IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No. 67 of 2014
Arising out of P.S. Case No. - 27 Year - 2012 Thana - C.B.I CASE District - MUZAFFARPUR

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Baby Kumari, Wife of Late Upendra Singh, Constable Indian Inhabitant, Muzaffapur District Police Force, Muzaffapur Permanently Residing at Village - Rahatpur, P.S. - Suryagarha, District - Lakhisarai

.... Appellant

Versus

The State of Bihar (through Vigilance)

.... Respondent

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Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Advocate Mr. Malay Kumar Choudhary, Advocate Mr. Amit Kumar, Advocate Mr. Pravin Kumar, Advocate
For the Respondent	:	Mr. Rama Kant Sharma, Sr. Adv. Vigilance-L/O Mr. Rabindra Kumar, Adv. AC to Vigilance L/O

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT
Date: 20-05-2016

Heard Mr. Ajay Kumar Thakur, learned counsel for the appellant and Mr. Rama Kant Sharma, learned counsel for the Vigilance.

2. This appeal is directed against the order dated 03.12.2013 passed in Confiscation Case No. 01 of 2013 by the Special Vigilance Court No. 1, Muzaffarpur by which the assets/properties both movable and immovable as shown in Item Nos. 1, 2, 3 and 5 of para F of the application filed by the State of Bihar under Section 13 of the Bihar Special Courts Act (for short the “Act”), 2009 has been ordered to stand confiscated by the State of Bihar with a direction to surrender or deliver possession of the above properties/assets to the District Magistrate, Muzaffarpur within 30 days of the service of this order, failing which the

District Magistrate, Muzaffarpur is authorized to take possession of the aforesaid properties/assets as per the provisions of Section 18(2) of the Act as has been held to be acquired by the public servant by offence, i.e., disproportionate to her known source of income.

3. From perusal of the records, it appears that a petition, under Section 13 of the Special Court Act, has been filed on the basis of First Information Report filed on the written report of the informant, Sri Manish Kumar, Dy. Superintendent of Police, (HQ), Muzaffarpur, bearing Muzaffarpur (Town) P.S. Case No. 401 of 2010, dated 01.10.2010 under Sections 409, 420, 467, 468, 471 and 120B of the Indian Penal Code and under Section 13(1) of the Prevention of Corruption Act, 1988, registered against accused Sushil Kumar Chaudhary, the then, Accountant, Police Office, Muzaffarpur, Smt. Anita Chaudhary, Wife of Sushil Kumar Chaudhary, Shakuntala Devi, Lady Constable and 2 other suspects for gross financial irregularity and defalcation of huge amount of government money.

4. Upon investigation, it was found that accused Sushil Kumar Choudhary, Accountant, Police Office, Muzaffarpur, has defalcated a large sum amounting to the tune of Rs.7,00,00,000/- (seven crores) or more of the government money through treasury bills of monthly salary, T.A. and other bills of the police personnel in between the year 2006 to September, 2010 and in connivance with other co-accused including the

appellant/Baby Kumari and Sushil Kumar Choudhary. The accused persons used to manage to get illegal money transferred through Cemtex System in his three (03) savings accounts (including the salary Account No. 30041237008) along with three (03) savings accounts of his wife and two daughter and another five (05) savings accounts (including the account of Baby Kumari bearing A/C. No. 11082148509 in which Rs.17,00,000/- was deposited in a single day) of other co-accused. Thereafter the house of Sushil Kumar Chaudhary and co-accused Baby Kumari was searched by the search team of Muzaffarpur Police and a huge part of defalcated amount of Rs.88,51,030/- along with ornaments worth Rs.4,10,050/- was recovered and seized from the house of Sushil Kumar Chaudhary and cash Rs.2,41,000/-, jewelry worth Rs.2,20,400/- and other investment papers and documents were also seized from the house of delinquent/appellant. However, total property seized, i.e., moveable and immovable property from the possession of the appellant amounts to Rs.39,77,821/-. It was found that during the cheque period the income of the delinquent/appellant/Baby Kumari as per her salary statement from May, 1997 to September, 2010 amounted to Rs.11,75,183/- and 1/3rd of this salary amount which is Rs.3,91,728/- is taken as likely savings of the delinquent/appellant and after taking the same from the total assets of Rs.44,15,397/- the disproportionate assets comes to Rs.40.23,669/-. Hence, the 5 Items of para F comes to the tune of Rs.39,77,821/- was prayed for to be confiscated as has been earned by offence disproportionate to the known source of income. The five items which were proposed to be confiscated in petition under Section 13 of the Act, bears Item No. 1 is the land having an area of 20 decimal (5 Kathas), description of land mentioned in Khata No. 879, Plot No. 1445, Mauza Kolhua Paigambarpur, Thana No. 482, P.S. Ahiyapur, Muzaffarpur (current MVR 90,000/- per decimal) value of the property having Rs.14,00,000/- standing in the name of Baby Kumari, Item No. 2 cash seized in house raid to the tune of Rs.2,41,000/, Item No. 3 cash in SBI Saving Account No. 11082148509 of Begusarai Branch to the tune of Rs.13,32,108/- standing in the name of Baby Kumari, Item No. 4 ornaments seized in house raid having value of the property to the tune of Rs.2,20,400/- and Item No. 5 ICICI Prudential Life Insurance Policy total 08 in Nos. having value of the property to the tune of Rs.7,84,313/- in which 04 policies are standing in name of Baby Kumari, 02 policies are standing in name of Ashi Singh, daughter of Baby Kumari and 02 policies are standing in the name of Anamika Singh, daughter of Baby Kumari.

