

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.225 of 2014

Against the order dated 21.01.2014 passed by Authorised Officer
of Special Court II, Patna in Special Case No. 5 of 2010

Arising Out of PS.Case No. -16 Year- 2000 Thana -C.B.I CASE District- PATNA

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1. Parmeshwari Sinha Widow of Late Kalika Prasad Sinha Resident of Road No. 23,
Srikrishna Nagar, Police Station - Buddha Colony. Patna

.... Appellant.

Versus

The State of Bihar through Vigilance

.... Respondent.

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Appearance :

For the Appellant : Mr. Sushil Kumar Singh, Advocate.

For the State : Mr. Ramakant Sharma, L.O. (I/C Vigilance).

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 04-02-2015

1. This petition is directed against the order dated 21.01.2014 passed by Authorised Officer of Special Court II, Patna in Special Case No. 5 of 2010 by which the petition dated 18. 11. 2011 on behalf of Kalka Prasad Sinha and petition dated 21.01.2012 on behalf of Parmeshwari Devi and petition dated 04.01.2013 filed on behalf of Parmeshwari Devi to drop the confiscation proceeding have been rejected.

2. The facts remain that one Kalka Prasad, a public servant retired from the post of Chairman, PRDA. After his retirement on 30.06.1996, the Income Tax Department raided his house on 27.11.1997 and recovered amassed wealth both movable and immovable property worth Rs. 1, 27, 84, 213 (one crore twenty-seven lakhs eighty four thousand and two hundred thirteen) which appeared much more than his known source of income and

information given to the State Government. A case was instituted against him under the P.C. Act (Prevention of Corruption Act) bearing Vigilance P.S. Case No. 16 of 2000. After institution of the case, the investigation proceeded and after investigation charge sheet submitted on 14.11.2007. The cognizance was taken on 19.11.2007. Case proceeds.

3. During the pendency of Vigilance P.S. Case No. 16 of 2000 for offence under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act 1988 Bihar Special Court Act 2009 came into existence. Under Chapter III of the Bihar Special Court Act, 2009, provided procedure for confiscation of the property which is alleged to have been earned by the public servant by means of offence as define under Section 2(e) of the Special Court Act. So a confiscation proceeding was initiated bearing Special Case No. 5 of 2010 before Authorised Officer of Special Court II under Section 13 of Chapter III the Special Court Act 2009 against Kalka Prasad Sinha and his family member for confiscation of the property alleged to have earned by offence defined under Section 2(e) of the Special Court Act. The notice under Section 14(1) and 14(2) were issued against Kalka Prasad Sinha and his family member. The reply to the show cause filed under Section 15 of the Special Court Act, 2009. However before passing final order by Authorised Officer of Special Court after hearing the Kalka Prasad Sinha under Section 15 of the

Special Court Act, Kalka Prasad Sinha died on 29. 10. 2011. After his death the Vigilance Case No. 16 of 2000 ordered to be abated and in consequence drop the same.

4. After the death of Kalka Prasad Sinha, the three petitions dated 18.11.2011 on behalf of Kalka Prasad Sinha, petition dated 21. 02. 2012 on behalf of Parmeshwari Devi and petition dated 04. 01. 2013 on behalf of Parmeshwari Devi filed to drop the confiscation proceeding pending before Authorised Officer.

5. The petition dated 18.11.2011 was filed to drop the confiscation proceeding on the ground that Kalka Prasad Sinha has died on 29.10.2011 and the Vigilance P.S. Case No. 16 of 2000 has already been abated and dropped. The petition dated 21.02.2012 was filed on behalf of Parmeshwari Devi to drop the proceeding on the ground that this confiscation proceeding initiated on the basis that Vigilance Case filed against the Kalka Prasad Sinha in view of the fact that an Income Tax raid conducted in the house of Kalka Prasad Sinha unearthing property worth one crore twenty seven lakhs and odd which were more than the known source of income, but the Income Tax Appellate Tribunal itself has drop the proceeding initiated by Income Tax Department. Hence the basis of institution of Vigilance Case under Section 13(1)(e) and 13(2) was unearthing the property by Income Tax having been itself dropped so the confiscation proceeding be also dropped. The petition dated

04.01.2013 also reiterated that the proceeding against Kalka Prasad Sinha be dropped.

