

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.632 of 2013

Against the order, dated 06.08.2013, passed by the Special Judge-cum-Additional Sessions Judge, X, Patna, in Special Case No. 41 of 2007 arising out of Vigilance P.S. Case No. 70 of 2007

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I. Anil Kumar S/O Late Ishwar Saran Lal R/O Mohalla Ananndpuri, West Boring Canal Road, P.S. Srikrishnapuri, Patna Appellant

Versus

1. The State of Bihar through Vigilance Respondent

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Appearance :

For the Appellant : M/S Laxmi Narayan Das & Akhilesh Dutta Verma, Advs.

For the Respondent : Mr. Rama Kant Sharma, Sr. Advocate
Law Officer, Vigilance, with
Mr. Kedar Singh, A/C to Law Officer, Vigilance

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 21-01-2016

Heard the learned counsel for the appellant and the Vigilance.

2. This petition has been filed challenging the order, dated 06.08.2013, by which the objection of the appellant to stay the proceeding till a declaration is made under Section 5 of the Bihar Special Courts Act, 2009 (hereinafter referred to as, 'the Act').

3. The fact in narrow compass that before coming into force the Bihar Special Courts Act, 2009, a proceeding under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988, was going on against the appellant since 2007 in the Court of Special Judge, Vigilance, I, Patna. However, after coming into force of the Bihar Special Courts Act, 2009, vide Notification, dated 08.06.2010. The Special Case No. 41 of 2007, arising out of Vigilance P.S. Case No. 70 of 2007, was transferred from Special Judge, Vigilance, II, Patna, to the Court of Authorized Officer-cum-Special Judge, Vigilance, II, Patna. A confiscation case, arising out of the said Special Case No. 41 of 2007, was transferred to the Court of Authorized Officer-cum-Special Judge, Vigilance, I, bearing Confiscation Case No. 1 of 2002. An objection was raised by the appellant that since there is no declaration issued under Section 5 of the Act for proceeding of trial of Special Case No. 41 of

2007 arising out of Vigilance P.S. Case No. 70 of 2007. Hence, Authorized Officer-cum-Special Judge, Vigilance, II, in disproportionate assets case, bearing Special Case No. 41 of 2007 has no jurisdiction and is not required to be proceeded till a declaration is made under Section 5 of the Act. In view of the stand taken and the notification, dated 08.06.2010, the Authorized Officer-cum-Special Judge, Vigilance, II, Patna, the objection of the appellant was countered by the Vigilance with submission that the declaration has already been made by the State by notification, dated 08.06.2010, under Section 5 of the Act and the said notification has been sent to both the Special Courts I and II and the petition has only been filed to cause delay in the disposal of the case. The Court below having perused the record observed that the case has been transferred to the Special Court I on declaration made by the State and the photo stat copy of the said declaration has also been produced before him, hence, there is no force in the petition and dismissed the petition.

4. The learned counsel for the appellant, however, challenged the order, impugned, dated 06.08.2010, on the ground that though a declaration has been made on 08.06.2010 and has annexed the said declaration and marked as Annexure 1, in his memo of appeal however, has taken stand that this declaration has been made for a confiscation of the proceeding and not for the trial of disproportionate assets case, hence, his submission is that since a declaration of trial in disproportionate assets case is made, the proceeding under the Bihar Special Courts Act, 2009, is not required to be proceeded with.

5. The learned counsel for the Vigilance, however, contends that Bihar Special Courts Act, 2009, provides that no declarations having to be made one for disproportionate assets case and other for confiscation case, hence, the stand taken by the appellant has no legs to stand. However, it is relevant to quote Sections 5 and 6 of the Bihar Special Courts Act, 2009 :

Section 5 : Declaration of cases to be deal with under this Act – (1) If the State Government is of the opinion that there is prima facie evidence of the commission of an

offence alleged to have been committed by a person, who has held or is holding public and is or has been public servant within the meaning of section 2(c) of the Prevention of Corruption Act, 1988, in the State of Bihar, the State Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.

