

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No. 1136 of 2015

% 28.04.2015

K.Somasekhar Reddy and others ...Petitioners

VERSUS

\$ The State represented by its S.H.O.,

Inspector of Police, Kadapa,

Tirupathi Range. ...Respondent

< GIST:

> HEAD NOTE:

! Counsel for the Petitioners : Sri C.V. Mohan Reddy, learned Senior Counsel
for

Sri V.R. Reddy Kovvuri

^ Counsel for the Respondent : Udaya Bhaskara Rao

SC-Spl. P.P. for ACB

? Cases referred:

1. 1987 Law Suit (Bom) 216 = 1987 (3) BomCR 360
2. (2005) 11 SCC 195
3. (2003) 6 SCC 641
4. (2014) 4 SCC 392
5. AIR 1963 SC 255
6. AIR 1968 SC 1481
7. (1979) 1 SCC 560
8. (1998) 5 SCC 749
9. AIR 1992 SC 604
10. (1999) 4 SCC 710
11. (2004) 4 SCC 785
12. 2014 (9) SCC 516 at para 62
13. AIR 1963 SC 1077

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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C.R.P.No.1136 of 2015

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ORDER:

This Revision Petition is filed under Article 227 of the Constitution of India challenging the Order dt.04-02-2015 in CrI.M.P.No.43 of 2015 in Cr.No.9/RCA-TCD/2011 by the Special Judge for Trial of ACB cases in Rayalaseema Region at Kurnool purportedly in exercise of jurisdiction under Sections 3 and 4 of Criminal Law Amendment Ordinance, 1944 (for short 'the Ordinance').

THE FACTS

2. The petitioners herein are accused in the said Cr.No.9/RCA-

TCD/2011. The 1st petitioner is employed as Asst. Director, Agriculture Department, Nandyal. The 2nd petitioner is his wife and petitioners 3 and 4 are their daughter and son respectively.

3. The above referred crime was registered on 03-06-2011 in the Police Station, Anti Corruption Bureau (for short 'ACB'), Kadapa, Tirupati Range alleging that 1st petitioner is the brother of one Komma Janardhan Reddy, an Executive Engineer in Andhra Pradesh Education & Welfare Infrastructure Development Corporation, Hyderabad, who is the accused officer in Cr.No.4/RCA-TCD/2011; that on credible information, as to acquisition of assets disproportionate to the 1st petitioner known sources of income, permission is obtained from the Joint Director (R), Anti Corruption Bureau, Hyderabad on 17-03-2011 and Cr.No.4/RCA-TCD/2011 was registered on 18-03-2011; search warrants were issued by the Special Judge for SPE & ACB Cases, Nellore on 18-03-2011 in the above crime to unearth the assets relating to Sri K.Janardhan Reddy, the accused officer in Cr.No.4/RCA-TCD/2011 and also the house of 1st petitioner who is his elder brother and residing at Kadapa; and during the course of said searches, several incriminating documents relating to the assets belonging to 1st petitioner and his brother were seized on 21-03-2011. It is alleged that the scrutiny of the seized documents from the house of 1st petitioner revealed that 1st petitioner, had also acquired assets disproportionate to the known sources of his income to the tune of Rs.63,04,213/-. It is alleged that 1st petitioner entered into Government service on 01-07-1992 as Agriculture Officer and worked at Ramapuram, Lakkireddypalli and Kadapa, that he got

promotion as Assistant Director of Agriculture in 2007 and had worked as District Manager, Markfed, Kadapa from 2007 to 2010 on deputation basis and he was subsequently transferred to Farmers Training Centre, Nandyal on 24-01-2011. After setting out the details of the assets, income and expenditure of 1st petitioner, it is alleged that he was found to have disproportionate assets to the tune of Rs.63,04,213/-, that he had acquired them disproportionate to his known sources of income and he had committed offences punishable under Sec. 13 (2) r/w 13 (1) (e) of Prevention of Corruption Act, 1988. After obtaining permission from the Joint Director (R), ACB, Hyderabad vide proceedings dt.02-06-2011, case was registered against him as Cr.No.9/RCA-TCD/2011 under the above provisions of law.

4. The Director General, ACB, Andhra Pradesh, Hyderabad addressed a letter dt.27-08-2011 to the Principal Secretary to Government, Agriculture and Cooperation (VIG.I) Department seeking authorization to file an application in the Court of the Special Judge for SPE & ACB Cases, Nellore for attachment of the properties of 1st petitioner. Thereafter, the Government issued G.O.Ms.No.250 Agriculture and Cooperation (VIG,I) Department dt.21-10-2011 authorizing the Investigating Officer of the ACB in the case to file an application in the Court of the Special Judge for SPE & ACB Cases, Nellore (for short 'the Special Court') for attachment of the properties worth Rs.57,35,623/- as mentioned in the annexures I to IV of the said G.O. under Section 3 of the said Ordinance.

5. Pursuant to the said authorization on 08-11-2011, an application

under Sections 3 and 4 of the said Ordinance was filed by the said Inspector of Police, A.C.B., Kadapa, Tirupathi Range, (for short 'the respondent') seeking attachment of the money, gold ornaments and properties of the petitioners mentioned in the annexures to the said petition. It was numbered as CrI.M.P.No.12 of 2012 by the Special Court.

