Complaint (OC) 1890/2023 dated 27.01.2023 before the 2<sup>nd</sup> respondent authority arraying the petitioner as Defendant No.6, alleging that the petitioner borrowed 16 KCC loans totaling to Rs.4 Crores and misappropriated the amount by diverting them into bank account of his company - M/s. Sri Bhuvanewari Agri Processing & Marketing Private Limited. It is further alleged that the petitioner has acquired immovable properties with the proceeds of the crime.

8. The 4<sup>th</sup> respondent passed Provisional Attachment Order in ECIR/HYZO/03/2017 attaching the immovable properties of the petitioner, recording that the immovable properties attached therein are based on crime involved in money laundering and placed a Provisional Attachment Order before the 2<sup>nd</sup> respondent authority in Original Complaint No.1890 of 2023.

9. It is submitted that the 2<sup>nd</sup> respondent authority, on receipt of the Original Complaint filed by 4<sup>th</sup> respondent, issued show cause notice dated 30.01.2023 under Section 8(1) of the Act to the petitioner, merely

reiterating the allegations made by the 4<sup>th</sup> respondent in the original complaint without any independent evaluation of the facts, as required under Section 8(1) of the Act. The petitioner sent reply dated 29.03.2023 stating that the Provisional Attachment Order passed by the 4<sup>th</sup> respondent is bad in law, for the reasons mentioned therein and the show cause notice issued under Section 8(1) of the Act is defective, as the 2<sup>nd</sup> respondent has mechanically reproduced the facts in the complaint without arriving at any independent reasons to believe regarding the commission of the offences by the petitioner and prayed the authority to reject the prayer of the 4<sup>th</sup> respondent and consequently dismiss the complaint filed by the 4<sup>th</sup> respondent.

10. It is further submitted that the 2<sup>nd</sup> respondent authority consisting of Single Member vide order dated 14.06.2023 in O.C.No.1890 of 2023 in PAO No.04/2022 dated 30.12.2022 in ECIR/HYZO/03/2017 affirmed the Attachment of the property under Section 5 of the PML Act and accordingly allowed O.C.No.1890 of 2023 filed by the 4<sup>th</sup> respondent in violation of the provisions of PML Act.

11. The 2<sup>nd</sup> respondent authority has been constituted under Section 6 of the Act to exercise jurisdiction, powers and authority conferred by or

under the Act, consisting of a Chairperson and other members as Coram, where one Member each shall be a person having experience in the field of law, administration, finance or accountancy. The 2<sup>nd</sup> respondent authority passed the impugned order confirming attachment, is a quasi judicial function and the quasi judicial order cannot be passed in the absence of a Judicial member having experience in the field of law and the impugned order is *coram non judice* and liable to be set-aside *per se*.

12. Respondent No.4 filed counter affidavit denying material allegations. It is stated that, he is an investigating agency functioning under the Government of India, Ministry of Finance and he is empowered to investigate into the matters of Prevention of Money Laundering Act, 2002 and other acts and he is competent to file the counter affidavit on behalf of all the respondents.

13. The main allegations in the counter affidavit are:

- a) The writ petition is liable to be dismissed *in limini*, as premature, as the petitioner approached the Hon'ble Court at the very initial stage without exhausting the legal remedies provided under the Act and cannot invoke writ jurisdiction of

the Court when an alternative effective remedy is provided in the statute of PML Act, 2002.

b) The Superintendent, Head of the Branch, CBI, ACB, Visakhapatnam, received 3 complaints about a large scale fraud committed in Guntur Branch of IDBI in the matter of processing and sanctioning Kisan Credit Cards short term loans for construction of ponds/tanks to farmers of fish farming/pisciculture, 3 F.I.Rs were registered by the Superintendent of Police, CBI, ACB, Visakhapatnam against Mr. Chandrasekhar H Chennappagari, the then AGM & GM of IDBI Bank Limited, Guntur Branch, Mr. Mada Srinivasa Rao (Aggregator), Mr. Ganduri Mallikarjuna Rao (Aggregator), Mr. Gariganti Rajesh (Aggregator), Mr. P. Prabhakar Rao (Panel Advocate), Mr.R. Siva Prasad (Panel Advocate), Mr. M. Nagaraju (Valuer) and other for the offences punishable under Sections 120-B, 420, 468, 409 read with Section 471 of IPC and Section 13(2) read with 13(1)(c)(d) of the Prevention of Corruption Act, 1988 and a single charge sheet was filed in all the aforementioned F.I.Rs by the CBI on 29.06.2018, as there was common conspiracy and similar modus operandi to cheat

IDBI Bank and the same was informed to the Joint Director, Director of Enforcement, Hyderabad by the CBI, ACB, Visakhapatnam vide letter dated 23.10.2018 along with copy of the charge sheet.

c) It is further alleged that the offences under Sections 120-B, 420, 468, 409 read with Section 471 of IPC and Section 13(2) read with 13(1)(c)(d) of the Prevention of Corruption Act, 1988 are schedule offences by virtue of Sections 2(1)(s) & 2(1)(y) of the PML Act, 2002 and there appears *prima facie* an offence of money laundering under Section 3 of the Act in the aforementioned F.I.R, a case in ECIR Report ECIR/HYZO/03/2017 was registered on 06.03.2017 and investigation was initiated under PML Act. During the course of investigation, the General Manger, IDBI Bank, Hyderabad Zonal Office filed another complaint dated 15.12.2017 to the Superintendent of Police, CBI, ACB, Hyderabad and based on it, an FIR vide RC07(A)/2018 dated 22.03.2018 was registered against Mr. Chandrasekhar H Chennappagari, Mr. Mada Srinivasa Rao (Aggregator), Mr. Ganduri Mallikarjuna Rao (Aggregator), Mr. Eluru Prasad Rao

