



2025:DHC:10040-DB



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

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Judgment reserved on: 22.09.2025

Judgment pronounced on: 15.11.2025

+ LPA 72/2015, CM APPL. 2627/2015 & CM APPL. 13983/2017

GAUTAM KHAITAN & ANR.Appellants

Through: Mr. Ramesh Singh, Senior Advocate along with Ms. Roopa Dayal and Mr. Shubham Jindal, Advocates.

versus

UNION OF INDIA & ANR.Respondents

Through: Mr. Himanshu Pathak, SPC along with Mr. Amit Singh, Advocate for R-1/UOI.
Mr. Zoheb Hossain, Special Counsel for ED; Mr. Vivek Gurnani - Panel counsel for ED along with Mr. Kartik Sabhwal; Mr. Pranjal Tripathi; Mr. Kanishk Maurya and Mr. S.K. Raqueeb, Advocates..

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Appeal assails the correctness of the Judgment dated 04.02.2015 [hereinafter referred to as 'IJ'] passed by the learned Single Judge [hereinafter referred to as 'LSJ'], whereby the writ petition filed by the Appellants, seeking quashing of the Provisional Attachment Order (PAO) dated 15.11.2014 in connection with the



Government's acquisition of VVIP helicopters from Agusta Westland, was dismissed.

A. BRIEF BACKGROUND:

2. Shorn of unnecessary details, the brief facts leading to the filing of the present Appeal are that pursuant to a proposal of Indian Air Force for replacement of its MI-8 VIP helicopters, a Request for Proposal (RFP) was issued in October 2000, stipulating a mandatory service ceiling requirement of 6,000 meters. This ceiling criterion was, however, subsequently relaxed to 4,500 meters, thereby enabling Agusta Westland, an Anglo-Italian helicopter design and manufacturing company, to participate in the bidding process and ultimately secure the contract for supply of 12 AW-101 VVIP helicopters to India.

3. It is the case of the Respondents that the said relaxation in the service ceiling requirement was allegedly procured through corrupt means, involving the payment of illegal gratification and kickbacks by Agusta Westland to two Italian nationals, namely Mr. Guido Ralph Haschke and Mr. Carlo Gerosa. It is alleged that these illicit funds were then routed to Indian intermediaries through the Appellant No.1, who, at the relevant time, was serving as a Legal Adviser to a company named IDS Infotech Ltd. (India) [hereinafter referred to as 'IDS India']. The Appellant No.1 is stated to have introduced key officials of IDS India to the aforementioned Italian nationals.

4. Further, in the intervening period of November 2007 to April 2010, IDS India allegedly received approximately 2.166 million Euros



from Agusta Westland. Thereafter, IDS India incorporated a wholly owned subsidiary, in Tunisia, namely IDS Sarl, Tunisia [hereafter referred to as IDS Tunisia]. Within a few months of its incorporation Messrs. Haschke and Gerosa purportedly acquired substantial interests and control in the said Tunisian entity.

5. Around the same period, another company, Aeromatrix Info Solution Ltd. [hereinafter referred to as 'AISL'], was incorporated in India, wherein the Appellant No.1, along with two others, initially served as Directors. Subsequently, Messrs. Haschke and Gerosa were also inducted onto the Board of Directors of AISL. It is alleged that the kickbacks received from Agusta Westland were ultimately funnelled through AISL, routed via Mauritius, for the purpose of disbursing illegal gratification to certain Indian officials including the Appellant No.1.

6. In consequence, thereof, the Central Bureau of Investigation ('CBI') registered an FIR No. RC-217/2013/A0003 dated 12.03.2013 against the Appellant No.1 and other individuals for commission of offences punishable under Section 120B read with Section 420 of Indian Penal Code, 1860 and Sections 7, 8, 9, 12 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Pursuant to the filing of the said FIR, the Directorate of Enforcement/Respondent No.2 [hereinafter referred to as 'ED'] registered ECIR No. DLZO/15/2014/AD(VM) dated 03.07.2014 against the accused persons, including the Appellant No.1, for commission of offences under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as 'PMLA'].