6. In the said application it was alleged that pursuant to the search warrant issued by the Special Court on 18-03-2011 to unearth the assets relating to 1st petitioner's brother K.Janardhan Reddy who is accused in the said crime, simultaneous searches caused in the house of 1st petitioner as well as his brother and the bank locker of

2nd petitioner in Indus-Ind Bank, Nagarajapet, Kadapa revealed several incriminating documents relating to both 1st petitioner as well as his brother K.Janardhan Reddy and they were seized on 21-03-2011. After scrutiny of the documents seized from the house of 1st petitioner, Cr.No.9/RCA-TCD/2011 under Section 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act, 1989 was registered against 1st petitioner alleging that he acquired and possessed assets which were disproportionate to his known sources of income; that detailed investigation was conducted into the said allegation and it was established that there was *prima face* case for his prosecution; and since the Inspector of Police had every reason to believe that

1st petitioner might clandestinely dispose of or alienate the movable and immovable properties which are in his possession as per annexures enclosed to avoid legal action against him, it is imperative to attach the said properties. It is also stated that the

State Government, after due consideration, had issued G.O.Ms.No.250 Agriculture and Cooperation 9VIG.I) Department dt.21-10-2011 and therefore an interim order attaching the properties of 1st petitioner and his other family members in whose names the 1st petitioner had purchased the assets, be granted.

7. On 11-01-2012, in CrI.MP.No.12/2012 the Special Court issued ad interim attachment order of the properties shown at serial No.1 and 2 at Annexure I and serial Nos.1 to 7 of Annexure II of the said application and directed service of notice on the petitioners by
01-03-2012.
8. After notices were served on petitioners, as permitted by sub-section (4) of Section 3 of the Ordinance, objections were filed on
26-09-2012 by all the petitioners to the attachment order issued on
11-01-2012.
9. As per Section 10 of the Ordinance, if the Special Court had not taken cognizance of the offences against the cases at the time when the order for attachment is applied for, the order of attachment of property under the Ordinance would continue only for one year from the date of it's order under sub-section (1) of Section 4 or sub- section (2) of Section 6 as the case may be. The said section further provides that the District Judge may, on application by the Agent of the State Government or as the case may be the Central Government, direct that the attachment order should be extended and pass an order accordingly.

10. Having regard to the said provision, the Inspector of Police, ACB, Kadapa, Tirupathi Range, filed another application for extending the period of attachment of the properties of 1st petitioner contending that the investigation in the case was not yet completed and therefore, cognizance was not yet taken; and since there is a possibility of the petitioners disposing of properties if the attachment is not extended, he prayed that the interim attachment order dt.11-01-2012 in CrI.M.P.No.12 of 2012 be extended to prevent the alienation of the properties. This application under Section 10 (a) of the Ordinance for grant of extension of the interim attachment order was numbered as CrI.M.P.No.124 of 2014.
11. The Inspector of Police, ACB, Kadapa, Tirupathi Range, also filed an application under Section 5 of the Limitation Act, 1963 to condone the delay of 464 days in filing the application under Section 10 (a) of the Ordinance for seeking extension of the period of attachment. He contended that the Inspector of Police, ACB, Kadapa, Tirupathi Range was engaged in investigation of other important cases and so could not file application earlier and also because there was heavy work. This application under Section 5 of the Limitation Act,1963 filed by the said Inspector of Police was numbered as CrI.M.P.No.123 of 2014.
12. In the mean time CrI.M.P.12 of 2012 was renumbered as CrI.M.P.No.173 of 2014.
13. A common counter affidavit was filed on 01-05-2014 by the petitioners opposing the condonation of delay and also contending that no case is made out for extending the interim attachment made on 11-01-2012 in CrI.M.P.No.173 of 2014 in

respect of their properties.

14. On 06-06-2014, a common order was passed in Crl.M.P.Nos.123 of 2014 and 124 of 2014 condoning the delay of 464 days in filing the application for extending the interim attachment order passed on 11-01-2012 in Crl.M.P.No.173 of 2014 and extending the attachment for one more year from 06-06-2014.
15. A separate order dt.06-06-2014 was also passed in Crl.M.P.No.173 of 2014 refusing to consider the objections of the petitioners and making absolute the interim attachment order granted on 11-01-2012 therein.
16. Challenging the order dt.06-06-2014 in Crl.M.P.No.124 of 2014, the petitioners filed Crl. Appeal No.683 of 2014 before this Court. They also filed Crl.Appeal No.684 of 2014 challenging the order dt.06-06-2014 in Crl.M.P.No.123 of 2014.
17. It was contended in the said appeals by petitioners that the provisions of the Limitation Act, 1963 cannot apply to proceedings under the Criminal Law Amendment Ordinance, 1984. A further contention was also raised that even if it applies, the delay in filing the application for extending the interim attachment, cannot be condoned. It was also contended that no reasons were furnished in the order passed in Crl.M.P.No.124 of 2014 for extending the attachment under Section 10 (a) of the Ordinance and therefore the order impugned in Crl.Appeal No.683 of 2014 should also be set aside.
18. By common judgment dt.15-09-2014, this Court dismissed

Crl.Appeal No.684 of 2014 holding that Section 5 of the Limitation Act, 1963 would apply to the proceedings under the Ordinance, that the delay in filing the application was properly explained and the Special Court had rightly condoned the said delay. This Court however allowed Crl.Appeal No.683 of 2014 holding that, in so far as Crl.M.P.No.124 of 2014 is concerned, the order dt.06-06-2014 extending the ad interim attachment order issued on 11-01-2012, is without any reasons. It set aside the order dt.06-06-2014 in so far as Crl.M.P.No.124 of 2014 is concerned, and gave a direction to the Special Court to hear arguments on the issue of extension of interim attachment and pass an order on merits afresh. It further directed that the interim attachment extension order passed by the Special Court shall be in force and merge with the order to be passed by the said Court after remand.