(Aggregator) the petitioner herein, Mr. Gariganti Rajesh (Aggregator), Mr. P. Prabhakar Rao (Panel Advocate), Mr.R. Siva Prasad (Panel Advocate), Mr. M. Nagaraju (Valuer) for the offences punishable under under Sections 120-B, 420, 468, 409 read with Section 471 of IPC and Section 13(2) read with 13(1)(c)(d) of the Prevention of Corruption Act, 1988.

d) The main contention of the 4<sup>th</sup> respondent regarding the role of the petitioner, as stated in Paragraph No.20 of the counter affidavit is that, the investigation revealed that the 16 loan amounts of Rs.4 Crores were transferred to the savings bank account of the respective borrowers and subsequently to the account of the petitioner's bank account No.0447102000001618 of M/s. Sri Bhuvanewari Agri Processing & Marketing Private Limited with IDBI Bank and on scrutiny of documents revealed that, all the fish ponds submitted by the 16 borrowers were leased to them by M/s. Sri Bhuvanewari Agri Processing & Marketing Private Limited represented by Sri Eluri Prasada Rao.

e) It is further alleged in the counter affidavit of the 4<sup>th</sup> respondent that, when the petitioner herein gave statement under Section 50 of PML Act admitted about arranging 16 borrowers, misappropriating the loan sanctioned to them and utilizing them for his business purposes and money trail revealed that the total proceeds of crime of Rs.4 Crores received on 08.03.2011 in IDBI Bank account was again transferred back to the bank account of the borrowers. The petitioner – Eluri Prasada Rao has stated that it was done as per the request of Sri Chandra Sekhar Harish to meet the targets of the branch. The amounts were then withdrawn in cash from the bank accounts of the borrowers and were then deposited in the IDBI Bank account Nos.0447104000047241 and 0447102000001618 of the petitioner.

f) It is further alleged in the counter affidavit that the petitioner had acquired immovable property vide Document No.1164/2012 in his name registered in Nallapadu SRO and did not provide any valid source of funds for acquisition of the property. He sold the property for an amount of Rs.5-86 crore vide Doc.No.51/2021 dated 01.01.2021 registered in

Nallapadu SRO. But, the deed was executed on 19.12.2020 and sale consideration was paid on 21.12.2020. SBI, Arundelpet Branch vide letter dated 03.12.2021 informed that M/s. SBAPM had settled term loan of Rs.18 Crores taken from them through OTS and that the OTS amount was paid on 22.01.2021. As the petitioner had acquired immovable properties with the proceeds of crime which were sold later and the sale proceeds were utilized to settle loan account and properties by M/s.SBAPM from SBH, Arundelpet Branch are nothing but the proceeds of crime as per Section 2(i)(u) of PML Act.

g) It is further alleged that the 2<sup>nd</sup> respondent had passed an order in O.C.No.1890 of 2023 by following due process of law, confirming the order after hearing both sides and after examining all material placed before it, in accordance with the provisions of PML Act. In order to avoid alienation of such leased property, second proviso to Section 5(1) of the Act was invoked and the property was attached and that the power of respondent to attach provisionally under Section 5 of the Act is not curtailed to the properties of the persons arrayed as

accused in the F.I.R basing on which ECIR was recorded, but also the properties of persons whoever found to be involved in the offence of money laundering immaterial to the fact that, FIR was registered against them prior to or subsequent to recording ECIR. But, in this case, ECIR was recorded based on 3 F.I.Rs initiated investigation. During investigation, it was revealed that the petitioner was also involved in the offence of money laundering and the properties of the petitioner were attached by recording reasons to believe as per the provisions of PML Act and registering FIR against him, after recording ECIR shall not absolve him from PMLA proceedings and that the notice issued under Section 8(1) of the Act by 2<sup>nd</sup> respondent is not defective.

h) The impugned order passed by the 2<sup>nd</sup> respondent is in accordance with Section 6 of PML Act. As per Section 6 of PML Act and catena of judgments stated by the Hon'ble High Courts, there can be a single Member of Adjudicating Authority and that single Member need not be a Judicial Member.

i) The 4<sup>th</sup> respondent mentioned judgments of other High Courts in support of his contentions that the power under Article 226 of the Constitution of India to issue writs cannot be exercised when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, and prays the Court to dismiss the writ petition filed by the petitioner.

14. The respondent submitted para-wise reply to the allegations made in each paragraph, but they are not required to be reiterated, as there is total denial of the allegations, while explaining the reasons for Provisional Attachment and confirmation.

15. The respondent also specifically contended that, without exhausting statutory remedy, the petitioner cannot approach this Court, requesting this Court to exercise discretionary power under Article 226 of the Constitution of India, while drawing attention of this Court to various judgments in **Vijay Madanlal Choudhary & Ors. v. Union of India**<sup>1</sup>, **Baburam Prakash Chandra Maheshwari v.**

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<sup>1</sup> SLP (Cri) No. 4636 of 2014 dated 27.07.2022

**Antarim Zilla Parishad<sup>2</sup>, Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai<sup>3</sup> and Harbanslal Sahnia and another vs. Indian Oil Corporation Limited<sup>4</sup>.** On the basis of the principles laid down in the catena of pronouncements of the Hon'ble Supreme Court referred above, Respondent No.4 contended that, when the statute provides an equally efficacious remedy by way of appeal, the High court cannot exercise it's discretionary jurisdiction under Article 226 of the Constitution of India and prayed for dismissal of the writ petition.