6. The Special Court after hearing the parties on the three petitions rejected the petition on the ground that petition not sustainable even either on the death of Kalka Prasad Sinha or order of Income Tax Appellate Tribunal holding that there is no relevance to drop the confiscation proceeding. Its reasoning given that

7. It is relevant to quote the reasoning given by the Special Court.

“यद्यपि अपचारी लोक सेवक की मृत्यु होने पर क्या कार्यवाही होगी इसका उल्लेख बिहार विशेष न्यायालय अधिनियम 2009 में नहीं है लेकिन इस उपरोक्त सुसंगत प्रावधानों से यह निष्कर्ष निकाला जा सकता है कि अपचारी लोक सेवक की मृत्यु के पश्चात् भी अधिहरण की कार्यवाही जारी रहेगी तथा जो भी विधिक प्रतिनिधि अपचारी लोक सेवक की संपत्ति को प्राप्त करने का दावा करेगा उसे यह साबित करना होगा कि अपचारी लोक सेवक के पास पाया गया आय से अधिक संपत्ति किसी अपराध के द्वारा प्राप्त किया गया नहीं है।”

8. Hence the line of reasoning, provided by the Authorised Officer of Special Court while rejecting the petition to drop the proceeding on the death of Late Kalka Prasad Sinha is that though,



there is no procedure prescribed in Special Court Act, 2009 as to what procedure will follow on the death of the delinquent public servant yet held that an inference can be drawn on the basis of the relevant provision that confiscation proceeding shall continue even after death of delinquent public servant. It has further been held that the legal representative of the public servant who claim such property of public servant he will have to prove that the property found in possession of the public servant was not beyond the known source of income. The Income Tax Department has got no concern with this proceeding and the Income Tax has itself drop the proceeding has got no consequence.

9. Learned counsel for the appellant however challenged the order impugn passed by the Authorised Officer on the ground that Kalka Prasad Sinha has died, there is no provision of substitution either in Special Court Act 2009 or under the Code of Criminal Procedure for substituting the heirs of the Kalka Prasad Sinha in the confiscation proceeding pending before Special Court. The Vigilance Case No. 16 of 2000 instituted against Kalka Prasad Sinha have already been abated and dropped on the death of Kalka Prasad Sinha. The Section 15 provides that order of confiscation can be passed by authorised officer only after hearing the public servant and taking into consideration the show cause filed on his behalf. However since the public servant Kalka Prasad Sinha died so he



cannot be heard and there is no provision for substitution of heirs of public servant hence the order cannot be passed under Section 15 of Special Court Act to confiscate the property without hearing the public servant. That appeal an order cannot be passed against dead person as order passed against a dead person is a nullity is apparently a general rule. Further the Special Court Act provides that even if property ordered to be confiscated under Section 15 of the Act is subject to Appeal under Section 17 of Special Court Act and subject to Section 19 of the Special Court Act which provides that if public servant acquitted for offence defined under Section 2(e) of the Special Court Act even then the property confiscated be released. Hence acquittal itself is relief against confiscation and when public officer died there is no question of conviction.

10. The learned counsel for the appellant has challenged the finding recorded by the Special Court on the ground that the order impugned based on conjecture and surmises. The Authorised Officer itself held that there is no provision under the Special Court Act, 2009 that what proceeding will follow after death of delinquent public servant but held that from the provision contained under Sections 13, 14, 15 and 18 of Special Court Act conclusion can be drawn that even after death of the public servant the confiscation proceeding shall continue. The legal representative of the public servant if claim the property then he will have to prove that property

has been acquired by the public servant from known source of income. It has further been contended by learned counsel for the appellant that finding recorded by the trial court is without basis or without any reasoning devoid of any provision of law and finding recorded without reasoning and without pointing specific provision is not sustainable as reason is heart beat of the judgment or order, but the order passed is devoid of any reason or provision of law.