19. Thereafter, on 16-10-2014, the petitioners got issued a notice bringing to the notice of prosecution a list of documents furnished by them to the Investigating Officer and also to the Special Public Prosecutor, which would establish that the petitioners had known sources of income to purchase the properties sought to be attached, and calling upon the respondent to admit the correctness of the documents within 7 days.
20. On 10-11-2014, a counter was filed by respondent in regard thereto before the Special Court. The petitioners also filed written arguments with supporting documentary proof before the Special Court substantiating their plea that they had known sources of income to purchase the properties which were attached.

21. On 27-01-2015, a fresh order was passed by the Special Court in Crl.M.P.No.124 of 2014 in Crl.M.P.No.173 of 2013 allowing the said petition and directing extension of the attachment only for one year from 11-01-2012 to 10-01-2013.
22. Since the order of interim attachment was not extended beyond 10-01-2013 in the order dt.27-01-2015 in Crl.M.P.No.124 of 2014, and since there was no attachment of the properties directed after 10-01-2013, the petitioners did not challenge the order dt.27-01-2015 and the said order became final.
23. Thereafter the respondent, on 02-02-2015 filed an application under Section 3(1) of the Ordinance before the Special Court seeking to pass a *fresh* ad-interim order of attachment, attaching the properties of petitioners shown in the annexures 1 to 4 enclosed to the petition. This was numbered as Crl.M.P.No.43 of 2015.
24. It is pertinent to note that no separate authorization from the State Government to the Investigating Officer of the A.C.B. was obtained by the respondent even though such authorization is required under Section 3 of the Ordinance for filing this application in Special Court for fresh attachment of the mentioned properties.
25. On 04-02-2015, the Special Court passed the impugned order *again* ordering attachment of the properties mentioned in the annexures to the said petition and issued notices to petitioners.
26. This order is being questioned by the petitioners in this Civil Revision Petition filed under Art.227 of the Constitution of India.

THE CONTENTIONS OF COUNSEL FOR THE PETITIONERS

27. Sri C.V.Mohan Reddy, learned Senior Counsel appearing for Sri V.R.Reddy Kovvuri, Counsel for petitioners contended that the petitioners are entitled to file the Revision under Article 227 of the Constitution of India having regard to the manner in which the Special Court had dealt with the proceedings initiated by respondent against the petitioners under the Ordinance. He pointed out that the objections which had been filed by petitioners on

26-09-2012 to raise the attachment originally made on 11-01-2012 in Crl.M.P.No.12 of 2012 had not been considered by the Special Court at all in its order dt.06-06-2014 in Crl.M.P.No.173 of 2013 by stating that they would be considered only after full trial and after examining the witnesses and documents; this is contrary to Section 5(2) of the Ordinance which makes it incumbent on the Special court to consider them; its conduct in extending the order of attachment on 06-06-2014 for one year from the said date in Crl.M.P.No.123 of 2014 without assigning any reasons was arbitrary; its subsequent order dt.27-01-2015 in Crl.M.P.No.124 of 2014 restricting the interim attachment from 11-01-2012 to 10-01-2013 is perverse; its further order dt.04-02-2015 in Crl.M.P.No.43 of 2015 again passing a fresh *ad interim* attachment by without considering the objections filed by petitioners to the original initial attachment without deciding them, is contrary to the provisions of the Ordinance; and its conduct in extending the *ad interim* attachment in a routine manner without taking cognizance even though about 4 years have elapsed since the registering of the Crime No.9-RCA-TCD/2011 and without insisting on the respondent to conclude the investigation

causes grave prejudice to the petitioners. He further contended that the purpose of restricting *ad interim* attachment to a period of one year initially in Section 10, is only to ensure that in that period the investigation would be completed and cognizance would be taken; extension of attachment cannot be a matter of course; and on the pretext of the prosecution not completing the investigation, the attachment cannot be extended indefinitely every one year; and this kind of action on the part of Special Court warrants interference with the impugned order by this Court under Article 227 of the Constitution of India. He further contended that there was only one authorization under Section 3(1) of the Ordinance granted by the Government of Andhra Pradesh on 20-05-2011 in G.O.Ms.No.250; pursuant to the said authorization, once Crl.M.P.No.12 of 2012 was filed seeking interim order of attachment (which was granted on 11-01-2012), the said authorization issued by the State Government stood exhausted; without obtaining fresh authorization under Section 3(1) of the Ordinance, the respondent could not have filed Crl.M.P.No.43 of 2015 on 02-02-2015. He pointed out that without verifying the existence of such authorization, the Special Court could not have granted *ad interim* attachment on 04-02-2015. He therefore prayed that the impugned order be said aside in exercise of power of superintendence on this Court under Article 227 of the Constitution of India. The learned counsel for petitioners relied on judgment of the High Court of Bombay in **State of Maharashtra Vs. Trambak Ananda Mahajan**.