16. The petitioner filed reply to the counter affidavit, denying para-wise allegations, while specifically contending that the 2<sup>nd</sup> respondent – Adjudicating Authority is established by the Central Government by virtue of the powers contemplated under Section 6(1) of PMLA. Section 6(2) has expressly contemplated that the Adjudicating Authority shall consist of a Chairperson and two other members and the proviso appended to the said sub-section contemplates a requirement that out of the coram of three members (including the Chairperson) in the Adjudicating Authority, one

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<sup>2</sup> AIR 1969 SC 556

<sup>3</sup> (1998) 8 SCC 1

<sup>4</sup> (2003) 2 SCC 107

Member each shall be a person having experience in the field of law, administration, finance or accountancy.

17. During hearing, learned counsel for the petitioner submits that the impugned order dated 14.06.2023 passed by Respondent No.2 consists of single member having no experience in the field of law and it suffers from inherent lack of jurisdiction, exercise of such power is arbitrary, unjust and is absolute contradiction with the requirement of the Act. Further, the single member of Respondent No.2 authority confirming the Provisional Order of Attachment under Section 8(3) of PML Act as quasi-judicial authority is without jurisdiction and contrary to the Act. Learned counsel further asserts that, Section 6(2) of the Act expressly contemplates that the Adjudicating Authority consists of a Chairperson and two other members, therefore, any orders passed by the Coram not consisting of the members in accordance with Section 6(2) of PMLA suffers from inherent lack of jurisdiction and vitiates the entire proceedings conducted by the improper coram.

18. Learned counsel for the petitioner further submits that, Section 6(2) of the Act mandates that the coram shall be in the

manner and composition as specified therein, therefore, any deviation of the provisions of the Act is contrary to the object of the Legislature. She submits that Respondent No.2 is a quasi judicial authority and the proceedings conducted by the learned Adjudicating Authority is akin to the judicial authority, as such, absence of members having experience in the field of law would be an absolute contradiction with the requirements of the Act and also the object established proposition of law.

19. Learned counsel for the petitioner would further submit that, Respondent No.2 did not assign reasons after application of mind in respect of reasons to believe existing regarding commission of money laundering, which is essential for adjudication by a quasi-judicial functionary. But, in the case on hand, except reiterating the contentions of the Provisional Order, no reasons were assigned as contemplated under Section 8(1) of the Act. She further submits that, the Central Bureau of Investigation, Visakhapatnam filed charge-sheet dated 29.06.2018 under Section 5(1) of the Act, wherein, the petitioner was not arrayed in all the three FIRs as an accused and since the petitioner is not an accused, the impugned order is liable to be set-aside. In all the three FIRs, there was no role of the petitioner

and he was not arrayed as accused, as such, it is clear from the charge sheet that no role is made out by this petitioner and the order passed by Respondent No.2 in the absence of any case, which is contrary to the Act.

20. She further submits that, admittedly, the date of offence as per the complaint is 08.03.2011. The order is passed by Respondent No.4 attaching the individual properties of the petitioner which were acquired much prior to the date of offence, as such, the conclusion arrived by the Adjudicating Authority that these properties were acquired by the petitioner out of the proceeds of crime is contrary to the facts on hand. She further submits that, the petitioner acquired the properties as an individual which are mentioned at Serial Nos.1 to 3 & 6 in the "B-Schedule" of the impugned order, much prior to the date of offence/commission of offence i.e. on 08.03.2011, therefore the impugned order of attachment dated 30.12.2022 is liable to be set-aside. Further case of the learned counsel for the petitioner is that, even though the petitioner submitted detailed explanation to the show cause notice issued under Section 8(1) of the Act, explaining that the petitioner acquired the properties as individual from his personal source of income much prior to the date of offence, the

allegation is against the 5<sup>th</sup> defendant/M/s. Bhuvanewari Marine Processing Limited, which is a limited company and the petitioner is only one of the Director of the said company, as such, the impugned order of attachment against the petitioner's properties is contrary to the law.

21. Learned counsel for the petitioner refuted the contention of learned Standing Counsel that writ petition is not maintainable, in view of the alternative remedy available by way of statutory appeal under Section 26 of the Act. She submits that, since the impugned order of Respondent No.2 dated 14.06.2023 lacks inherent jurisdiction, it is settled proposition of law that once the impugned order lacks inherent jurisdiction, alternative remedy is not a proper remedy and the petitioner is entitled to invoke extraordinary jurisdiction under Article 226 of the Constitution of India.

22. On the other hand, learned Standing Counsel for Enforcement Directorate, while reiterating the contentions urged in the counter affidavit, would submit that, Respondent No.2 passed the order impugned in the writ petition, in accordance with Section 6 of the Act and this Hon'ble Court in catena of judgments held that the order

passed by the single member is valid and such single member need not be a judicial member. She further submits that the extraordinary jurisdiction of this Court cannot be exercised when a right is created by a statute and where question of facts are involved and if a statute prescribes remedy, the petitioner shall avail the same and requested to dismiss the writ petition.

23. Heard Smt. M.V. Ramana Kumari, learned counsel for the petitioner, Ms. Divya Datla, learned Standing Counsel for Enforcement Directorate and perused the material available on record.

24. Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- (i) Whether the writ petition is maintainable under Article 226 of the Constitution of India?**
- (ii) Whether the Sole Administrative Member of Adjudicating Authority is competent to pass an Order dated 14.06.2023 in OC 1890/2023 in PAO No.04/2022 dated 30.12.2022 in ECIR/HYZO/03/2017, which is impugned in the writ petition?**

- (iii) **Whether the property attached by Respondent No.4 was acquired with the proceeds of the crime, as defined under Section 2(1)(u) of the Prevention of Money Laundering Act, 2002 (for short 'PML Act')?. If so, whether the petitioner committed any predicate offence *prima facie*?**
- (iv) **Whether the Order dated 14.06.2023 in O.C.1890/2023 in PAO No.04/2022 dated 30.12.2022 in ECIR/HYZO/03/2017 is illegal and arbitrary. If so, whether the same can be set-aside.**

**POINT No.1:**

25. Learned counsel for the respondent placed reliance on the judgments of Hon'ble Supreme Court in **Vijay Madanlal Choudhary & Ors. v. Union of India** (referred supra), **R.P. Infosystem Limited vs. Adjudicating Authority<sup>5</sup>**, **M/s. Goldcroft Properties Pvt Limited s. Directorate of Enforcement<sup>6</sup>**, **G. Gopalakrishnan vs. Deputy Director<sup>7</sup>** and contended that, when an alternative efficacious remedy by way of appeal is available under the Statute,

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<sup>5</sup> W.P.A No.12335 of 2023 dated 16.06.2023

<sup>6</sup> W.P (c) 2191/2023 dated 20.02.2023

<sup>7</sup> W.P.No.11454 of 2018 dated 03.01.2019

this Court cannot exercise extraordinary jurisdiction under Article 226 of the Constitution of India.

26. Whereas, learned counsel for the petitioner, during his argument, relied on the judgments of the Hon'ble Supreme Court in **L. Chandra Kumar vs. Union of India<sup>8</sup>; M/s. Godrej Sara Lee Ltd vs. The Excise and Taxation Officer-cum-Assessing Authority<sup>9</sup>; State Of U.P. & Anr vs U.P. Rajya Khanij Vikas Nigam S.S. & Ors<sup>10</sup>** to contend that, it is not proper to dismiss a writ petition on the ground of availability of alternative remedy without examining whether an exceptional case has been made out for such entertainment, since availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law.

27. A similar question as to maintainability of writ petition without exhausting the statutory remedy in paragraphs 151 and 152 of the

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<sup>8</sup> AIR 1997 SUPREME COURT CASES 1125

<sup>9</sup> Civil Appeal No.5393 of 2010 dated 01.02.2023

<sup>10</sup> 2008 (12) SCC 675

judgment in **Lalaram and Others v Jaipur Development Authority**

**and Another**<sup>11</sup> the Supreme Court also held as follows:

“151. The Constitutional Courts are sentinels of justice and vested with the extraordinary power of judicial review to ensure that the rights of the citizens are duly protected. That the quest for justice is a compulsion of judicial conscience, found its expression in *C. Chenga Reddy v. State of A.P.* [*C. Chenga Reddy v. State of A.P.*, (1996) 10 SCC 193 : 1996 SCC (Cri) 1205] in the following extract: (SCC p. 223, para 56)

“56. ... *A court of equity must so act, within the permissible limits so as to prevent injustice. ‘Equity is not past the age of child-bearing’ and an effort to do justice between the parties is a compulsion of judicial conscience. Courts can and should strive to evolve an appropriate remedy, in the facts and circumstances of a given case, so as to further the cause of justice, within the available range and forging new tools for the said purpose, if necessary to chisel hard edges of the law.*”

(emphasis supplied)

152. This underlying thought found erudite elaboration in *Manohar Lal Sharma v. Union of India* [*Manohar Lal Sharma v. Union of India*, (2014) 2 SCC 532 : (2014) 4 SCC (Cri) 1] : (SCC p. 559, para 47)

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<sup>11</sup> (2016) 11 SCC 31

“47. The Supreme Court has been conferred very wide powers for proper and effective administration of justice. *The Court has inherent power and jurisdiction for dealing with any exceptional situation in larger public interest which builds confidence in the rule of law and strengthens democracy.* The Supreme Court as the sentinel on the qui vive, has been invested with the powers which are elastic and flexible and in certain areas the rigidity in exercise of such powers is considered inappropriate.”

(emphasis supplied)”

28. In **Commissioner of Income Tax and others v. Chhabil**

**Dass Agarwal**<sup>12</sup> the Apex Court held as follows:

“Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See State of U.P. v.

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<sup>12</sup> (2014) 1 SCC 603

Mohd. Nooh<sup>13</sup>, Titaghur Paper Mills Co. Ltd.  
v. State of Orissa<sup>14</sup>, Harbanslal Sahnia v.  
Indian Oil Corpn. Ltd<sup>15</sup> and State of H.P. v.  
Gujarat Ambuja Cement Ltd<sup>16</sup>)

29. The jurisdiction of this Court under Article 226 of the Constitution of India is wide, but such discretionary jurisdiction has to be exercised sparingly. However, in the above judgments, the Apex Court was of the view that, in exceptional circumstances, the Courts can exercise power under Article 226 of the Constitution of India.

30. The Apex Court in **L.K. Verma v. H.M.T Limited and others**<sup>17</sup>, held that it is well settled that, availability of an alternative forum for redressal of grievances itself may not be sufficient to come to a conclusion that the power of judicial review vested in the High Court is not to be exercised. The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition *inter alia* on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Despite existence of an alternative

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<sup>13</sup> AIR 1958 SC 86

<sup>14</sup> (1983) 2 SCC 433

<sup>15</sup> (2003) 2 SCC 107

<sup>16</sup> (2005) 6 SCC 499

<sup>17</sup> AIR 2006 SC 975

remedy, a writ court may exercise its discretionary jurisdiction of judicial review *inter alia* in cases where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the Act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate as a bar.