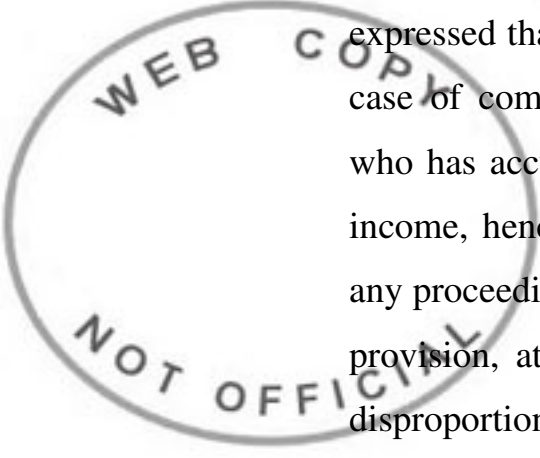
(2) Such declaration shall not be called in question in any Court.

Section 6 : Effect of declaration -- (1) on such declaration being made, notwithstanding anything in the Code or any other law for the time being in force, any prosecution in respect of the offence shall be instituted only in a Special Court.

(2) Where any declaration made under section 5 relates to an offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court under this Act, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to Special Court for trial or the offence in accordance with this Act.

6. Hence, from plain reading of Section 5 it is apparent that the Bihar Special Courts Act, 2009, provides that if the State Government is of the opinion that there is prima facie evidence of the commission of an offence alleged to have been committed by a person, who has held or is holding public office and if or is public servant, the State Government shall make a declaration to that effect in each case in which it is of the aforesaid opinion. The word “each” signifies a case for commission of an ‘offence’ as defined under Section 2(C) by public servant holding public office. However, in the entire declaration, there is no mention either of trial or a confiscation case or a confiscation proceeding what has been required is only that the State Government has to affirm an opinion that there is prima facie evidence of commission of an offence committed by a person holding a public office or a public





servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988. However, coming to the declaration, made in the Notification, dated 08.06.2010, with regard to this, that is, the Vigilance Investigation Bureau Case No. 70 of 2007 in which it is expressly expressed that the Government is of the opinion that there is prima facie case of commission of above mentioned misconduct by Anil Kumar, who has accumulated property disproportionate to his known source of income, hence, its declaration, itself, is sufficient either for trial or for any proceeding under the Bihar Special Courts Act, 2009, and there is no provision, at all, mentioned that a separate declaration is required for disproportionate assets once the declaration is made by the State. The consequence of such declaration follows under Section 6 of the Bihar Special Courts Act, 2009. When declaration made under Section 5 of the Bihar Special Courts Act, 2009, the offence in respect of which the prosecution has already been instituted that proceeding in relation, therefore, are pending in a Court other than Special Court such proceeding shall stand transferred to the Special Court for trial. Hence, having regard to the fact that once the declaration made the cases pending in the Court of Special Judge, Vigilance, I, was transferred in the Court of Authorized Officer-cum-Special Judge. However, the confiscation case initiated under Section 13 of Chapter III of the Bihar Special Courts Act, 2009, and no provision for a separate declaration under Section 5 is provided. The grievance of the appellant is that in the declaration it has been mentioned in paragraph 3 that it felt necessary by the Government that the offender should be tried for confiscation of the property mentioned in the application by the Bihar Special Courts Act, 2009, established under sub section (1) of Section 3 of the Bihar Special Courts Act, 2009, and has submitted that this declaration can only be deemed to be for the confiscation case only and not for trial of the disproportionate assets case. He has also referred to paragraph 20 of the case reported in **2011(1) P.L.J.R., 1168** (supra) and submitted that the word “all” used in this paragraph as “declaration in all cases” means both disproportionate assets case and confiscation case.

7. The learned counsel for the appellant is totally

misconceived in his submission. The word “all” does not represent disproportionate assets case and confiscation case, the word all used in and referred in paragraph 20 of the case reported in **2011(1) P.L.J.R., 1168** (supra) has its connotation that three cases of three stages, that is, cases in which the cognizance has already been taken, cases in which the proceeding has been granted for prosecution and the cases in which the investigation is under progress, the offender should be tried for confiscation case. There is no reference, at all, in the paragraph any confiscation. Hence, the submission made by the learned counsel for the appellant does not stand. I do not find any merit in the petition.

8. The petition is, accordingly, **dismissed**.

(Gopal Prasad, J)

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