CONTENTIONS OF COUNSEL FOR RESPONDENT

28. Sri Udaya Bhaskar Rao, learned counsel for respondent refuted the above contentions. He contended that it is not open to petitioners to invoke the supervisory jurisdiction of this Court under Article 227 of the Constitution of India for challenging the impugned order. He relied upon the decisions in **Anandwardhan and another Vs. Pandurang and others** and **State through Special Cell, New Delhi Vs. Navjot Sandhu alias Afshan Guru and others** on the scope of exercise of jurisdiction under Article 227 of the Constitution of India. He pointed out that the petitioners can as well file fresh objections to the interim attachment order on 04-02-2015 in Crl.M.P.No.43 of 2015 or file an appeal under Section 11 of the Ordinance, and without availing those remedies, it is not open to petitioners to invoke Article 227 of the Constitution of India. He also contended that the authorization initially granted vide G.O.Ms.No.250 dt.20-05-2011 continues to be valid and on the basis of such authorization, respondents can file a fresh application for *ad interim* attachment under Section 3(1) of the Ordinance and it was not necessary for them to obtain fresh authorization from the State Government under Section 3(1) of the Ordinance.

THE CONSIDERATION BY THE COURT

29. I have noted the submissions of both sides.

30. Before I deal with the respective contentions, I will give a brief background about the Ordinance and its relevant provisions.

31. The said Ordinance was issued under Sec.72 of the Government of India Act, 1935 by the Governor General of British India in exercise of his powers under Sec.72 of the said Act, set out in the Ninth Schedule thereto, to prevent disposal or

concealment of property by means of certain offences punishable under the Indian Penal Code, 1860. Its main object is to protect Government Money and property believed to have been obtained by the persons against whom cases are brought either of embezzling the Government money or property, or being in possession of stolen Government property or of obtaining Government money by false pretences. It can also be invoked where there is an allegation against a Government servant relating to an offence of bribery. Its object is to secure money or property improperly obtained by a Government servant as inducement to do a favour in his official capacity, to freeze money or property improperly so obtained by Government servant in his official capacity, or money or property belonging to the Government regarding which an offence is alleged to have been committed, so that on the conclusion of the case, in the event of the conviction of accused, the money or property is available for immediate restoration to the Government.

32. Although this Ordinance is a pre-Constitution law, it continues to be in force in this country by virtue of operation of Article 372 of the Constitution of India.

THE RELEVANT PROVISIONS OF THE ORDINANCE

33. Some of the relevant provisions of the said Ordinance are :

Section 3 states:

“3. Application for attachment of property.- (1) Where the [State] Government [or as the case may be, the Central Government] has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any schedule offence, the [State Government or

as the case may be, the Central Government] may, whether or not any Court has taken cognizance of the offence, authorize the making of an application to the

District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for attachment under this Ordinance of the money or other property which the [State Government or as the case may be, the Central Government] believes the said person to have procured by means of the offence, or if such money or property cannot for any reason be attached of other property of the said person or value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, shall apply to the proceedings for an order of attachment under this Ordinance as they apply to suits by the [Government].

(3) An application under sub-section (1) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by means of the offence. The application shall also furnish:-

(a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person;

(b) the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person”.

Section 4 states:

“4. Ad interim attachment.- *(1) Upon receipt of an application under Section 3 the District Judge, shall, unless for reasons to be recorded in writing he is of the opinion that there exists no prima facie grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available, for attachment of such other property of the said person of equivalent value as the District Judge may think fit:*

Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order examine the person making the affidavits accompanying the application.

(2) At the same time as he passes an order under sub-section (1) the District Judge shall issue to the person whose money or other property is being attached a notice accompanied by copies of the order, the application and affidavits and of the evidence, if any recorded calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

(3) The District Judge shall also issue notices, accompanied by copies of the document accompanying the notice under sub-section (2), to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section calling upon each such person to appear on the same date as that specified in the notice under the said sub-section and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any person claiming an interest in the attachment property or any portion of thereof may notwithstanding that no notice has been served upon him under this section make an objection as aforesaid to the District Judge at any time before an order is passed under sub-section (1) or sub-section (3), as the case may be, of Section 5."

Section 5 states:

"5. Investigation of objections to attachment.-

(1) If no cause is shown and no objections are made under Section 4 on or before the specified date, the District Judge shall forthwith pass an order making ad interim order of attachment absolute.

*(2) **If cause is shown or any objections are made as aforesaid, the District Judge shall proceed to investigate the same,** and in so doing, as regards the examination of the parties and in all other respects he shall, subject to the provisions of this Ordinance follow the procedure and exercise all the powers of the court in hearing a suit under the Code of Civil Procedure, 1908, and any person making an objection under Section 4 shall be*

required to adduce evidence to show that at the date of the attachment he had some interest in the property attached.