31. The Apex Court laid down additional grounds to exercise power of judicial review under Article 226 of the Constitution of India in **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai** (referred supra). In the above judgment, the Hon'ble Apex Court while referring earlier judgments of the Apex Court in **Collector of Customs, Bombay vs. Ramchand Sobhraj Wadhvani and others**<sup>18</sup> and **Calcutta Discount Company Limited vs. Income Tax Officer Companies District**<sup>19</sup> laid down an additional ground.

32. In **Collector of Customs, Bombay vs. Ramchand Sobhraj Wadhvani and others** (referred above), the Apex Court held as follows:

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<sup>18</sup> AIR 1961 SC 1506

<sup>19</sup> AIR 1961 SC 372

*"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus per-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court".*

33. In **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai** (referred supra), the Hon'ble Apex Court held as follows:

*"Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition*

*under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.”*

34. The Hon'ble Apex Court, time and again laid down certain principles as to under what circumstances the Court can exercise its power of judicial review under Article 226 of the Constitution of India and that there is no absolute bar to entertain such writ petitions, more particularly, when the authorities passed an order in violation of principles of natural justice or without considering any law or without affording any opportunities to the parties.

35. In another recent judgment of the Hon'ble Supreme Court in **M/s. Godrej Sara Lee Ltd vs. The Excise and Taxation Officer-cum-Assessing Authority & ors**<sup>20</sup>, the Hon'ble Apex Court held that, availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy

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<sup>20</sup> 2023 LiveLaw (SC) 70

provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law.

36. In **Maharashtra Chess Association v. Union of India**<sup>21</sup> the Division Bench of Apex Court was called upon to decide whether the existence of an alternate remedy would create a bar on High Court to exercise writ jurisdiction, it held, “The existence of an alternate remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court’s writ jurisdiction and therefore does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court.”

37. In view of the law laid down by the Apex Court, writ petition can be entertained, though alternative remedy by way of statutory appeal is available when the statutory authority did not exercise their power in accordance with law while passing the impugned order or that the orders were passed in violation of principles of natural justice or the order suffers from patent illegality. Therefore, writ petition is maintainable against the impugned order. Accordingly, the point is answered in favour of the petitioner and against the respondents.

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<sup>21</sup> Civil Appeal No. 5654 of 2019 @Special Leave Petition (C) No 29040 of 2018 dated 29.07.2019

**POINT No.2:**

38. One of the major contentions of the petitioner is that, the very passing of the order making the attachment of the property absolute by Single Member who is an Administrative Member of the Adjudicating Authority is illegal. But the respondent contended that, in view of Section 6(5)(b) of PML Act, a Bench may be constituted by the Chairperson of the Adjudicating authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit and according to Section 6(5)(c), the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and at such other places as the Central Government may, in Consultation with the Chairperson, by notification, specify.

39. Learned counsel for the respondent relied upon Section 6(5)(b) referred above to contend that a Single Member of Adjudicating authority can pass any order.

40. In **Karvy India Reality Limited vs. Directorate of Enforcement**<sup>22</sup>, similar question came up for consideration before

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I.A.No.1 of 2022 W.P.No.41133 of 2022 dated 13.03.2023

the Telangana High Court, wherein the learned single Judge held that every Bench of Adjudicating Authority shall invariably have a member having experience in the field of law for adjudication of show cause notice and passing order of provisional attachment. But the said judgment of the learned single Judge was overruled by the Hon'ble Division Bench of High Court of Telangana in **Directorate of Enforcement vs. Karvy India Reality Limited**<sup>23</sup> holding that, when legislature confers function of adjudication on an authority under statute, same can be performed by such authority within four corners of power conferred on it. Thereafter, the matter was carried in appeal to the Hon'ble Supreme Court vide Special Leave Petition Criminal Diary No.30703 of 2024 and the same is pending for consideration. Since the matter is subjudice before the Hon'ble Supreme Court, this Court is not expressing its views on this issue. Accordingly, the point is answered.

**POINT NO.3:**

41. The petitioner filed W.P.No.19038 of 2023 raising various grounds. One among them is that, the petitioner did commit no

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<sup>23</sup> W.A.No.611 of 2023 dated 12.02.2024

predicate or schedule offence and that the properties attached by Respondent No.4 vide Provisional Attachment Order No.04/2022 dated 30.12.2022 in ECIR/HYZO/03/2017 would not fall within the definition of "proceeds of the crime". This writ petition is filed challenging the Order dated 14.06.2023 in OC 1890/2023 in PAO No.04/2022 dated 30.12.2022 in ECIR/HYZO/03/2017 passed by the Adjudicating Authority/Respondent No.2 as illegal, arbitrary and consequently, set-aside the same, on the ground that the property was acquired long prior to the alleged commission of offence by this petitioner on 08.03.2011. Therefore, the provisional attachment of property by Respondent No.4 is a serious illegality, making the attachment absolute by a Single Administrative Member of Adjudicating Authority, under PMLA is contrary to law and an abuse of process of law.

42. At this stage, it is relevant to refer to the date of offence allegedly committed by the petitioner. As per F.I.R for the offences punishable under Sections 13(2) r/w13(1)(c) & (d) of Prevention of Corruption Act, 1988 and Sections 120 r/w 420, 468, 471 & 409 of Indian Penal Code is 08.03.2011. The date is not in controversy.

