

Properties which have no nexus to a criminal activity relating to a scheduled offence cannot be regarded as proceeds of crime, and attachment of property acquired prior to the commission of the crime would not fall within the definition of the proceeds of crime

The **Gauhati High Court** in the case of **Kumar Sanjit Krishna vs Directorate of Enforcement [Criminal Appeal (PMLA)/1/2025]** dated **March 27, 2026**, has held that properties which have no nexus to a criminal activity relating to a scheduled offence cannot be regarded as proceeds of crime, and attachment of property acquired prior to the commission of the crime would not fall within the definition of the proceeds of crime.

However, in view of there being a disputed question of fact with regard to when the property had been purchased and keeping in mind the fact that the property had allegedly being registered in the name of the appellant only during the period of commission of the crime, the said disputed question of fact would have to be proved by way of evidence. Till the time it is proved that the property had been bought prior to the commission of the crime/offence, the Court is not inclined to allow the present petition.

The High Court observed that the attached property is required to have a connection with the crime in question. The enforcement authority has to be able to trace the attached property to the criminal act relating to the scheduled offense, in terms of Section 2(1)(u) of the Prevention of Money Laundering Act, 2002 (PMLA). Only a property which is connected with the proceeds of the crime can be attached and the only exception to the above, is when the property derived out of criminal activity is taken out of India and held outside India.

The Court noted that the Appellate Tribunal (SAFEMA) had erroneously held that Section 2(1)(u) of the Act would include within its ambit the property of the appellant, even if it did not have any connection with the crime in question, and that even if the property was acquired prior to the crime, it was liable to be attached if the proceeds of crime had vanished and could not be traced.

The Court observed that the pre-condition for being proceeds of crime is that the property has been derived or obtained directly or indirectly, by any person, as a result of criminal activity relating to a scheduled offence. The attachment must be only in respect of property which appears to be proceeds of crime and not all the property belonging to the person concerned.

Hence, the Court concluded that only property which has been derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be attached.