(3) After investigation under sub-section (2) the District Judge shall pass an order either making the ad interim order or attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order:

Provided that the District Judge shall not,

- a. *release from attachment any interest which he is satisfied that the person believed to have committed a scheduled offence has in the property, unless he is also satisfied that there will remain under attachment an amount of the said person's property of value not less than that of the property believed to have been procured by the said person by means of the offence; or*
- b. *withdraw the order of attachment unless he is satisfied that the said person has not by means of the said offence procured any money or other property."*

Section 10 states:

"10. Duration of attachment: *An order of attachment of property under this Ordinance shall, unless it is withdrawn earlier in accordance with the provisions of this ordinance, continue in force:-*

- a. *Where no court has taken cognizance of the alleged scheduled offence at the time when the order is applied for, for [one year] from the date of the order under sub-section (1) of section 4 or sub-section (2) of Section 6 as the case may be, unless cognizance of such offence is in the meantime so taken or unless the District Judge, on application by the agent of the [State] Government [or as the case may be, the Central Government] thinks it proper and just that the period should be extended and passes an order accordingly; or*
- b. *Where a Court has taken cognizance of the alleged scheduled offence whether before or after the time when the order was applied for until orders are passed by the District Judge in accordance with the provisions of this Ordinance after the termination of the criminal proceedings."*

Section 11 states:

“11. Appeals : (1) *The [State] Government [or as the case may be, the Central Government] or any person who has shown cause under Section 4 or Section 6 or has made an objection under Section 4 or has made an application under Section 8 or Section 9, if aggrieved by any order of the District Judge under any of the foregoing provisions of this Ordinance, may appeal to the High Court within thirty days from the date on which the order complained against was passed.*

1. *Upon any appeal under this section the High Court may, after giving such parties, as it thinks proper, an opportunity of being heard, pass such orders as it thinks fit.*
2. *Until an appeal under this section is finally disposed of by the High Court no Court shall, otherwise, than in accordance with the provisions of Section 8 or Section 13, order the withdrawal or suspension of any order of attachment to which the appeal relates.”*

Section 12 states:

“12. Criminal Court to evaluate property procured by schedule offences:-

1. *Where before judgment is pronounced in any criminal trial for a scheduled offence it is pronounced in any criminal trial for a scheduled offence it is represented to the Court that an order of attachment of property has been passed under this Ordinance in connection with such offence, the Court shall if it is convicting the accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence.*
2. *In any appeal or revisional proceedings against such conviction, the appellate or revisional Court shall, unless it sets aside the conviction, either confirm such finding or modify it in such manner as it thinks proper.*
3. *In any appeal or revisional proceedings against an order of acquittal passed in a trial such as is referred to in sub-section (1), the appellate or revisional Court, if it convicts the accused, shall record a finding such as is referred to in that sub-section.*

[(4) Where the accused is convicted of a scheduled offence other

than one specified in item 1 of the Schedule to this Ordinance and where it appears that the offence has caused loss to more than one Government referred to in the said schedule or local authority the finding referred to in this section shall indicate the amount of loss sustained by each such Government or local authority.

(5) Where the accused is convicted at the same trial of one or more offences specified in item 1 of the Schedule to this ordinance and of one or more offences specified in any of the other items of the said Schedule, the finding referred to in this section shall indicate separately the amount procured by means of the two classes of offences].”

Section 13 states:

“13. Disposal of attached Property upon termination of criminal proceedings:-

3. *Upon termination of any criminal proceedings for any scheduled offence in respect of which any order of attachment of property has been made under this Ordinance or security given in lieu thereof, the agent of the [State] Government [or as the case may be, the Central Government] shall without delay inform the District Judge, and shall where criminal proceedings have been taken in any court, furnish the District Judge with a copy of the judgment or order of the trying court and with the copies of the judgments or orders, if any, of the appellate or revisional courts thereon.*
4. *Where it is reported to the District Judge under sub-section (1) that cognizance of the alleged scheduled offence has not been taken or where the final judgment or order of the criminal courts is one of acquittal, the District Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned.*
5. *Where the final judgment or order of the*

criminal courts is one of conviction the District Judge shall order that from the property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment there shall be forfeited to [Government] such amount or value as is found in the final judgment or order of the criminal courts in pursuance of Section 12 to have been procured by the convicted person by means of the offence together with the costs of attachment as determined by the District Judge and where the final judgment or order of the criminal courts has imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment.

6. *Where the amounts ordered to be forfeited or recovered under sub-section (3) exceed the value of the property of the convicted person attached and where the property of any transferee of the convicted person has been attached under Section 6, the District Judge shall order that the balance of the amount ordered to be forfeited under sub-Section (3) together with the costs of attachment of the transferee's property as determined by the District Judge shall be forfeited to [Government] from the attached property of the transferee or out of the security given in lieu of such attachment; and the District Judge may order without prejudice to any other mode of recovery that any fine referred to in sub-section (3) or any portion thereof not recovered under that sub-section shall be recovered from the attached property of the transferee or out of security given in lieu of such attachment.*

7. *If any property remains under attachment in*

respect of any scheduled offence or any security given in lieu of such attachment remains with the District Judge after his orders under sub-sections (3) and (4) have been carried into effect the order of attachment in respect of such property remaining shall be forthwith withdrawn or as the case may be the remainder of the security returned, under the orders of the District Judge.