5. Upon filing of the petition under Section 13 of the Act, a notice was issued to the appellant and in consequence of the same she submitted explanation under Section 14 of the Act making a claim through affidavit to the following effects that she has been appointed on

17.05.1997 and from 17.05.1997 to 30.09.2010 she saved from her salary to the tune of Rs.4,00,000/-. She has stated that her husband Upendra Prasad Singh who was posted as Constable in Bihar Police, District Begusarai, was encountered on 13.02.1997 and after his death she got income from Gratuity to the tune of Rs.1,00,000/-, leave salary to the tune of Rs.50,000/-, G.L.I. to the tune of Rs.1,00,000/-, and G.P.F. to the tune of Rs.1,00,000/- total comes to the tune of Rs.3,50,000/-. She has stated that she got income from bonus of LIC to the tune of Rs.90,000/- in the year 1998. She has stated that she got Rs.50,000/- as a sympathetic amount from the other Constables on the death of her husband. She has stated that she got Rs.90,000/- from Bihar Police Paropkari Kosh. She has stated that her marriage performed in the year 1987, and after marriage till the date of the death of her husband, her husband used to give her Rs.5,000/- per month and so she saved Rs.5,000/- x 114 months equivalent to Rs.5,70,000/-. She has stated that from her Sasural she was earning by tractor Rs.5,70,000/- @ of Rs.5,000/- x 114 months equivalent to Rs.5,70,000/-, from jeep she was earning Rs.3,000/- per month till the death of her husband i.e. Rs.3,000/- x 114 months equivalent to Rs.3,42,000/-, from two cows she was earning Rs.4,000/- per month since the time of her marriage i.e. Rs.4,000/- x 114 months equivalent to Rs.4,56,000/- and so she got income from tractor, jeep and cows to the tune of Rs.13,68,000/-. She has stated that she got jewellery of Rs.1,20,400/-, 1,00,000/- total comes to Rs.2,20,2400/- as a gift on her marriage. She has stated that from the ancestral property of her Sasural she earned Rs.3,50,000/- between July 1987 to September, 2010. She has stated that she got 10 Kathas land from her parents and from that land she earned Rs.1,15,000/- and so by these means she earned Rs.4,65,000/- by adding Rs.3,50,000/- and Rs.1,15,000/-. She has stated that Kamaldeo Pradad Thakur and Abhay Thakur had given Mokhtarnama in her name vide deed no. 1095 and for the said Mokhtarnama she gave all the money to the person who has written Mokhtarnama in his favour and the Mokhtarnama was only given to look and sale it and after selling the land she paid Rs.14,00,000/-. She has stated that after death of her husband government has given her Rs.1,00,000/- as compensation. She has stated that as a family pension from 1997 to 2004 she got Rs.1,76,400/- and Rs.1,09,200/- from 14.02.2004 to 30.09.2010 and earned total amount of Rs.2,85,600/- and prayer has been made to dismiss the confiscation application in the light of the aforesaid facts given in the affidavits.

6. The court below considered the written statement and the show cause filed on behalf of Prabhat Kumar in detail. The statement of SBI Account No. 11082148509 of the delinquent/appellant shows that a very little amount was left in the account through out between 1999 to July, 2006 and from the statement of account of aforesaid State Bank of

India A/C. No. 11082148509 it is found that Rs.17,00,000/- was deposited on a single day i.e. 31.03.2009 by Centex System of transfer which was amount of Muzaffarpur District Police Salary, ACP, arrear etc. and no explanation has been given about that single day deposit by Centex System and there is no documentary proof of any other income, except the salary that has been brought to notice nor any paper regarding tractor, jeep, cows found nor sworn in affidavit nor any document in respect of agricultural land has been produced and hence, taking into consideration these facts as pointed out by the appellant and taking into consideration the respective submissions the court below held that there is no explanation given regarding the deposits of Rs.17,00,000/- in her account in one day credited through CEMTEX System. Taking into consideration the fact that amount credited was not on regular basis and hence, ordered for confiscation of the property described in Item Nos. 1, 2, 3 5 of para F of the application to the tune of Rs.39,77,821/-. However, the Special Court by its order released the property of Item No. 4 of para F taking it to be her stridhana property may have been acquired during marriage and the said amount was released from the purview of the confiscation.