7. Subsequently, on 22.09.2014, a search and seizure operation was conducted by ED at the office and residential premises of the Appellant No.1, leading to seizure of certain moveable and immovable properties. Thereafter, on 17.10.2014, an order for retention of jewellery seized, during the aforesaid operation, was passed following the representation made by the wife (Appellant No.2) and son seeking return of the seized properties. Consequently, on 15.11.2014, the PAO was issued by the ED under Section 5 of the PMLA. The said order was then challenged by the Appellants before the LSJ.

8. The LSJ on the basis of pleadings and arguments advanced by the parties framed three jurisdictional issues for consideration:

“8.First, whether provisional attachment of the properties in issue, could have been passed without a charge sheet having been filed under Section 173 of the Cr.PC qua the scheduled offences.

8.1 Second, whether the officer concerned, who passed the impugned order, had reasons to believe based on the material available with him to order provisional attachment of the properties in issue.

8.2 Third, was there a breach of principles of natural justice in the respondents, not issuing notice to the petitioners before passing the impugned order which, resulted in provisional attachment of their properties.”

9. Upon detailed consideration of pleadings and submissions made by the parties, the LSJ returned following findings on the three issues:

9.1 **First Issue**-Upon a careful examination of the legislative history and scheme of the Act, the Court observed that after the amendment by the Prevention of Money Laundering (Amendment) Act, 2013 (Act 2 of 2013) [hereinafter referred to as ‘Act 2 of 2013’], clause ‘b’ of section 5 (1) of the PMLA which required a person to be



charged with a schedule offence before a PAO could be issued was expressly omitted. Consequently, the authorised/designated officer [hereinafter referred to as 'AO'] had the power to issue a PAO even against a person not charged, if he has, reason to believe, based on material available with him, that the proceeds of crime are likely to be concealed or transferred leading to frustration of the proceedings under the PMLA. Additionally, it was also observed that the first proviso to Section 5(1) of the PMLA, mandating a filing of report under Section 173 of Code of Criminal Procedure, 1973 [hereinafter referred to as 'CrPC'], applies only to person already charged with a scheduled offence, whereas the second proviso, being a non obstante clause, empowers the AO to issue PAO against any person meeting the conditions stipulated thereunder.

9.2 Second Issue-The LSJ while deciding the present issue in favour of the Respondents relied upon the legislative intent behind the addition of second proviso to Section 5(1) of the PMLA and observed that the PAO issued was merely a tentative arrangement aimed to act as a measure to ensure that proceedings under the Act are not rendered infructuous or futile. While applying the aforesaid principles and relying upon the FIR filed by CBI, statements recorded under the PMLA and supporting financial records, it was held that the AO's belief was grounded in cogent material and could not be characterised as arbitrary, though it remained provisional in nature, leaving it open to the petitioners to establish before the Adjudicating Authority that the attached assets are untainted.



9.3 **Third Issue-** The LSJ held that there was no breach of the principles of natural justice in issuing the PAO. In this regard, it was observed that the PMLA, by its scheme, implicitly excludes the requirement of prior notice or hearing before attachment, as the power under Section 5(1) of the PMLA is emergent and preventive in nature to ensure that proceedings under the Act are not frustrated. Moreover, adequate opportunity for hearing is provided subsequently under Section 8 of the PMLA before the Adjudicating Authority, with further appellate remedies envisaged under Sections 26 and 42 of the PMLA. Thus, the legislature, by necessary implication, did not intend a pre-decisional hearing at the provisional attachment stage.

10. Keeping in view the aforesaid discussions, the LSJ *vide* the II dismissed the Writ Petition, thereby restricting its jurisdiction to interfere with the PAO, holding that the writ court, while exercising its jurisdiction under Article 226 of the Constitution of India ('COI') possesses a circumscribed scope of interference, particularly when the proceedings are at a nascent stage of Section 5 of the PMLA. The LSJ further observed that the PAO, being only an interim measure based on a *prima facie* satisfaction, ought not to be interdicted at such an incipient stage unless a case of manifest arbitrariness or lack of jurisdiction is established.