[(6) Every sum ordered to be forfeited under this section in connection with any scheduled offence other than one specified in item 1 of the Schedule to this Ordinance shall, after deduction of the costs of the attachment as determined by the District Judge, be credited to the Government (being a Government referred to in the said schedule) or local authority to which the offence has caused loss or where there is more than one such Govt. or local authority, the sum shall, after such deduction as aforesaid, be distributed among them in proportion to the loss sustained by each].”

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THE ORDINANCE IS EVEN NOW VALID

34. In **Biswanath Bhattacharya Vs. Union of India and others**, while dealing with a similar statute i.e. the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1977, (which deals with forfeiture of properties of a person when he was in preventive detention of the COFEPOSA, 1974), and upholding Section 7 thereof (which provided for such forfeiture on the ground that such forfeiture is justified if a person acquires property by means which is not legally approved) and holding that such provision is in public interest, the Supreme Court referred to the Criminal Law Amendment Ordinance, 1944, with

which are concerned, and observed :

*“32. The regime of forfeiture of property contemplated under the Act is not new. At least from 1944 such a regime (though not identical but similar to the impugned one) is prevalent in this country. Two ordinances were made in 1943 and **1944**, subsequently amended by another ordinance in 1945, all called **Criminal Law Amendment Ordinances**, which continued to be in force in this country by virtue of operation of Article 372 and some anterior laws-the details of which may not be necessary for the present purpose. Under the 1943 Ordinance, two special Tribunals were constituted to try cases allotted to them "in the first Schedule in respect of such charges of offence prescribed under the second Schedule etc.". Essentially, such cases were cases either of charge of receipt of illegal gratification by a public servant or embezzlement of public money etc. **The 1944 Ordinance provided for the attachment of the money or other property which is believed to have been procured by means of one of the above mentioned scheduled offences by the offender. Such attached property is required to be disposed of as provided under Section 13 of the said Ordinance. Under Section 12 of the Ordinance, the Criminal Court trying a scheduled offence is obliged to ascertain the amount or value of the property procured by the accused by means of the offence. Under Section 13(3), it is provided that so much of the attached property referred to earlier equivalent to the value ascertained by the Criminal Court under Section 12 is required to be forfeited to the State.**”*

35. The Court also referred to the Constitution Bench judgment of the Supreme Court in **State of West Bengal Vs. S.K.Ghosh** and observed that in that case, it was held that the forfeiture contemplated in the Ordinance was not a penalty within the meaning of Article 20 of the Constitution but is only a speedier mode of recovery of the money embezzled by the accused. Therefore even now the applicability, validity and operation of the Ordinance are in no doubt.

THE POINTS FOR CONSIDERATION

36. Having regard to the contentions of the respective parties, two points arise for consideration in this case:

8. *Whether this Revision under Article 227 of the Constitution of India is maintainable in the facts and circumstances of the case?*
9. *Whether it was incumbent on respondent to obtain fresh authorization from the State Government under Section 3(1) of the Ordinance in order to file Crl.M.P.No.43 of 2015 before the Special Court?*

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Point No.1

37. First I will deal with decisions of the Supreme Court which have considered the scope of power under Art.227 of the Constitution of India.
38. In **State of Gujarat Vs. Vakhatsinghji Vajesinhji Vaghela**, the Supreme Court held that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, and that this jurisdiction cannot be limited or fettered by any act of the State Legislature and that the supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of the authority and to seeing that they obey the law.
39. In **Jagir Singh Vs. Ranbir Singh**, the Supreme Court held that the power of judicial superintendence under Article 227 could only be exercised sparingly, to keep subordinate courts and tribunals within the bounds of their authority and not to correct

mere errors. It held that if the statute banned the exercise of revisional powers by the High Court, it would indeed require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law.

40. In **Pepsi Foods Ltd. Vs. Special Judicial Magistrate**, the Supreme Court has held that the High Court can exercise its power of judicial review in criminal matters as was declared in **State of Haryana Vs. Bhajan Lal** and also inherent powers under Section 482 of the Code, which it said, could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. It further held that under Article 227, the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature, that it confers vast powers on the High Court to prevent the abuse of process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure and that such power can also be exercised in criminal matters. It declared that the power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. The Supreme Court further held that the nomenclature under which petition is filed is not quite relevant, and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed, which procedure is mandatory. It held that if in a given case the court finds that the person who approached it could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under

Article 227 or Section 482 of the Cr.P.C. It observed that even if provisions exist in the said Code of Revision and Appeal, sometimes for immediate relief, Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts.

41. In **Industrial Credit and Investment Corporation of India Limited Vs. Grapco Industries Limited**, the Supreme Court held that there is no bar on the High Court examining merits of a case in exercise of its jurisdiction under Article 227 of the Constitution of India if the circumstances so require. It further held that under Article 227 of the Constitution of India, the High Court can even interfere with interim orders of courts and tribunals if the order is made without jurisdiction.

42. This was reiterated in **Navjot Sandhu** (3 supra) by the Supreme Court in the following terms:

“28. Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate Tribunal's within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is a difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and Tribunal's within the bounds of their authority and not to correct mere errors. Further where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was

not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised 'as the cloak of an appeal in disguise'".

