

**(2025) 07 DEL CK 0780**

**In the Delhi High Court**

**Case No : Miscellaneous Appeal (PMLA) No. 24 Of 2025**

Shiv Murat Dwivedi

APPELLANT

Vs

Directorate Of Enforcement

RESPONDENT

**Date of Decision : 02-07-2025**

**Acts Referred:**

Code of Criminal Procedure, 1973 — Section 173

Maharashtra Control of Organized Crime Act, 1999 — Section 3

Prevention of Money Laundering Act, 2002 — Section 2(1)(u), 3, 5(5), 23, 24, 26, 42, 50

Immoral Trafficking (Prevention) Act, 1956 — Section 3, 4, 5, 6, 8

**Citation : (2025) 07 DEL CK 0780**

**Hon'ble Judges :** Subramonium Prasad, J; Harish Vaidyanathan Shankar, J

**Bench :** Division Bench

**Advocate :** Mohit Chaudhary, Kunal Sachdeva, Katyayani Vajpayee, Rahul Tyagi, Mathew M. Philip, Karan Grover, Sangeet Sibou, Aniket Kumar Singh

**Final Decision :** Dismissed

## Judgement

Subramonium Prasad, J.

1. The instant Appeal under Section 42 of the Prevention of Money Laundering Act, 2002 ("PMLA") has been preferred by the Appellant against the final order and judgment dated 25.02.2025 ("Impugned Order") passed by the learned Appellate Tribunal in FPA-PMLA-1953/DLI/2017. By way of the Impugned Order, the learned Appellate Tribunal, while dismissing the appeal under Section 26 of PMLA, has upheld the Attachment Order dated 06.08.2015 passed by the Adjudicating Authority in the Original Complainant No. 478/2015, which confirmed the attachment of properties attached by the Respondent/Enforcement Directorate ("ED") vide PAO No. 09/2015 dated 28.03.2025 ("Provisional Order").

2. The Respondent/ED had attached the following list of properties belonging to the Appellant in connection with Enforcement Case Information Report bearing No. ECIR/53/DZ/2010 since 28.03.2015:-

I. Bank A/Cs

S.

No.

Name

A/c No.

Last Balance

1.

Barclays Bank,

Nehru Place

000003280571

0.00

2.

Barclays Bank,

Nehru Place

000003152103

1,25,361.39

3.

HDFC Bank,

GK-I, New Delhi

00921000112082

0.00

4.

HDFC Bank,

Sec 28, Noida

00881370001348

24,916.43

5.

ICICI Bank,

CP, New Delhi

000701211460

22,316.45

6.

HDFC Bank,

Deer Park, Safdarjung,

New Delhi

05031930005607

1,01,683.45

Total Balance

2,74,277.72

II. Life Insurance Policies

S.

No.

Policy No.

Insurance

Provider

Date of

Maturity

Sum

Assured

1.

111973427

LIC

15.11.2016

1,00,000

2.

113049028

LIC

25.01.2016

50,000

3.

1200900858548

Metlife Insurance Co.

31.03.2019

25,000

4.

00359581

ICICI Prudential Life Insurance

Lifetime

3,00,000

### III. Vehicle

S. No.

Details of Vehicle

1.

Honda City Car No. DL7CF2115

### IV. Immovable Property

S.

No.

Address of the Property

1.

Entire Property at C-120/1, Jawahar Park, Devli Road, Khanpur,

Delhi values at Rs. 52,81,900/-

3. Brief facts leading to the attachment of properties belonging to the Appellant are as follows:-

a) On 25.02.2010, information was received at Police Station, Saket that a gang involved in immoral trafficking of women was active near PVR Saket and that certain pimps along with girls would be coming to the area at around 10:00 P.M. for soliciting customers and if a raid were to be conducted at the spot, they could be caught red-handed.

b) Acting on the information, a raid was conducted at the spot, and the Appellant along with one Praveen Kumar and six women were apprehended from a Honda City and Honda Civic car. Subsequently, FIR No. 47/2010 dated 26.02.2010 was registered at PS Saket, New Delhi against the abovementioned persons for commission of offences punishable under Sections 4, 5 & 8 of Immoral Trafficking

(Prevention) Act, 1956 ("ITP Act").