11. Learned counsel for the State however further contended and supported the finding recorded by the Special Court and has submitted that huge amount of property has been recovered which is beyond his known source of income and proceeding initiated under Section 13 of the Special Court Act and notices have been issued under Section 14 (1) and 14(2) of the Special Court Act hence the heirs of the public servant has to prove that property acquire by known source. He has relied upon decision reported in **2000 Criminal Law Journal 3425** and submitted that property seized in criminal proceeding cannot be released to the heir of the public servant as per Section 457 of the Code of Criminal Procedure delivery of the property is required to be given to the person who is entitle in possession.

12. However, the submission made by State and decision relied is amount to mixing two issues together i.e. the release of property seized by police in criminal proceeding as well as dropping of

confiscation proceeding initiated under Part III of the Special Court Act.

13. However coming to the Scheme of the Special Court Act 2009(henceforth to be referred as the Act) from the preamble itself it is apparent that the act has been constituted for speedy trial of the offence defined under Section 2(e) of the Special Court act for the trial of public servant defined under Section 2(e) of Prevention of Corruption Act to check the menace of corruption by accumulation of vast public money by public servant with corrupt means.

14. Chapter I of the Special Court Act 2009 contain definition or term the “offence” under Section 2(e) of the P.C. Act, defining “authorised Officer” under Section 2 (b) and defining the “Special Court” under Section 2 (f) as these are of great Special Significance.

15. Chapter II provides the power of State Government to establish Special Court (define under Section 2(f))under Section 3 of the Act to be presided over by a member of Superior Judicial Service of the rank of Additional Court of Sessions Judge/Sessions Judge for the purpose of speedy trial of offence defined under Section 2(e) of the Act. Section 5 empowers the State for declaration of cases to be dealt by the Special Court and Section 7 give jurisdiction for conducting the trial of the offence. Hence the Scheme of the act in Chapter II provided that the trial of the “offence” defined under Section 2(e) of the Act shall be conducted by Special Court establish



under Section 3 of the Act. The Section 6 provides such cases shall be heard and disposed off by Special Court for which prosecution has been instituted and proceeding pending in other court shall stand transferred and hence the status of Special Court stands to be a regular criminal court for all practical purpose for “offence” defined under Section 2(e) and for which declaration have been made. Hence trial of cases for offence defines under Section 2(e) shall be conducted by Special Court under the Special Court Act.

16. Chapter III provides the confiscation proceeding to be initiated before an Authorised Officer as defined under Section 2(b) of the Special Court Act, 2009, for confiscation of money and/or property alleged to have committed offence defined under Section 2(e). The Section 13 of Chapter III of the Special Court Act provides that State Government on having reasonable believe that public servant committed offence under Section 2(e) shall authorised a Public Prosecutor to file a petition before the Authorised Officer. Section 14 provides notice to public officer under Section 14(1) and also notice to other person, the person who held property earn by public servant on his behalf to such other person under Section 14(2) and then the Authorised Officer after considering the show cause filed by them and giving opportunity to be heard shall pass order confiscating the property being satisfied being earned by offence under Section 15. Hence the proceeding to confiscate the property is

before Authorised Officer. However the order of confiscation is subject to provision of the Act i.e. the confiscation is subject of order passed in appeal proved under Section 17 or the acquittal of the public servant in the criminal proceeding before the Special Court.

17. Hence from the Scheme of the Special Court Act the criminal trial or criminal proceeding for trial of the offence defined under Section 2(e) of the Special Court Act shall be conducted by the Special Court defined under Section 2(f) of the Special Court Act constituted under Section 3 of the Act whereas the confiscation proceeding shall be instituted and conducted by the Authorised Officer defined under Section 2(b) of the Special court Act. It is well settle in decision reported in **2011(1) PLJR 1168 (Sanjay Kumar Vrs. The State of Bihar)** that the two proceedings i.e. the criminal trial with regard to offence defined under Section 2(e) and the confiscation proceeding cannot be run before the same Court under same Presiding Officer, but before Special Court and other before the Authorised Officer. Hence the two proceedings before two different Presiding Officer whereas the release of the property seized by police during investigation is concern with Court where criminal trial is pending.