11. The Appellants have now approached this Court in Appeal, seeking to challenge the correctness of the judgment.

12. This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book.



13. Learned counsel for the parties have filed their respective written submissions and have relied upon judgments thereof. The contentions of the parties are examined hereinafter.

14. Before turning to the submissions advanced by the learned counsel for the parties, this Court deems it appropriate to reproduce Section 5 of the PMLA, as it stood, prior to and subsequent to, its amendment by Act 2 of 2013 and the Finance Act, 2015 (Act 20 of 2015) [hereinafter referred to as 'Act 20 of 2015']. The relevant statutory provision as amended from time to time, as relied upon by the learned counsel for the parties during the course of arguments, is reproduced hereinbelow for ready reference:

Prior to 2013 amendment:

Sec 5: - Attachment of property involved in money laundering –
Where the Director, or any other officer not below the rank of Deputy Director authorized by him 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;*
- (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 under this Chapter;*

He may, by order in writing, provisionally attach such property for a period not exceeding [one hundred and fifty days] from the date of the order, on the manner provided in the Second Schedule of the Income Tax Act, 1961(43 of 1962) the Director or the other officer so authorized by him, as the case may be, shall be deemed to be an officer or under sub rule (e) of rule 1 of that Schedule;

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 authorized to investigate the offence mentioned in the Schedule, before



a Magistrate or Court for taking cognizance of the scheduled offence as the case may be;

Provided further that, notwithstanding anything contained in clause (b) any property of any person may be attached under this section if the Director or any other officer no below in rank of Deputy Director authorized by him 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 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 proceedings under this Act.

Subsequent to 2013 amendment and Prior to 2015 amendment:

Sec 5: - Attachment of property involved in money laundering – Where the Director, or any other officer not below the rank of Deputy Director authorized by him 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;
- (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 eight days from the date of the order, in such a 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 authorized to investigate the offence mentioned in the Schedule, before a Magistrate or Court for taking cognizance of the scheduled offence as the case may be, or a similar report of complaint has been made or filed under the corresponding law of any other country;

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer no below in rank of Deputy Director authorized by him for the purposes of this section has reason to believe (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 proceedings under this Act.



Subsequent to 2015 amendment:

Sec 5: - Attachment of property involved in money laundering – Where the Director, or any other officer not below the rank of Deputy Director authorized by him 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;

(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 authorized to investigate the offence mentioned in the Schedule, before a Magistrate or Court for taking cognizance of the scheduled offence as the case may be, or a similar report of complaint has been made or filed under the corresponding law of any other country;

Provided further that, notwithstanding anything contained in [the first proviso], any property of any person may be attached under this section if the Director or any other officer no below in rank of Deputy Director authorized 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 proceedings under this Act.

B. SUBMISSIONS ON BEHALF OF THE APPELLANTS:

15. Learned Counsel representing the Appellants, while controverting the findings of the LSJ has made following submissions:-

15.1 It is contended that the PAO was issued in contravention of the mandate of Section 5(1) of the PMLA, as it stood prior to its



amendment by the Act 20 of 2015. With regard to the same, it has been submitted that under the unamended provision, the power to provisionally attach a property could only be exercised upon the filing of a final report under Section 173 of CrPC in respect of the scheduled offence. On the basis of the aforestated, it is the case of the Appellants that the PAO issued by ED was invalid, since no such report existed at the time of issuance of PAO and a chargesheet only came to be filed on 30.08.2017.

15.2 Additionally, it is contended that the amendment introduced by the Act 20 of 2015 could not be construed as clarificatory or retrospective in nature, since it effected a substantive alteration in the legal position and materially impacted the constitutional right to hold property under Article 300A of COI.

15.3 Learned counsel for the Appellants has also placed reliance on Paragraph No.2 of the PAO, to submit that a bare perusal of the same would reveal that no material existed before the Deputy Director, as required under clause 'b' of Section 5(1) of the PMLA or even under the second proviso thereto, to form a 'reason to believe' that immediate attachment was warranted.

15.4 Lastly, it has been contended by the Appellants that the LSJ while dismissing the writ petition on ground of availability of alternative efficacious remedy, ought not to have made observations with respect to the merits of the case.



