

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.112 of 2015

Arising Out of PS.Case No. -71 Year- 2009 Thana -C.B.I CASE District- MUZAFFARPUR

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1. Om Prakash Singh son of Late Jagdeep Singh, Resident of Pramila Villa, Lalji Tola, P.S.- Gandhi Maigan, Patna, District- Patna
 2. Smt. Pramila Sinha, Wife of Om Prakash Singh, Resident of Pramila Villa, Lalji Tola, P.S.- Gandhi Maigan, Patna, District- Patna
 3. Neelu Kumari @ Neelu Sinha, wife of Rajeev Ranjan, Resident of Pramila Villa, Lalji Tola, P.S.- Gandhi Maigan, Patna, District- Patna
 4. Suman Kumar, Son of Om Prakash Singh, Resident of Pramila Villa, Lalji Tola, P.S.- Gandhi Maigan, Patna, District- Patna
 5. Rajeev Ranjan, Son of Om Prakash Singh, Resident of Pramila Villa, Lalji Tola, P.S.- Gandhi Maigan, Patna, District- Patna

.... Appellant/s

Versus

1. The State of Bihar through Vigilance

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Rakesh Kumar Samarendra, Advocate
For the Respondent/s	:	Mr. Rama Kant Sharma, Sr. Advocate Mr. Rakesh Kumar Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 24-03-2017

Instant appeal under Section 17 of the BSC Act, 2009

has been filed by the appellants against judgment and order dated 12.01.2015 passed by Authorised Officer, Special Court Vigilance No.1, Muzaffarpur in Confiscation Case No. 04/2012 under Section 15 of the BSC Act, 2009 declaring the assets moveable as well as immovable appertaining to Rs. 1,19,66,063/- shown under para-(F) and (H) of the application filed under Section 13 of the Bihar Special



Courts Act 2009, be confiscated to the State Government free from all encumbrance directing the District Magistrate, Patna to take possession thereof, and in likewise manner appellants/OPs were directed to surrender/deliver possession of these properties within 30 days of service of the order impugned.

2. Appellant No.1/O.P. while being prosecuted under Vigilance PS Case No. 71/2009 (Special Case No. 51/2009) under the garb of Section 13(E) of the Prevention of Corruption Act, 1988 was found in possession of huge amount of moveable as well as immovable properties disproportionate to his income having acquired in different names of his family members during course of conduction of raid and accordingly, prayer was made at the end of the State in terms of Section 13 of the Bihar Special Courts Act, 2009 for confiscation of the properties and accordingly, arrayed all the family members including that of Om Prakash Singh as an Opposite Party and were, accordingly noticed. After their appearance on different dates having written statement at their end, the matter has finally concluded by the judgment and order impugned whereupon the instant appeal has been filed.

3. Learned counsel for the appellants made elaborate submissions while assailing the judgment and order impugned and



during course thereof, encircled his submission relating to non compliance of Rule-11 (P) of the Bihar Special Courts Rules and in order to substantiate the same, it has been submitted that even having challenged by way of specific averments under para-17 of the written statement regarding the valuation having estimated at the end of the Vigilance, in partial manner and in the aforesaid background, asked for revaluation by a competent, qualified agency, consequent thereupon, it was obligatory on the part of the court to act in terms thereof, and should have procured proper valuation of the assets before it from competent agency. Non appreciation of the aforesaid legal right having available to the appellants, virtually, speaks over denial of statutory right more particularly, the natural right and on account thereof, the order impugned is fit to be set aside. To substantiate the same, learned counsel of the appellants relied upon ***2014(2) PLJR 648 (Srikant Prasad v. State of Bihar through Vigilance)***.

4. Learned counsel for the appellants also assailed the judgment/order impugned over non appreciation of the status of other appellants who, in their individual capacity, were quite competent to acquire the properties standing in their respective names which they duly explained by way of placing proper explanation supported by



relevant documents and so, would have exonerated the same. Furthermore, the theme of HUF (Hindu Undivided Family) has also not been properly considered, although, there happens to be sufficient material on the record to justify the same. Consequent thereupon, the judgment/order impugned suggests non application of judicial mind as well as over looking the pleadings, evidence whereupon, the order impugned would not survive.

5. Learned Special P.P. representing the Vigilance controverted the submissions and submitted that the instant appeal happens to be non maintainable in the background of lapses having at the end of the appellants themselves whereunder the pleadings having been filed at their end is found non entertainable in the eye of law on account of having been filed before the learned lower court in contravention of Section 14 as well as in terms of Rule 11 of the Bihar Special Courts Rules 2010. Hence, instant appeal is fit to be summarily dismissed.

6. At an initial stage, the validity of the Act was challenged in the case of *Sanjay Kumar v. The State of Bihar* as reported in *2011 (1) PLJR 1168* whereunder negating the plea of the petitioners, vires of the Act was upheld. Furthermore, the matter sailed up to the Hon'ble Apex Court in the case of *Yogendra Kumar*



Jaiswal v. State of Bihar as reported in *AIR 2016 SC 1474* wherein also validity of the Act has been upheld save and except nullifying identity of Rule-12 declassing the same as *ultra vires* on account of prescription of conflicting procedure to be followed during course of going with the proceeding as prescribed under Section 8 of the Act. That being so, the mandate of law prescribing proper mode of procedure to be followed while proceeding with the trial is to be carried out in similar fashion. It is needless to remind that effect of Special Law will overlap over general Law. Furthermore, Section 4, 5 of the Cr.P.C. also abrade the same. That being so, Bihar Special Court Act as well as Rules, laying down the procedure for conduction of proceeding is to be followed in strict sense.