43. Before going to decide as to whether the property was acquired with the proceeds of the crime or not, it is necessary to advert to the definition of "Proceeds of Crime" under Section 2(1)(u) of the PML Act and it is extracted hereunder for better appreciation:

*(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"*

44. The Madras High Court had an occasion to define the word of "Proceeds of Crime" in **Indian Bank vs. Govt. of India, Ministry of**

**Finance, Dept. of Revenue, Directorate of Enforcement<sup>24</sup>** as

under:

*“The expression ‘proceeds of crime’ is defined in Section 2(1)(u) to mean any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a schedule offence or the value of any such property.*

45. In **Rana Ayyub vs. Directorate of Enforcement through its Assistant Director<sup>25</sup>**, the Hon’ble Supreme Court observed that, the involvement of a person in any one or more of certain processes or activities connected with proceeds of crime, constitutes the offence of money laundering. These processes or activities include, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; or (vi) claiming as untainted property. In other words, a person may (i) acquire proceeds of crime in one place, (ii) keep the same in his possession in another place, (iii) conceal the same in a third place, and (iv) use the same in a fourth place. The area in which each one of these places is located, will be the area in which the offence of money- laundering has been committed. To put

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<sup>24</sup> (2012) 4 CTC 225 (Mad)

<sup>25</sup> W.P. (Criminal) No.12 of 2023 dated 07.02.2023

it differently, the area in which the place of acquisition of the proceeds of crime is located or the place of keeping it in possession is located or the place in which it is concealed is located or the place in which it is used is located, will be the area in which the offence has been committed. In addition, the definition of the words “proceeds of crime” focuses on “deriving or obtaining a property” as a result of criminal activity relating to a scheduled offence. Therefore, the area in which the property is derived or obtained or even held or concealed, will be the area in which the offence of money-laundering is committed.

46. In **Directorate of Enforcement vs. Padmanabhan Kishore**<sup>26</sup>, the Division Bench of the Hon’ble Supreme Court, defined “proceeds of crime” in PMLA, *inter alia*, means any property derived or obtained by any person as a result of criminal activity relating to a scheduled offence.

47. To find out whether the property was directly or indirectly obtained or derived from the Proceeds of crime, the date of offence,

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<sup>26</sup> 2022 SCC OnLine SC 1490

date of obtaining or deriving or acquiring the property are much relevant for the purpose of deciding the issue.

48. The date of crime, as alleged in F.I.R and other material placed before this Court by Respondent Nos.2 & 4 is 08.03.2011. The specific allegation against this petitioner is that, an amount of Rs.4,00,00,000/- was transferred to the account of M/s. Sri Bhuvanewari Agri Processing & marketing P Ltd from the account of 16 Kisan Credit Card Holders/Ryoths allegedly on 08.03.2018. So, the date of offence is certain according to the allegations made in the complaint. The amount of Rs.4,00,00,000/- was transferred from the account of Bhagyarao Kummarigunta and 15 others to the account of M/s. Sri Bhuvanewari Agri Processing & marketing P Ltd. But the property attached by Respondent No.4 was purchased long prior to alleged offence. The details of name of the property holder, document number and date are shown as under:

Sl. NO.	Name of the property holder	Doc No. & date	SRO	Description of the property	Document value in INR	Current market value in INR
1	Eluri Prasad Rao	1608/2014 Dt. 07.03.2011	Nallapadu	Ankireddipalem Survey :592, 585 Extent: 1.2 Acres	24,00,000	4,72,89,610
2	Eluri Prasada Rao	3849/2010 Dt 03.06.2010	Nallapadu	Survey: 600, 588, 591/1, Extent: 1.84 acres Ankireddipalem	11,04,000	

3	Eluri Prasada Rao	4489/2010 Dt 28.06.2010	Nallapadu	Survey: 584, 585 Extent: 1.51 acres Ankireddipalem	09,06,000	
4	Eluri Prasada Rao	1422/2011 Dt 24.02.2011	Nallapadu	Survey: 588 Extent: 0.66 acres Ankireddipalem	5,28,000	
5	M/s. Sri Bhuvan eswari Agri Processing P Ltd	8116/2011 Dt 06.09.2011	Nallapdu	Pothuru/Potturu RU W-B:0-0 Survey: 422/A 422/B, 422/C Extent: 6.06 acres	27,27,000	
6	Eluri Prasada Rao	2870/2009 Dt 31.08.2009	Martoor	Rajulapalem/ Degaramudi w-8; 0-0 survey:268/8, 268/C, 270, 271 Extent: 5.1 acres	9,18,000	30,60,000
			<b>Total</b>		<b>85,83,000</b>	<b>5,03,49,610</b>

49. For Item No.4, the date of Document No.1422/2011 is mentioned as 24.04.2011 in the order impugned, but the actual date of Document is 24.02.2011.

50. As seen from the details furnished in Schedule –B of the order impugned in the writ petition, except Item No.5, all other properties were acquired prior to the commission of alleged offence under registered documents referred in Column No.3 of the table.

51. Item Nos.1 to 3 & 6 were acquired or obtained prior to alleged commission of offence under PMLA. The property covered by Sale Deed bearing Document No.8116/2011 dated 06.09.2011 was acquired by M/s. Sri Bhuvan eswari Marine Food Processing Private

Limited for Rs.27,27,000/-. M/s. Sri Bhuvanewari Marine Food Private Limited is a company incorporated under the Company's Act. Therefore, the company is having its independent legal entity and common seal and the property acquired by the company cannot be treated as a property of any individual.

52. As discussed above, Item Nos.1 to 3 & 6 mentioned in Schedule-B of the property were acquired long prior to commission of the alleged schedule offence by the petitioner. Item No.5 was acquired by the company M/s. Sri Bhuvanewari Marine Food Processing Pvt. Ltd, an artificial person having its separate legal entity and thereby, attachment of the property by Respondent No.4 and making provisional attachment of the property vide Order dated 14.06.2023 in OC 1890/2023 in PAO No.04/2022 dated 30.12.2022 in ECIR/HYZO/03/2017 and making the order of provisional attachment as absolute is without application of mind, illegal and liable to be set-aside on this ground also.