C. SUBMISSIONS ON BEHALF OF ED:

16. *Per contra*, learned counsel for ED made following submissions:

16.1 At the outset, it has been contended by ED that the LSJ had rightly relegated the Appellants to avail the alternative remedies expressly provided under PMLA and any contrary approach would amount to bypassing the statutory scheme set out under Sections 8, 26 and 42 of the PMLA.

16.2 Controverting the argument raised by the Appellants with respect to a mandatory filing of a report under Section 173 CrPC prior to attachment, it has been contended that by virtue of second proviso to Section 5(1) of the PMLA, a PAO may be issued against ‘any person’ in possession of proceeds of crime, irrespective of whether such person has been charged with a scheduled offence. Reliance in this regard has been placed on ***Radha Mohan Lakhotia v. Deputy Director***¹ which came to affirmed by the Supreme Court in ***Vijay Madanlal Chaudhary v. Union of India***².

16.3 Learned Counsel for ED also emphasised on the usage of expression ‘whosoever’ under Section 3 of PMLA to demonstrate the legislative intent to include any individual in possession of proceeds of crime within the ambit of the Act. Further, reliance has been placed on the amendment made *vide* Act 2 of 2013 to state that the erstwhile clause ‘b’ which required a person to be charged with a scheduled

¹ 2010 SCC OnLine Bom 1116

² 2022 SCC OnLine SC 929



offence was done away with and as such acceptance of the argument made by the Appellants would render the second proviso inoperative during the period between 15.02.2013 and 14.05.2015, contrary to legislative intent behind the addition of second proviso to Section 5(1) of the PMLA which was to create an exception to the general requirement contained in the preceding part of the provision along with the first proviso.

16.4 Additionally, while relying upon ***Georgia Railroad & Banking Co. v. Smith***³, it has been submitted that an amendment introduced by way of a proviso operates as a *non obstante clause*, overriding the main provision. Further relying upon ***Zile Singh v. State of Haryana***⁴, it was argued by ED that an amendment by substitution has a retrospective operation as if it existed from its very inception.

16.5 With respect to the argument raised by the Appellants that there was an absence of material to form a reason to believe, it has been contended by the learned counsel for the Respondents that the LSJ after examining the PAO in detail, rightly concluded that the AO had sufficient material to form a reasoned belief and as such an immediate attachment was justified in view of the clandestine manner in which the offence of money laundering has been committed in the present case.

16.6 Moreover, *arguendo*, it has been contended that sufficiency of reasons to believe are amenable to adjudication before the three-tier statutory mechanism, and not in the writ proceedings.

³ 1888 SCC OnLine US SC 228

⁴ (2004) 8 SCC 1



D. ANALYSIS:

17. This Court has duly considered the submissions advanced by the learned counsel for the parties. At the outset, this Court deems it appropriate to state that the scope of exercise of jurisdiction under Article 226 of the COI, particularly when an alternative efficacious remedy exists, must be undertaken with due care and caution. The indiscriminate filing of writ petitions challenging the issuance of a PAO not only risks circumventing the legislative scheme envisaged under PMLA but also results in multiplicity of proceedings and unwarranted consumption of judicial time and resources. It is, therefore, imperative that the writ jurisdiction must be invoked sparingly and only in cases where there is a clear demonstration of mala fide exercise of power, patent arbitrariness, or a manifest lack of jurisdiction.

18. In this context, this Court also deems it necessary to refer to Paragraph No.12 of the IJ, wherein the LSJ records that, notwithstanding a suggestion made to the Appellants to seek redressal before the Adjudicating Authority in response to the notice issued, the Appellants pressed the Court to examine the material on record to determine whether the AO possessed sufficient material to form a reason to believe for the issuance of the PAO. Consequently, the submission advanced by the learned counsel for the Appellants, that the LSJ ought not to have addressed the merits of the case while dismissing the writ petition on the ground of alternate remedy, is rendered inconsequential.



