IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.435 of 2015

Arising Out of Confiscation Case No. -02 Year- 2012 Thana -null District- PATNA

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1. Suresh Prasad Son of Late Satya Narayan Prasad Resident of :-
House No. 6, Adarsh Path, North Shashtri Nagar, P.S.- Shashtri Nagar, Town and District Patna

.... Appellant/s

Versus

1. The State of Bihar through Vigilance

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Laxmi Narayan Das, Adv.
Mr. Akhilesh Dutt Verma, Adv.

For the Respondent/s : Mr. Rama Kant Sharma, Sr. Adv. L/o
Mr. Rabindra Kumar, A.C. to Vigilance L/o

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-08-2015

Heard learned counsel for the appellant and learned counsel for the Vigilance.

2. The instant criminal appeal under section 17 of the Bihar Special Courts Act, 2009 has been filed by the appellant against the order dated 24.06.2015 passed by the learned Authorized Officer, Special Court (Vigilance) No.1, Muzaffarpur in Confiscation Case No.02 of 2012.

3. The brief facts of the case are as follows :

(a) On 01.08.2008, the appellant Suresh Prasad, the then District Cooperative Officer-cum-Assistant

Registrar, Motihari, East Champaran was arrested red-handed by the Vigilance Team while accepting illegal gratification of Rs.11,000/- for which Vigilance Case No. 75 of 2008 dated 01.10.2008 was registered under sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988;

(b) In connection with the above mentioned case, house of the appellant was searched by the Vigilance Team and various documents relating to moveable and immoveable properties in his name and in the name of his family members were seized. During investigation it came into light that the appellant had acquired huge amount of assets, which were disproportionate to his known sources of income in his name and in the name of his family members. Accordingly, a separate case being Vigilance P.S.Case No. 104 of 2008 corresponding to Special Case No. 68 of 2008 was registered under sections 7/13(2) read with 13(1)(e) of the Prevention of Corruption Act against the petitioner;

(c) After completion of investigation, charge sheet no.18 of 2009 dated 30.01.2009 was filed under sections 7 and 13(2) read with 13(1)(e) of the Prevention of Corruption Act for disproportionate income;

(d) Subsequent to the submission of charge sheet, as per provisions prescribed under section 5 of the Bihar Special Court Act, 2009 and the Bihar Special Court Rules, 2010, a declaration against the appellant was issued by the Government for confiscation proceeding;

(e) The declaration was published in the official gazette, and based on the abovementioned Vigilance P.S.Case No. 104 of 2008, a confiscation application under section 13 of the Bihar Special Court Act, 2009 was filed by the Vigilance Investigation Bureau in the court of Authorized Officer, Special Court Vigilance, Muzaffarpur in which the appellant and his family members were made Opposite Parties;

(f) On receipt of the aforesaid confiscation application, the court of Authorized Officer registered the confiscation application as Confiscation Case No.02 of 2012;

(g) On the notice issued by the court of Authorized Officer, Special Court, Vigilance, Muzaffarpur, the Opposite Parties before the court below appeared and on 29th October, 2013 Shail Devi, wife of the appellant, received documents in the court and all other Opposite Parties (other family members of the appellant) received documents on 7th August, 2014;

(h) The documents supplied to the appellant and his family members contained 101 items of the properties mentioned in the confiscation application;

(i) It transpired to the appellant and his family members, who are Opposite Parties before the court below that there were discrepancies in 9 out of 101 items of properties mentioned in the confiscation application from the attached documents of properties seized from their possession;

(j) The appellant and his family members demanded the documents of those 9 items in respect of which there were discrepancies in the list of properties;

(k) When the prosecution came to know that there were discrepancies in the description of 9 out of 101 items of properties, they filed an application before the Authorized Officer with a prayer that they may be allowed to make amendment in the petition as the amendment sought for were due to clerical and typographical mistakes, but this submission of the prosecution was objected by the appellant;

(l) The Authorized Officer, after hearing the parties, allowed the application filed on behalf of the prosecution vide impugned order dated 24.06.2015;

(m) The said order dated 24.06.2015 is under challenge before this Court in the present appeal.