53. Time and again, the Courts have considered the effect of attachment and exempted the property that acquired prior to commission of offence from attachment. Recently, in **Pavana Dibbur**

**vs. The Directorate of Enforcement**<sup>27</sup>, while deciding a similar issue regarding attachment of property that was acquired prior to commission of an offence, referring the judgment in **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors** (referred supra) concluded that, the property that was acquired prior to commission of a schedule offence is liable to be exempted. In **Vijay Madanlal Choudhary & Ors. v. Union of India** (referred supra), the conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of subsection (1) of Section 3 of the PMLA. The relevant paragraph in the judgment is as follows:

*“Another allegation is that both the first and second properties have been acquired out of the proceeds of crime. The first property, ex-facie, cannot be said to have been any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its acquisition.”*

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<sup>27</sup> CrI.A No.2779 of 2023 dated 29.11.2023

54. In the present case also, the property covered by Item Nos.1 to 3 & 6 were acquired prior to commission of alleged offence and whereas, Item No.5 was acquired by M/s. Sri Bhuvanewari Marine Food Processing Private Limited, having independent legal entity. Hence, attachment of the property covered by Item Nos.1 to 3 & 6 is void and liable to be rejected.

55. Proceeds of crime constitutes core for the offence of money-laundering. Properties which have been targeted in most of the corresponding cases for attachment by enforcement authority under PMLA are not properties which can be described even remotely to be those which had been derived or obtained as a result of criminal activity leading to commission of money-laundering. All such assets were acquired much prior to acts of commission or omission relating to money laundering. Enforcement authority having not been able to lay its hands on property derived or obtained from money laundering has proceeded to reach out to other assets of suspects that appear *prima facie* to have been acquired earlier from legitimate means because they are properties of same value as would have been value of pecuniary advantage gained by money laundering. If enforcement authority under PMLA has not been able to trace

tainted property which was acquired or obtained by criminal activity relating to schedule offence for money-laundering, it can legitimately proceed to attach some other property of accused. But, for this exercise to be a fair exercise, objective of PMLA being distinct from purposes of three other enactments viz., RDBA, SARFAESI Act and Insolvency Code, latter cannot prevail over former. If order confirming attachment has attained finality, or if order of confiscation has been passed or, further if trial of a case for the offence under Section 4 of PMLA has commenced, claim of a party asserting to have acted bonafide or having legitimate interest will have to be inquired into and adjudicated upon only by Special Court, as such, assets which have been subject matter of attachment in appeals at hand are not tainted property. (vide **Deputy Director Directorate of Enforcement of Delhi and another vs. Axis Bank**<sup>28</sup>).

56. In **Sanjay Agarwal vs. Union of India**<sup>29</sup>, the Delhi High Court analyzed the meaning of value of the property derived or obtained from commission of schedule offence i.e the alleged criminal activity. In Paragraph Nos.42 & 43, it is held as follows:

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<sup>28</sup> 2019 (2) Crimes (HC) 181 (Del)

<sup>29</sup> 2018 (5) RCR (Criminal) 507

*However, that is not the case here. It is apparent to the Court that the Detaining Authority was unclear about the grounds on which it should authorize the detention of Mr. Sanjay Agarwal. This is evident from the reading of para 34 where repeatedly the word 'or' is used to separate out the different grounds. This is suggestive of two things: first the Detaining Authority was unsure if the facts brought on record constituted one or more of these grounds; and second, there was in fact non-application of mind as simply taking the wording of the Section 3.*

*In the present case, concededly property was purchased in 1991 and mortgaged with bank in 2009. The alleged offence was committed in 2013 whereas attachment order was passed in December, 2017. There is nothing on record to show that Appellants after 2009 or 2013 attempted to dispose of property in question which prompted the respondent to pass attachment order. The respondent has simply taken wording of Section 5(1) of the PMLA and reiteration of these words would not constitute recording of reasons that if property is not attached, it may result in frustrating any proceedings of confiscation. The respondent was bound to record the reasons on the basis of material in his possession that property is likely to be concealed or transferred or dealt with in*

*any manner. Use of all words i.e. concealed, transferred or dealt with in any manner shows that Respondent was not specific with respect to possibility of action of Appellant which would have frustrated proceedings of confiscation. It further shows that there was no application of mind and respondent simply picked up words from Section 5 of the PMLA and inserted in the order. Accordingly, we hold that Respondent has passed attachment order without recording the reasons on the basis of material in his possession that property in question was likely to be concealed, transferred or dealt with in any manner which would frustrate confiscation proceedings”*

57. In view of the law laid down by the Delhi High Court, the property acquired prior to commission of scheduled offence i.e. criminal activity cannot be attached unless the property is obtained from the scheduled offence, as held or taken outside the country.

58. Here, in the present case, the property shown as Item Nos.1 to 4 & 6 were acquired much prior to commission of alleged offence under PMLA. Therefore, Item Nos.1 to 4 & 6 cannot be said to be the property acquired with the proceeds of the crime, as defined under Section 2(1)(u) of PMLA, since the petitioner allegedly committed

offence on 08.03.2011 and all the transactions pertaining to Item Nos.1 to 4 & 6 were prior to commission of alleged offence. Therefore, those items cannot be attached treating them as the property derived or obtained from the proceeds of the crime.