19. With respect to the argument raised on behalf of the Appellants that the PAO can only be issued subsequent to the filing of a chargesheet under Section 173 of CrPC, this Bench places reliance on its recent decision in **LPA 588 of 2022** titled **Directorate of Enforcement v. M/s. Hi-tech Merchantile India Pvt. Ltd & Ors. & Ors.** dated 17.10.2025. This Bench in the aforesaid judgment comprehensively examined the scope and exercise of powers of attachment conferred under Section 5 of the PMLA. For sake of clarity and to underscore the principles laid down therein, the relevant paragraphs of the judgment are reproduced hereunder:

“58. The contention of PIL with respect to the relevance of the date of allocation, i.e. 04.09.2003 and the findings of the LSJ restricting the actions of the Directorate upto the given date falls short of merit. More specifically, when Section 5 of the PMLA enables the Directorate to proceed with an attachment of the properties of similar value, whereas first two provisos out of the three provisos to Section 5(1) of the PMLA, highlights the statutory pre-requisite of initiating the attachment. While the first proviso provides for filing of a report under Section 173 of the CrPC or a complaint by an authorised officer for initiation of attachment, the second proviso provides for attachment on account of a “reason to believe” based on the material available. These provisos form a jurisdictional precondition for issuance of the PAO; however, it does not restrict the scope of the Directorate’s attachment to the time period covered in the said report or complaint.

59. To put it succinctly, the report under Section 173 of the CrPC, acts as a gateway triggering the requirement to initiate action under the proviso to Section 5(1) of the PMLA; but does not confine the extent of the inquiry of the Directorate and/or the duration of the proceeds of crime sought to be attached. Having said the aforesaid, it is also important to highlight that there are two provisos attached to section 5(1) of the PMLA, each operating within its own independent domain. Therefore, it is important to bear in mind that the filing of a report under Section 173 of the CrPC is one of the triggering conditions for initiating attachment under first proviso to Section 5(1) of the PMLA, but not the only one, as under the statute, other conditions may independently warrant the initiation of attachment proceedings.”



In substance, it was observed that while the first proviso to Section 5(1) of the PMLA constitutes a statutory pre-requisite for initiating an attachment, it is not to be construed that the compliance of the said proviso is a sole pre-requisite for issuance of PAO, which if not complied with would render the attachment proceedings invalid or ineffectual.

20. Moreover, the LSJ, in Paragraph Nos.8.3 to 10.5 of the IJ, has rightly interpreted Section 5(1) of the PMLA, subsequent to the amendment effected *via* Act 2 of 2013. The LSJ has rightly observed that following the omission of the erstwhile clause 'b' of Section 5(1) of the PMLA, it is no longer mandatory that a person against whom a PAO is issued must have necessarily been charged with a scheduled offence. Since, the LSJ has examined the issue in exhaustive detail, this Court does not consider it necessary to revisit and re-examine the same, particularly, since in view of this Court, the conclusion reached by the LSJ are in complete harmony with the scheme and legislative intent of the Act.

21. With respect to the arguments advanced by the Appellants regarding the alleged absence of sufficient material with the AO to form a reason to believe, this Court concurs with the findings of the LSJ in Paragraph Nos.12.1 to 13.1 of the IJ. In the opinion of this Court, the LSJ has rightly observed that a PAO, by its nature, is a tentative measure undertaken to safeguard the integrity of future proceedings under the PMLA. The LSJ also meticulously examined the relevant portions of the PAO, which detailed the quantification and subsequent investment of the proceeds of crime. It was further



noted by the LSJ that the ED attached only those properties acquired by the Appellant No.1 between 2009 and 2014, coinciding with the period of incorporation of AISL, thereby demonstrating that the designated officer had cogent material on the basis of which it formed a reason to believe leading to issuance of the PAO.

E. CONCLUSION:

22. Keeping in view the above position of law, as well as the facts and circumstances of the present case, this Court does not deem it appropriate to interfere with the Impugned Judgment passed by the learned Single Judge.

23. Accordingly, the present Appeal, along with the pending applications, is dismissed.

24. The foregoing discussion was only for the purpose of adjudication of *lis* raised in the present Appeal and the same shall not be treated as a final expression on the submissions of the respective parties and shall also not affect the future adjudication emanating before any other forum in accordance with law.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 15, 2025

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