43. In **Smt.Shail Vs. Shri Manoj Kumar and Ors.**, the Supreme Court reiterated that in exercise of power of superintendence conferred under Article 227 of the Constitution of India on the High Court, the High Court does have power to make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior Court or Tribunal as to the manner in which it would proceed hence and the High Court has the jurisdiction also to pass itself such a decision or direction as the inferior Court or Tribunal should have made.
44. The facts narrated above indicate the unfortunate manner in which the Special Court has been dealing with the proceedings initiated against the petitioners. For sake of convenience they are again recapitulated.
45. It is not in dispute that the complaint against 1st petitioner had been registered under Section 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act, 1988 as long back as 03-06-2011. It is expected of the respondent to conclude the investigation as expeditiously as possible but although almost four years are getting completed, there is no sign of any closure of the investigation. Learned counsel for the respondent fairly stated that more time is required to complete the investigation but was unwilling to commit as to how much longer the investigation would go on.
46. The object of Section 10 of the Ordinance is to ensure a speedy investigation and filing of the charge sheet so that accused does

not suffer the order of attachment for an undue long period and that period, in the wisdom of the statute had been fixed at one year with a rider that it was open in a special case to the State to move for an extension but that also has to be done within a reasonable period. The Special Court therefore ought to exercise some control over the respondent in the matter of investigation, but it appears to be oblivious of the said responsibility.

47. On 11-01-2012, the Special Court in Crl.M.P.No.12 of 2012 had initially directed ad-interim attachment of the properties of the petitioners in the exercise of its jurisdiction under Section 4 (1) of the Act and directed the petitioners to file their objections. Under sub section (3) of Section 4, the said Court had an obligation to invite objections to its order of *ad interim* attachment. Sub section (2) of Section 5 of the Ordinance obligates the Special Court to investigate the objections by following the procedure in respect of a suit under the Code of Civil Procedure. It is also empowered to examine parties and only thereafter it can pass an order making the *ad interim* order of attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order under sub Section (3) of Section 5 of the Ordinance.

48. Although the petitioners herein had filed objections on 26-09-2012 along with supporting material, the Special Court in its order dt.06-06-2014 in Crl.M.P.No.173 of 2014 took the view that the points raised in the objections can only be effectively considered after full trial and after examining the witnesses and documents.

49. In my opinion, in doing so, the Court below had abdicated its responsibility to decide the objections and acted contrary to the mandate of sub Section (2) of Section 5 of the Ordinance by refusing the investigating objections. Also in Crl.M.P.No.124 of 2014, when extension of the ad interim attachment was sought under Section 10 (a) of the Ordinance by the respondents, that too with a delay of 464 days, it directed extension of the attachment for a period of one year from 06-06-2014 without assigning any reasons therefor.
50. This shows the casual manner with which the Special Court is conducting the proceedings against the petitioners.
51. After the Order dt.15-09-2014 was passed by this Court in Crl.P.No.683 of 2014 allowing the said appeal and setting aside the order dt.06-06-2014 in Crl.M.P.No.124 of 2014 and directing the Special Court to hear arguments and pass a fresh order, it passed an order on 27-01-2015 curiously extending attachment for one year from 11-01-2012 to 10-01-2013 only. Even in the said order, the Court below has held that the contentions of the petitioners and the documents filed by the petitioners can only be considered after full trial. No reason is assigned why it confined the attachment only for one year from 11-01-2012 to 10-01-2013 and what is to happen to the properties which have been attached up to 10-01-2013 thereafter.
52. When the respondent again filed petition Crl.M.P.No.43 of 2015 on 03-02-2015, the Special Court, without even questioning the respondent/investigating agency as to the reasons for the delay in completing investigation, meekly accepted the plea of the respondent and passed impugned order on 04-02-2015 granting

fresh ad interim attachment of the properties of the petitioners.

53. In my considered opinion, there is total abdication of responsibility by the Special Court of its duty to comply with the provisions of the Ordinance. It is acting as a mere post box to rubber stamp the requests of the respondent. This is not expected of the Special Court under the provisions of the Act.
54. In my considered opinion, the conduct of this nature by the Special Court warrants the exercise of powers under Article 227 of the Constitution of India by this Court. The Special Court ought to be kept within the bounds of this authority. In **Pepsi Foods Limited** (8 supra), the Supreme Court had held that the High Court can exercise its power of judicial review and power of superintendence under Article 227 in criminal matters also. In **Smt.Shail** (11 supra), the Supreme Court had also held that in exercise of power of superintendence under Article 227 of the Constitution of India, the High Court does have power to make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior Court or Tribunal as to the manner in which it would proceed hence; and the High Court has the jurisdiction also to pass itself such a decision or direction as the inferior Court or Tribunal should have made.
55. In my opinion, since the Special Court, as explained above, acted in utter disregard of the provisions of the Ordinance, there was no necessity for the petitioners to invoke the provisions of appeal under Section 11 of the Ordinance and the non-filing of the said appeal would not come in the way of the petitioners invoking Article 227 of the Constitution of India in the facts and circumstance of this case.

56. In **Anandawardhan** (2 supra) cited by counsel for respondent, a writ petition under Article 227 of the Constitution of India was filed by petitioners seeking a direction to the Police to take cognizance of complaints lodged by the petitioners. The High Court entertained it and granted directions. The Supreme Court set aside the order of the High Court and observed that the petitioners could have moved the Magistrate concerned for an appropriate order under Sec.156 Cr.P.C or could have filed a complaint and obtained appropriate orders from him for issuance of process against the accused for trial. It held that without doing so, the petitioners cannot approach the High Court and it cannot entertain it. This decision does not help the respondent since as explained below the Special Court had in fact acted without jurisdiction. In such a situation the existence of any alternative remedy is no bar to approach the High Court under Article 226 or Article 227 of the Constitution of India.