59. At the same time, Item No.5 was acquired under Registered Sale Deed bearing Document No.8116 of 2011 dated 06.09.2011 by M/s. Sri Bhuvanewari Marine Food Processing Pvt. Ltd and not by M/s. Sri Bhuvanewari Agri Processing & Marketing Processing Pvt. Ltd.

60. Item Nos.1 to 4 & 6 were not acquired with the proceeds of crime and they were acquired much prior to alleged crime and acquisition of above items cannot be construed as the property obtained or derived from the proceeds of crime either directly or indirectly as defined under Section 2(1)(u) of PML Act. Therefore, none of the items shown in Schedule-B i.e. Immovable properties acquired by the petitioner is liable for attachment either provisionally or finally. Hence, the order passed by Respondent No.4 attaching the property provisionally making the attachment absolute by Respondent No.2 in the impugned proceedings is illegal, arbitrary

and violative of Section 2(1)(u) r/w Sections 5(1), 8(3) and Section 3 of PMLA, besides Articles 14 & 300-A of the Constitution of India. Accordingly, the point is answered.

**P O I N T No.4**

61. On plain reading of the order passed by Respondent No.4 indicates that, Respondent No.4 did not apply it's mind, as to the requirement as held in the judgment referred above. On this ground also, the Provisional Attachment Order is liable to be set-aside. Apart from that, Respondent No.4 did not even examine the date of commission of alleged offence and date of purchase, to decide whether the property was acquired, derived or obtained with the proceeds of the crime. Therefore, Respondent No.4 without applying mind passed Provisional Attachment Order and committed a grave error in passing the Provisional Attachment Order.

62. Respondent No.2 did not record his reason to believe that the petitioner has committed an offence under Section 3 of PMLA and in possession of the property obtained or acquired with the proceeds of the crime and thus, committed an error in issuing show cause notice and it's confirmation of Provisional Attachment Order.

63. Respondent No.2 is under obligation to record his reason to believe that the petitioner has committed an offence punishable under Section 3 of PMLA. But, in the present case, Respondent Nos.2 & 4 did not comply with the mandatory procedure prescribed under Section 5(1)(a) before Ordering Provisional Attachment and Section 8(1) of PMLA before ordering show cause notice for confirmation of Provisional Attachment Order. Thus, Respondent Nos.4 & 2 committed a grave error in utter deviation of procedure prescribed under PMLA and consequently, ordering Provisional Attachment Order passed by Respondent No.4 and it's confirmation order passed by Respondent No.2 in the impugned proceedings are illegal and in violation of the provisions of PMLA and liable to be set-aside on this ground also.

64. In view of my findings on Point Nos.1 to 4, unless the property was derived or obtained with the proceeds of crime, as defined under Section 2(1)(u) of PMLA or the property was acquired with tainted money, the attachment cannot be sustained. This Court has recorded specific findings in the points referred supra, that all the properties i.e. Item Nos.1 to 4 & 6 were acquired much prior to the

commission of alleged offence by this petitioner and the question of acquiring the property either directly or indirectly, the property attached by Provisional Order does not arise. Moreover, Item No.5 of the property belongs to M/s. Sri Bhuvanewari Marine Food Processing Private Limited, a company incorporated under The Companies Act, 2013, having its separate legal entity with common seal.

65. As discussed above, I find that the Provisional Attachment by Respondent No.4 and its confirmation by the Adjudicating Authority/Respondent No.2 herein is contrary to law and Respondent No.2 failed to satisfy the Court that the property was derived or obtained directly or indirectly from the proceeds of the crime, thereby, the Provisional Attachment and its confirmation under the impugned order are liable to be set-aside.

66. However, the petitioner filed detailed objections before the competent authority, but, the competent authority did not consider the specific objections which goes to the root of the matter while passing the order.

67. It is noticed that, neither M/s. Sri Bhuvanewari Agri Processing & Marketing Private Limited nor Sri Bhuvanewari Marine Food Processing Pvt. Ltd are not parties to the present writ petition. Only, Eluri Prasada Rao alone is the petitioner, who is the Managing Director of both the companies allegedly. His contention is that, no notice was served to both the companies. But, such fact cannot be adjudicated in the present writ petition as to whether any notice was served on both the companies or not, since it is for the companies to challenge the attachment of property whether it belongs to it exclusively. Neither M/s. Sri Bhuvanewari Agri Processing & Marketing Private Limited nor Sri Bhuvanewari Marine Food Processing Pvt. Ltd did not challenge the property in Item No.5 of the Schedule – B of the impugned order as illegal. In those circumstances, it is appropriate to leave it open to both the companies i.e. M/s. Sri Bhuvanewari Agri Processing & Marketing Private Limited nor Sri Bhuvanewari Marine Food Processing Pvt. Ltd to challenge the attachment order, if it is illegal on any of the grounds, if advised, while filing appropriate application or petition before the competent authority or before the Court.

68. Therefore, it is necessary to examine the matter afresh based on the objections and decide whether the properties attached are the properties which fall under Section 2(u) of the PML Act.

69. In the result, writ petition is disposed of, setting aside the Provisional Attachment Order passed by Respondent No.2 i.e. Order dated 14.06.2023 in OC 1890/2023 in PAO No.04/2022 dated 30.12.2022 in ECIR/HYZO/03/2017, and the matter is remanded to Respondent Nos.2 & 4 for passing order afresh, in accordance with law, after considering each and every objection raised by the petitioner.

70. Consequently, miscellaneous applications pending if any, shall stand closed.

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**JUSTICE VENKATESWARLU NIMMAGADDA**

Date: 10.01.2025

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**THE HON''BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

**WRIT PETITION NO: 19038/2023**

Date: 10.01.2025

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