c) Upon the completion of investigation, the Delhi Police filed a Final Report before the Court of Metropolitan Magistrate (South), Saket Courts, Delhi on 26.04.2010 against the following accused persons for commission of offences punishable under Sections 3, 4, 5, 6 & 8 of the ITP Act:-

i. The Appellant, being Shiv Murat Dwivedi @ Shiva @ Rajiv @ Swamiji S/o Baccha Lal Dwivedi

ii. Praveen Kumar S/o Ram Narayan

iii. Shashi Prabha D/o Sh. Sanjeev Malhotra

iv. Shalini Gautam D/o Sh.D. C. Gautam

v. Seema Chakrabarty D/o Sh. Pradeep Chakrawarti

vi. Ashu Dube W/o Sh. Adarsh

vii. Riya Sharma W/o Sh. Praat Pal Singh

viii. Raina Singh @ Gurender Priti w/o Sh. Jag Jeet Singh

d) Another FIR No. 54/2010 dated 06.03.2010 was registered at PS Saket against the abovementioned persons for commission of offences under Section 3 of the Maharashtra Control of Organized Crime Act, 1999 ("MCOCA"). After completion of the investigation, the Delhi Police filed a Final Report (Charge Sheet) under section 173 of the Cr.P.C. in FIR No. 54/2010, in the Court of Additional Sessions Judge, Designated Court MCOCA, Patiala House Court, New Delhi on 16.08.2010 against the Appellant and one Praveen Kumar @ Ankit for commission of offences punishable u/s 3 of the MCOCA.

e) During the investigation of FIR No. 47/2010 u/s 3, 4, 5, 6, 8 of ITP Act, a number of personal diaries, cheque books, CDs, Pamphlets, cash Rs. 1,55,000/- and US\$ 20, a gold arm band, mobile phones, 2 Honda cars, and various bills, cash receipts, insurance policies, deposit slips, credit cards and sundry documents showing income and expenditure and transactions of their illegal trade were seized.

f) After the arrest of the Appellant, Praveen Kumar and their associates, their criminal activities were studied. It was observed that the accused Shiv Murat Dwivedi was indulged in continuing unlawful activities in an organized manner and had generated huge wealth to the tune of Rs. 1.5 crores (approx.) from these activities.

g) The investigation further revealed that the Appellant and his associates had no legal source of income but they accumulated huge wealth by continuously indulging in the said criminal activities.

h) As a result, the Respondent/ED recorded ECIR No. 53/DZ/2010 and thereafter

initiated investigation under PMLA. The Respondent/ED conducted the investigation under PMLA and recorded the statement of accused persons/suspects and others and also obtained the documents from the banks and Income Tax Department. On the basis of material on record, the Respondent/ED attached the properties of the Appellant and thereafter filed Original Complaint No. 478/2015 under Section 5(5) of PMLA against the Appellant for confirmation of Provisional Order.

i) The Adjudicating Authority, being satisfied with the allegations made by the Respondent/ED in the complaint along with the relied upon documents, issued show cause notice to the Appellant as well as other defendants.

j) After receiving the replies and arguments advanced by the parties, the Adjudicating Authority confirmed the Provisional Attachment Order vide its Attachment Order dated 06.08.2015.

4. The Attachment Order dated 06.08.2015 passed by the Adjudicating Authority was challenged by the Appellant before learned Appellate Tribunal, which on 25.02.2025, upheld the Attachment Order dated 06.08.2016 and dismissed the appeal while observing as under:-

"5. After hearing the rival submissions, I have given my thoughtful consideration of the same. There is no denial to the fact that appellant is a habitual criminal being in the trade of immoral trafficking of ladies and earning money from flesh trade, as apparent from para no.2 above. Making the assets from said illicit source is not ruled out. The contention of the appellant for acquiring the assets from legal sources needs to be tested by the PMLA Court after examination and cross examination of defence witnesses. The contention of the appellant that all the movable and immovable properties mentioned in para no.1 above were invested/acquired much prior to the alleged period of offence is devoid of any merits, seeing the fact that he is continuously in this immoral trafficking from 1998 onwards."

5. The Appellant has now challenged the Impugned Order dated 25.02.2025 passed by the learned Appellate Tribunal before this Court.