57. In this view of the matter, I am of the opinion that the objection raised by the learned counsel for the respondent that this Court ought not to entertain this Revision under Article 227 of the Constitution of India is without any merit. Point No.1 is answered accordingly in favour of the petitioners and against the respondents.

Point No.2:-

58. There is no dispute that unless the respondent is authorized under sub section (1) of Section 3 by the State Government to file an application before the Special Court for attachment of the properties of an accused person under the Ordinance, the respondent cannot file an application for attachment of the

properties under Sec.3 and 4 of the Ordinance.

59. G.O.Ms.No.250 Agriculture and Cooperative (VIG.I) Department dt.22-01-2011 was no doubt issued by the State Government in exercise of that power authorizing the respondent to file an application in the Court of the Special Judge for SPE & ACB Cases, Nellore for attachment of properties of the petitioners. Para 3 thereof is extracted hereunder:

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*“The Government after careful examination of the matter hereby authorize the Investigating Officer of Anti Corruption Bureau of this case for filing **an application** in the Court of Special Judge for SPE and ACB Cases, Nellore for attachment of the properties worth Rs.57,35,623/- (Rupees Fifty Seven Lakhs, Thirty Five Thousand, Six Hundred and Twenty Three only) as described in the Annexure-I to IV to this order under Section 3 of the Criminal Law (Amendment) Ordinance, 1944.”*

60. This authorization was utilized by the respondent for filing Crl.M.P.No.12 of 2012 on 08-11-2011 for seeking attachment of properties of the petitioners under Sections 3 and 4 of the Ordinance. The language of the said G.O. referred to above indicates that for only **one application** for attachment, authorization had been granted to the respondent. Once Crl.M.P.No.12 of 2012 was filed on 08-11-2011 invoking the said G.O., the authorization issued thereunder by the State Government stood exhausted and extinguished.
61. For filing another application of the nature of Crl.M.P.No.43 of 2015 (for again attaching the properties of the petitioners), the respondents cannot rely upon G.O.Ms.No.250 Agriculture and Cooperative (VIG.I) Department dt.21-10-2011. It was incumbent upon the respondent to obtain a fresh order of authorization from

State authorizing him to file another application for attachment of the properties of the petitioners. Admittedly this has not been done.

62. It is settled law that where a statute prescribes a thing to be done in a particular way, it has to be done in that way and in no other way. Other methods of performance are necessarily forbidden. (**Manohar Lal Sharma v. Principal Secretary and Patna Improvement Trust v. Lakshmi Devi**).

63. The Bombay High Court in the case of **Trambak Ananda Mahajan** (1 supra) had an occasion to consider this principle. In that case also, an order of ad interim attachment under Section 4 of the Ordinance was obtained. Since no cognizance of the offence against the respondents therein came to be taken and no application for continuing the orders of attachment came to be filed, the trial Court vacated the attachment. Thereafter, a second application seeking a fresh order of attachment was filed. This was done without obtaining a fresh authorization under sub section (1) of Section 3 of the Ordinance. That application was rejected on the ground of want of fresh authorization and also on the ground that charge sheet ought to have been filed since a period of 23 months had elapsed since the registration of offence. This was questioned by the State in the Bombay High Court. The Bombay High Court dismissed the appeal of the State. It held that Section 10 of the Ordinance enables the State to attach the properties of the individual against whom the prosecution is intended to be lodged so that the accused is prevented from disposing of the properties attached and reaping the fruits thereof. At the same time it held that it is the further object of Section 10 of the Ordinance to

ensure a speedy investigation and filing of the charge sheet so that accused does not suffer the order of attachment for an undue long period and that period, in it's wisdom, legislature had fixed at three months (later amended as 'one year') with a rider that it was open in a special case to the State to move for an extension but that also has to be done within a period of three months. It further held that the order of authorization dt.10-09-1984 issued to the appellant was only to make 'an' application which it had already done in CrI.M.P.No.615 of 1984. Once that application was dismissed, if a fresh application was to be filed, there has to be a fresh authorization. It held that the earlier authorization dt.10-09-1984 had exhausted itself and it cannot be resorted to as a support for the filing of the second application. It dismissed the appeal filed by the State which had challenged the decision of the Magistrate who held that the second application of the State without fresh authorization was not maintainable.

64. Therefore, in my considered opinion, without a fresh authorization from the State Government under sub-section (1) of Sec.3, the respondent could not have filed another application (CrI.M.P.No.43 of 2015) for attachment and it was not open to the Special Court to entertain it and pass the impugned order. Therefore it's order is without jurisdiction. This is not a mere irregularity in passing of the order but it goes to the very root of the matter.

65. In this view of the matter, I answer point No.2 also in favour of the petitioners and against the respondent.

66. For the aforesaid reasons, the Civil Revision Petition is allowed

and the order dt.04-02-2015 in Crl.M.P.No.43 of 2015 of the Special Court is set aside. No costs.

67. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 28-04-2015

Note:

L.R.Copy to be marked: **Yes**

B/o

Kvr/Vsv