18. The submission made by the learned counsel for the State has misconceive in mixing the two issues the release of the property seized by the police during the investigation with the confiscation



proceeding when the jurisdiction to release the property seized by police lies before that Court where charge sheet submitted and trial proceeded and it is the jurisdiction of that Court to release the property. Hence the domain for the release of the property concern with the Special court where the criminal proceeding is pending. The reliance of the State on decision reported in **2000 Cr.L.J. 3425** is in connection with trial of cases for offence under P.C. Act in which the accused died during the trial and a petition under Section 482 of Cr.P.C. filed to release the property where it is held that the property cannot be released under Section 452 of Cr.P.C. as the provision of Section 452 of Cr.P.C. apply to stage where criminal proceeding has been concluded after due trial but having regard to fact that criminal trial has not been concluded as the accused died during trial and trial not proceeded but to order for release cannot be passed under Section 452 of Cr.P.C. however it was ordered that property seized in Criminal Court can be released under Section 457 of Cr.P.C. for which it is to be established who is entitle for possession and to go for that remedy. However it has not been decided that is a remedy available but has not decided the issue.

19. However the point raised by the learned counsel for the State is not an issue for consideration before this Court the question raised concerns with criminal trial before the Special Court. Moreover the petition filed by the appellant on which the impugned



order passed does not concern with the release of the property seized but concern with dropping of the confiscation proceeding pending before the Authorised Officer and hence the question required for consideration has nothing to do with the issue about the release of the property and impugned order passed on petition dated 18.10.2011, 21.01.2012 and 04.01.2013 is limited to the question whether after death of Kalka Prasad Sinha, the confiscation proceeding shall continue or drop.

20. Hence mute question for consideration whether confiscation proceeding shall continue or not. However the procedure for confiscation is mentioned in part III of the Special Court Act and it is relevant to quote Sections 13, 14, 15, 17 and 19 of the **Special Court Act.**

Section 13 of the Special Court provides that where the State Government, on the basis of prima facie evidence, have reasons to believe that any person, who has held or is holding public office and is or has been a public servant has committed the offence, the State Government may, whether or not the Special Court has cognizance of the offence, authorise the Public Prosecutor for making an application to the authorised officer for confiscation under this Act of the money and other

property, which the State Government believe the said person to have procured by means of the offence.

Section 14 provides (1) Upon receipt of an application made under Section 13 of this Act, the authorised officer shall serve a notice upon the person in respect of whom the application is made (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the source of his income, earning or assets, out of which or by means of which he has acquired such money or property, the evidence on which he relies and other relevant information any particulars, and to show cause as to why all or any of such money or property or both, should not be declared to have acquired by means of offence and be confiscated to the State Government.

(2) Where a notice under sub-section (1) to any person specifies any money or property or both as being held on behalf of such person by an other person, a copy of the notice shall also be served

upon such other person.

(3) Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the authorised officer, by the person affected or the State Government shall be open to be rebutted in the trial before the Special Court provided that such rebuttal shall be confined to the trial for determination and adjudication of guilt of the offender by the Special Court under this Act.

Section 15 provides that (1) the authorised officer may, after considering the explanation, if any, to the show cause notice issued under Section 14 and the materials available before it, and after giving to the person affected (and in case here the person affected holds any money or property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order record a finding whether all or any other money or properties in question have been acquired illegally.

(2) Where the authorised officer specifies that some of the money or property or both referred to



in the show cause notice are acquired by means of the offence, but is not able to identify specifically such money or property, then it shall be lawful for the authorised officer to specify the money or property or both which, to the best of his judgment, have been acquired by means of the offence and record a finding, accordingly, under Sub-section(1).

(3) Where the authorised officer records a finding under this Section to the effect that any money or property or both have been acquired by means of the offence, he shall declare that such money or property or both shall, subject to the provisions of this Act, stand confiscated to the State Government free from all incumbrances:

Provides that if the market price of the property confiscated is deposited with the authorised officer, the property shall not be confiscated.

(4) Where any share in a Company stands confiscated to the State Government under this Act, then, the Company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the Article of Association of the

Company forthwith register the State Government as the transferee of such share.

Every proceeding for confiscation of money or property or both under this Chapter shall be disposed of within a period of six months from the date of service of the notice under sub-section (1) of Section 14.

The order of confiscation passed under this Section shall, subject to the order passed in appeal, if any, under Section 17, be final and shall not be called in question in any Court of Law.