6. Learned Counsel for the Appellant submits as under:-

a) The scheduled offences have been registered only in 2010, whereas the Appellant had acquired the attached property on 14.03.2003, that is, almost 7 years earlier;

b) At the time of commissioning of the scheduled offences, the PMLA Act 2002 was not in force and thus, no retrospective application is permitted to attach the properties of the Appellant;

c) The learned Appellate Authority fails to draw out its 'reasons to believe' as to which specific predicate/scheduled offence was committed by the Appellant which resulted in the tainted money and that this was the tainted money used by the

Appellant to purchase the properties;

d) The Appellant does not possess any 'proceeds of crime' as his earnings are a result of being previously involved in religious ceremonies, from where he started earning around Rs. 35,000/- to 40,000/-, which the Appellant saved up to buy the property bearing No.C-120/1, Jawahar Park, Devli Road, Khanpur, Delhi – 110062 comprising of basement, ground and first floor from one Late Sh. Mool Chand for a sale consideration of Rs. 1,60,000/-;

e) Possession of unaccounted property acquired by legal means does not qualify the said property as "proceeds of crime";

f) The presumption under Section 23 PMLA is a mere conjecture since the transactions took place in two different timelines which cannot be interconnected.

7. To support its submissions, learned Counsel for the Appellant has relied upon the judgment of the Apex Court in *Pavana Dibbur v. The Directorate of Enforcement*, (2023) 15 SCC 91, and a Division Bench of the Punjab and Haryana High Court in *Seema Garg v. Deputy Director, Directorate of Enforcement*, 2020 SCC OnLine P&H 738.

8. Per contra, learned Standing Counsel for the Respondent/ED has contended as under:

a) The Appellant has indulged in continued unlawful and illegal activities since 1997 and has managed to launder proceeds of crime of around Rs. 1.5 crores from flesh trade and organized crime and continues to possess the said proceeds of crime in the form of attached properties;

b) The offence of money laundering under PMLA is continuing in nature and therefore any proceeds of crime generated prior to the coming in force of the said legislation or before the predicate offence was included in the schedule would still be covered within the scope of PMLA, considering the accused continues to be in possession of such proceeds of crime;

c) The Appellant has failed to discharge the burden of proof under Section 24 of the PMLA to prove that he is not involved in money laundering and that the attached properties are not proceeds of crime; and

d) Even if it is assumed that the subject properties attached are untainted, then also the same can be attached as proceeds of crime as per Section 2(1)(u) of PMLA, if the actual proceeds of crime remain untraceable.

9. To support its contentions, the learned Standing Counsel for Respondent/ED has relied upon the judgments of the Apex Court in *Gautam Kundu v. Directorate of Enforcement*, (2015) 16 SCC 1, *Vijay Madanlal Choudhary v. Union of India*, (2023) 12 SCC 1, *Pradeep Nirankarnath Sharma v. State of Gujarat*, 2025 SCC OnLine SC 560 and Single Benches of this Court in *Enforcement Directorate v. Axis Bank*, 2019 SCC OnLine Del 7854 & *Prakash Industries Limited v. Directorate of Enforcement*, 2022 SCC OnLine Del 2087.

10. Heard the learned Counsel for the parties and perused the material on record.

11. The core question that arises for adjudication by this Court is whether the attachment of properties acquired by the Appellant as proceeds of crime under PMLA was justified, considering the properties were purchased in the year 2003, while the offences which the Appellant is alleged to have committed were registered in several FIRs only in 2010.

12. Since the present appeal revolves around the dispute of whether the Appellant's properties would constitute proceeds of crime under PMLA, it would be apposite to refer to the definition of 'proceeds of crime' given under Section 2(1)(u), which reads as under:

"2. Definitions.— (1) In this Act, unless the context otherwise requires, —

xxx

(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;]

13. Further, the offence of money laundering, which has been defined under Section 3 of the PMLA, reads as under:-

"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.]”

14. An extensive discussion of the rigors of PMLA has been carried out by the Apex Court in the case of Vijay Madanlal Choudhary (supra). In particular, the Apex Court gives the following interpretation on the interplay between Section 2(1)(u) and Section 3 of PMLA:-

107. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of the Explanation added in 2019 to the definition of the expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching up to the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition of "proceeds of crime". The definition of "property" also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences.

108. In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property if purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of the 2002 Act.

109. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence that can

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

15. So far as the prime contention of the Appellant is concerned, that there was a significant gap in timeline with respect to the acquiring of the subject properties by the Appellant in 2003 and registration of offences in 2010, the following observations of the Apex Court in Vijay Madanlal Choudhary (supra) fairly deal with the same:-

"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]

16. It would be appropriate to reproduce similar findings of the Apex Court in the judgment of Pradeep Nirankarnath Sharma (supra):-

" 24. ...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."

17. Coming to the facts of the present case, the material on record indicates that after the arrest of the Appellant and his associates, their criminal activities were studied, which revealed that the Appellant was indulged in continuing unlawful activities in an organized manner since 1997 and in such commission, had managed to generate huge wealth, approximately to the tune of Rs. 1.5 crores.

The Appellant was also found to be involved in several criminal cases along with his associates between the 1997 and 2003, making it abundantly clear that the Appellant is not unknown to criminal activity.

18. During the course of investigation under the ITP Act, a number of personal diaries, cheque books, CDs, pamphlets, cash to the tune of Rs. 1.55 crores, US \$20, a gold arm band, mobile phones, 2 Honda cars, and various bills, cash receipts, insurance policies, deposit slips, credit cards and sundry documents showing income and expenditure by the Appellant for illegal trade which includes payments made to brokers, call girls, servants, telephone numbers of call girls and brokers of illegal trade were found.

19. Further investigation by the Respondent/ED revealed that the Appellant used three rented accommodations at House No. 130, Village-Humayun Pur, New Delhi, 239, Sector-3, R.K. Puram, New Delhi; and 138, Govt. Colony Mohammad Pur, New Delhi. Out of these, statement of one Dushyant S/o Satbir Singh who claimed to be the owner of the property at Humayan Pur, was recorded. When the Appellant was arrested on 25.02.2010, the neighbors living around the said property informed the police that they had noticed a lot of people, mostly girls, visiting the property even when the Appellant was not present at the premises.

20. At the time of deposing under Section 50 of PMLA, the Appellant inter alia had stated that he filed annual income tax returns during the period of 1996 to 2006, however, did not remember any details of such filings or his PAN card number. In light of this statement, the Respondent/ED had obtained documents from the Income Tax Department, which revealed that the Appellant had filed returns only for Financial Years 2003-04, 2004-05 and not before. Further analysis of the returns revealed that total money available with the Appellant since 2000-01 is merely Rs. 2,38,720/- and with such amount, it was impossible for the Appellant to have invested approximately Rs. 1.88 lakhs for purchase of property, depositing in bank accounts, investment in policies and payment for rented accommodations, especially when these investments did not find place in the said ITRs.

21. While numerous explanations were tendered by the Appellant to explain a valid source of income, the intricate investigation undertaken by the police and the Respondent/ED into the crime syndicate run by the Appellant very transparently pointed towards the conclusion that the attached immovable properties, deposits in bank accounts and investments in various life-saving policies have been made out of income generated out of the proceeds gained from flesh trade and other criminal conduct. The Appellant's involvement in the offences under the ITP Act and MCOCA forms the basis of bringing his crime syndicate under the ambit of money laundering and is sufficient to categorize the subject properties as proceeds of crime. The Appellant, therefore, has indeed failed to discharge the burden of proving the facts in support of his claim that the attached properties are untainted and not obtained directly or indirectly from criminal activity.

22. It is apposite to mention that with the background of Appellant's criminal history that comes through in light of the investigation carried out by the Respondent/ED, this Court is constrained to deduce that all the investments, etc. carried out by the Appellant – at least post-1997 – are linked to the criminal syndicate the Appellant has been developing over the years. Merely because the FIR was registered in 2010 would not be sufficient to draw an adverse inference against the Respondent/ED and conclude that the attached properties have no link to the predicate offences of which the Appellant is accused of. Having been actively involved in the commission of offences under various penal legislations and no satisfactory explanation regarding legal source of income, the conclusion arrived at by the Tribunal that the properties attached by the Respondent/ED are, in fact, tainted, being properties acquired directly or indirectly from the proceeds of the Appellant's criminal activity does not warrant any interference.

23. Resultantly, with the expansive material on record before this Court and the law laid down by the Apex Court, this Court is inclined to uphold the conclusion arrived at by the learned Appellate Tribunal.

24. For the aforesaid reasons, the present appeal stands dismissed. Pending application(s), if any, also stand disposed of.