4. Learned counsel for the appellant has submitted that the impugned order dated 24.06.2015 is bad in law. According to him, there were discrepancies and mistakes in the documents in respect of 9 items and instead of supplying copies of the documents, the learned court below directed the Vigilance to clarify the mistakes in the 9 items by filing correction petition. He has submitted that the learned Authorized Officer has got no jurisdiction to give such direction to the Vigilance to make change by correction in the paper which has come during investigation of the Disproportionate Asset Case. He has further contended that taking

advantage of the permission granted by the Authorized Officer, the prosecution through Vigilance filed an amendment petition on 18th May, 2015 and by the said amendment the Vigilance prayed to change the figure of the amount arrived at the investigation of the Disproportionate Asset Case and has also prayed to change the name of the owners of the property.

5. He has further contended that in the confiscation proceeding any amendment in the document relied upon by the Vigilance cannot be allowed specially because the confiscation proceeding is nothing but an offshoot of the Vigilance P.S.Case No. 104 of 2008 and its investigation. When in the said Vigilance P.S.Case No. 104 of 2008 investigation revealed that the appellant was in possession of disproportionate assets to the tune of Rs. 76,67,045.09 and on the basis of the said investigation the present confiscation proceeding was initiated for confiscation of the said amount, now by amendment, the confiscation proceeding for the assets to the tune of Rs.76, 82,849.50 cannot be allowed to proceed.

6. In reply, learned counsel for the Vigilance has submitted that there is no merit in the appeal filed on behalf of the appellant. According to him, entire case is based on documentary evidence. The prayer of the prosecution was neither to change the figure of the amount nor the name of the holder of the property.

Rather, a prayer was made simply to make amendment in the petition as certain clerical and typographical errors had crept in while giving details of property. He has submitted that regarding rectification of 9 items sought by the Vigilance, learned Authorized Officer verified the same from the Xerox copy of the seizure list and the case diary filed by the Vigilance and found that the mistakes were clerical, arithmetical and typing mistakes. The total amount of confiscation came to be Rs.76,82,844.52 instead of Rs.76,67,045.09. According to him, the impugned order passed by the Authorized Officer does not suffer from any illegality as the application was allowed after examining the records and the court below has correctly held that the amendment sought for by the prosecution does not cause any prejudice to the appellant in the eye of law.

7. I have heard the respective counsel for the parties and perused the impugned order passed by the court below. A perusal of the order passed by the court below would make it evident that due to inadvertence there was clerical, arithmetical and typing error in description of property mentioned in the confiscation application and accordingly the prosecution has been permitted to rectify those mistakes vide impugned order dated 24th June, 2015 passed by the learned Special Court, Vigilance, Muzaffarpur. The documents

pertaining to those properties have been seized from the possession of the appellant and his family members. Since the relevant documents are already on record and have been already supplied to the appellant, it cannot be said that the confiscation proceeding was not launched in respect of those properties. The typographical error in description of properties mentioned in the confiscation application was liable to be corrected in the interest of justice.

8. Section 20 of the Bihar Special Courts Act, 2009 clearly envisages that no notice issued or served, no declaration made and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein, if such property or person is identifiable from the description so mentioned.

9. In view of the provisions of Section 20 of the Special Courts Act, it would be evident that if there is an error in the description of the property or the person mentioned therein, or in any notice issued or declaration made, the same would not make the proceeding invalid.

10. In the present case, apparently the description of the properties mentioned in the confiscation application was wrongly typed. Such an error cannot be treated to be material error as the appellant or any of his family members, who have been made

Opposite Parties in the proceedings in the court below have not been misled by such error occasioning any failure of justice or causing any prejudice to them inasmuch as they are still at liberty to file their show cause and contest the matter before the Authorized Officer.

11. In view of the discussions made hereinabove, I find no merit in this appeal. Accordingly, the appeal, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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