Section 17. *(1) Any person aggrieved by any order of the authorised officer under this Chapter may appeal to the High Court within thirty days from the date on which the order appealed against was passed.*

(2) Upon any appeal preferred under this Section the High Court, may, after giving such parties, as it thinks proper, an opportunity of being heard, pass such order as it thinks fit.

Section 19. *Where an order of confiscation made under Section 15 is modified or annulled by the High Court in appeal or where the person affected*

is acquitted by the Special Court, the money or property or both shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the price thereof including the money so confiscated with the interest at the rate of five percent annum thereon calculated from the date of confiscation.

21. Hence from perusal of the provision under Chapter III it is apparent that a confiscation proceeding can be initiated by a Public Prosecutor duly authorised by State having reason to believe that a public servant has earned a property by offence defined under Section 2(e) of Special Court Act. The Public Prosecutor shall file petition before an Authorised Officer duly appointed and constituted under Section 3 of the Special Court Act then notice under Section 14(1)(e) to the public servant holding the property on his behalf and under Section 15 the Authorised Officer after considering the show cause and after giving opportunity of being heard to the Government Servant shall pass an order declaring the property to be confiscated if satisfied that the same has been earned by an offence. However this order of confiscation shall be subject to the order reversed in appeal provided under Section 17 or acquitted of public servant in trial before Special Court for offence defined under Section 2 (e)

provided under Section 19 of the Special Court Act. There is no provision for the substitution of the heirs of the public servant and no provision that proceeding shall continue after the death of public servant who has been noticed under Section 14(1).

22. Hence taking the view that proceeding shall continue and the heirs be substituted for continuing the proceeding will amount to usurping the jurisdiction of the legislature to enact a law is against the procedure establish by law. The legislature in its wisdom has not enacted the law to substitute the legal heir who claims the property to the Court has no jurisdiction to order for continuation of the proceeding by substituting the heir and it amount to usurp the jurisdiction of legislative function. There is provision in appeal under Code of Criminal Procedure that cases in which the conviction with regard to fine on death of appellant shall not abate and the legal heir can contest. However there is neither any provision in the Act nor under Cr.P.C. for substituting the heirs in confiscation proceeding.

23. Hence coming to the fact and circumstance of this case the confiscation proceeding initiated on satisfaction of State that property earned by an offence by filing a petition by Public Prosecutor duly appointment and notice issued under Section 14(1) and (2) of the Special Court Act. The show cause filed but before affording the opportunity of being heard given to the public servant



and the person holding the property on his behalf, the public servant died. Hence the question whether the confiscation proceeding for confiscation of money and property earned by offence can proceed against a dead person and order be passed against dead person shall sustain when there is provision to be heard and that order subject to appeal and acquittal in criminal case is impossible to pursue in absence of public servant. There is no provision that the case shall proceed even on death of public servant or substituting the heirs of public servant. So the first question is whether the order can be passed under Section 15 of Special Court Act behind the back of the public servant who is dead and further can proceed with case after substitution of the heir particularly when there is no provision for substitution. The answer in both cases is negative. The Court can neither proceed behind the back nor proceed with after substituting the heir when there is no provision for substitution.

24. The further procedure that order passed under Section 15 of the Special Court Act is subject to order of appeal and acquittal in criminal case. But the result in appeal or acquittal in trial is impossible to attain as the person is dead and the criminal case already abated and dropped.

25. Hence in my considered opinion there is no useful purpose for continuing the confiscation case against Kalka Prasad Sinha. The special court in his impugned order has taken into

consideration that there is no provision for substituting the heirs of Kalka Prasad Sinha but has held that taking into consideration the relevant provision it is incumbent on the heirs of Kalka Prasad Sinha to prove the property has been earned by Kalka Prasad Sinha is without any basis as there is no provision in the Act either of substitution or proceeding with trial and this Court cannot legislate when neither there is any provision as such. Hence finding of Special Court without any basis or reasoning and hence is not sustainable. Hence order impugn is hereby set aside and no useful purpose to continue the confiscation proceeding against Kalka Prasad Sinha. **Hence impugned order passed by the Authorised Officer in Special Case No. 5 of 2010 is hereby set aside and appeal is allowed.**

Patna High Court.
The 4th February, 2015.
NAFR/m.p.

(Gopal Prasad, J)

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