7. As per Section 14 of the Special Courts Act, it is evident that as soon as application in terms of Section 13 is filed before the Authorised Officer, the person against whom that application has been filed (O.P.) is to be noticed calling upon him within such time as may be specified in the notice, which should not be ordinarily more than 30 days to respond explaining sources of his income, earning, asset and further the source for such acquisition by way of written statement. The aforesaid eventuality is found further magnified under Rule-11 of the Special Courts Rules, 2010. For better appreciation the



same is quoted below:-

“11. Authorised Officer to follow summary procedure.—(a) On receipt of application under Section 13 read with Rule 14 the authorized officer shall immediately issue notice to the delinquent public servant.

(b) If the delinquent public servant responds to the notice and appears before the authorized officer either in person or through his legal representative, he shall be furnished with the copy of the application filed under Section 13 along with all its enclosures. The authorized officer shall allow 30 days time for appearance of delinquent public servant to file his statement in defence. If for good and valid reasons, to the satisfaction of the authorized officer, delinquent public servant does not file his statement of defence, he may allow maximum of 15 days time within which he shall have to file his statement of defence.

(c) If the delinquent public servant does not file his statement of defence within the prescribed period of 30 days or within extended period of 15 days, it shall be presumed that he has no defence to put forward. The authorized officer shall be free to adjudicate the proceeding instituted before him.

(d) If the delinquent public servant submits his statement in defence, a copy of the same shall be made available to the special Public Prosecutor conducting the proceeding before the authorized officer who shall have the opportunity to reply to the same.

(e) The Special Public Prosecutor shall have to reply within maximum period of 15 days from service of statement of defence upon him.

(f) If the Special Public Prosecutor fails to submit his reply within 15 days, the authorized officer may for good or valid reason allow further period of 15 days for filing the reply, failing which the authorized officer shall proceed to adjudicate the proceeding as if the prosecution has no reply to submit.

(g) If the delinquent public servant proposes to contest the valuation of the property, the authorized officer may take assistance of such State Government agency or Central Government agency or any other officer or person



technically qualified as he may deem fit and proper.

(h) The authorized officer, on consideration of statement of defence, reply of public prosecutor and report of experts, if any, shall adjudicate the proceeding and will pronounce final verdict within a maximum period of 6 months from the day of service of notice.

(i) The authorized officer, after final adjudication, may proceed to confiscate the property in accordance with Section 15 of the Act.”

8. From perusal of Clause ‘b’ as well as Clause ‘c’, it is evident that at the first instance 30 days time is permissible which may be further extended to maximum 15 days. Clause ‘c’ speaks that in case, delinquent fails to file written statement within the aforesaid stipulated period of 30 days or further extended period of 15 days, it shall be presumed that he has no defence to put forward and in that event, the Authorised Officer will proceed to adjudicate the proceeding in absence thereof. The other part is not being taken up as, the same happens to be with regard to discharge of an obligation by the public prosecutor in case of filing of written statement at the end of delinquent within the aforesaid stipulated period, that means to say, 30 days or further extended period of 15 days.

9. From perusal of the Act as well as Rules, it is further evident that no power has been vested to the Authorised Officer for extending the aforesaid maximum period allotted in two



slots. When the relevant order-sheets have been gone through, it is found that on 22. 11. 2013, Om Prakash Singh O.P. No.1/appellant no.1 appeared and filed time petition for filing written statement. It is further evident from the order-sheet dated 25.11.2013 that he received copy of petition purported to be under Section 13 of the Act along with enclosures annexed therewith and since thereafter, time petition on his behalf was regularly filed in routine manner on each and every date till 13.01.2014 on which date Om Prakash Singh filed his written statement. Therefore, the written statement was filed on 52 days after appearance while 49 days after receipt of the enclosure. In any case, it was beyond 45 days, the maximum prescribed limit, though there happens to be absence of positive order at the end of Authorized Officer extending another 15 days as required under Rule 11(b) of the Special Courts Rules 2010 and in likewise manner, there happens to be absence at his end for extension of the period. Furthermore, successive orders did not speak with regard to acceptance of the written statement having been filed on behalf of appellant/O.P. No.1, Om Prakash Singh.

10. In likewise manner, the other appellants/O.P. Nos. 2 to 5 appeared on 05.12.2013 and filed a petition on 21.12.2013 to drop the proceeding against them whereupon, the proceeding sailed



for quite a long time and then lastly, vide order dated 01.05.2014, the same was rejected directing them to file written statement by 06.05.2014. Instead of filing written statement at their end, they filed petition before the Authorized Officer that they are going to challenge the order dated 01.05.2014, which they never did and lastly, written statement happens to be at their end on 24.05.2014.

11. Before calculating the period, it is evident that neither any prayer was made at the end of appellants/O.P. Nos. 2 to 5 for extension of another 15 days for filing written statement nor the Court, on its own, extended the same. In likewise manner, there happens to be no intermediary provision available whereunder a prayer should be at the end of Opposite Parties to drop the proceeding though made and further, filing of written statement on 24.05.2014, virtually, happens to be beyond maximum prescribed tenure of 45 days.

12. Considering the intention of the legislature inconsonance with the provisions having prescribed thereunder, more particularly, regarding disposal of the proceeding as warrant trial as well as confined the same within specific time frame and further, having absence of inherent power vested to the Authorized Officer during course of acceptance of written statement beyond prescribed



period and further perceiving embargo in terms of Rule 11 (c) of the Special Court Rules, written statement having been filed on behalf of appellants/Opposite Parties were not at all entertainable and that being so, whatever grounds they have taken, go out of consideration. Consequent thereupon, the grounds whatever been taken at the present moment could not be considered.

13. Consequent thereupon, the instant appeal sans merit and is, accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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