7. Learned counsel for the appellant during the argument conceded that out of the five properties mentioned in para F of the confiscation case she has not claimed Item No. 1 the land having

valuation of Rs.14,00,000/-. She has also not made any claim with regard to Item No. 3 amounting to Rs.13,32,108/- credited in Account No. 11082148509 of Begusarai Branch and hence, only made her claim with regard to the two properties mentioned in Item No. 2 of para F of the petition i.e. cash seized in house raid and Item No. 5 ICICI Prudential Life Insurance Policy total eight in numbers standing in the name of Baby Kumari and her daughters.

8. Learned counsel for the appellant has submitted that appellant/Baby Kumari has earned as her husband was in service and died in encounter and so she got huge amounts like gratuity, leave encashment, G.L.I. and GPF to the tune of Rs.3,50,000/-, LIC bonus to the tune of Rs.90,000/-. He submitted that she got sympathetic consideration of the Constable to the tune of Rs.50,000/- in 1997 and she received Rs.90,000/- Bihar Police Paropkari Police Force and hence, she claimed that these amounts apart from her claim by earning from tractor, jeep and agricultural land as well as saving from money paid to her by her husband per months since the time of her marriage till death and so has claimed that these amounts if taken into consideration her claim to the tune of cash seized to the tune of Rs.2,41,000/- and Rs.7,84,313/- from ICICI Prudential Life Insurance Policy in the name of herself and her children be released and hence, the main argument advanced on behalf of the appellant is only with regard to the release of the property

seized which was a cash recovered from her house to the tune of Rs.2,41,000/- and policy of ICICI Prudential Life Insurance of Rs.7,84,313/-.

9. However, learned counsel for the State has countered the claim of the appellant and the argument and has pointed out that it is highly improbable that the cash seized from her house to the tune of Rs.2,41,000/- are the properties which she earned at the time of the death of her husband and asserted that money seized cannot be said to be earned property which she got in 1997-98 at the time of death of her husband. It has further been pointed out that no document shows that as to whether these money have been deposited in any bank or there is no account showing that the amount was running in her account since 1997. It has further been pointed out that she claimed that her husband was giving her money of Rs.5,000/- per month from the time of marriage till 1997 but the salary of her husband must not have been Rs.5,000/- at the time of her marriage and it is highly improbable to accept without any supporting document that she was getting at the time of her marriage Rs.5,000/- per month by her husband in cash in her house and further any earning by tractor and jeep or by agricultural land is not acceptable in absence of any document to support. It has further been submitted that though whatever she claims to have earned by jeep, tractor or lands and the amounts received after the death of her husband in 1987-97 is not

acceptable to have been kept by her in cash without any document to support and it cannot be accepted that the said amount was kept in cash in house and there is nothing to suggest that the amount was kept in any accounts till 2009.

10. It has further been pointed out that eight LIC Policies to the tune of Rs.7,84,313/- bearing Policy Nos. 08490117, 09048781, 09015682, 09015661, 08595112, 09048698, 08487011, 08584454 are the investment made in 2008, 2009 and 2010 and hence, contended that the amount paid in the ICICI Prudential Life Insurance Policy in the name of Baby Kumari and children cannot be acceptable which was alleged to have been earned in 1997-1998. Nor the income from tractor, jeep, land or money paid by her husband during his life time is acceptable. It is apparent that amount of Rs.17,00,000/- transferred through CEMTEX System paid in the accounts as well as cash found in her house cannot be an amount earned during 1997-1998.

11. Having regard to the respective contention, I find that there is substance in the argument advanced by the learned counsel for the Vigilance that the amount recovered from the house of the appellant i.e. cash of Rs.2,41,000/- and the amount of investment made in the Insurance Policy of ICICI Prudential during the year 2008 to 2010 found on the date of confiscation in her house is exceptional high amount for a

constable and any explanation that that amount was the amount earned in 1987 to 1998 is not at all acceptable without any document evidence.

12. However, it is apparent from the affidavits that the appellant has earned the amount of Rs.4,00,000/- by her savings and other amounts she earned in the year 1997 after the death of her husband but there is no supporting document showing that where the said amount was kept from 1987 to 1997 even thereafter in 2009-2010 and as stated it cannot be presumed that such a huge amount was kept in house in cash and there is nothing to show that the said amount is ever kept in bank nor any document regarding the income from the tractor, jeep and land is acceptable and it is contrary that such a huge amount has been transferred in her account in a single day by CEMTEX System.

13. Hence, I do not find any merit in the appeal and the same is, accordingly, dismissed.

(Gopal Prasad, J)

Kundan Sharma

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	