

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No. 405 of 2016

Against the order dated 29.04.2016 passed by the learned Authorized Officer,
Vigilance, Court No. II, Vigilance, Patna in Special Case No. 05 of 2010 arising out
of Vigilance P.S. Case No. 16 of 2000

Arising out of Vigilance P. S. Case No. - 16, Year - 2000 Thana - District - PATNA

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1. Parmeshwari Sinha, Wife of Late Kalika Prasad Sinha
 2. Ravi Ranjan Sinha, Son of Late Kalika Prasad Sinha
 3. Sanjeev Kumar Sinha @ Pappu Kumar, Son of Late Kalika Prasad Sinha
 4. Sushma Sinha @ Sushma Yadav, Wife of Ishwar Chandra Sinha
 5. Alka Yadav, Wife of Rajiv Ranjan Sinha
 6. Anita Yadav @ Anita Kumari, Daughter of Late Kalika Prasad Sinha, Wife of Hare Krishna Yadav
 7. Sunita Sinha, Daughter of Late Kalika Prasad Sinha, Wife of Late Chinmay Lal Singh Yadav

All residents of Road No. 23, Srikrishna Nagar, Police Station - Buddha
Colony, District – Patna

.... Appellants

Versus

1. The State of Bihar through Vigilance

.... Respondent

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Appearance :

For the Appellants	:	Shri Shashi Anugrah Narayan, Sr. Advocate Shri Bindhyachal Singh, Advocate Shri Ram Binod Singh, Advocate Shri Parijat Saurav, Advocate
For the Respondent	:	Shri Rama Kant Sharma, Sr. Advocate Shri Rakesh Kumar Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 19-01-2017

This criminal appeal has been preferred under Section 17 of the Bihar Special Courts Act, 2009 against the order dated 29.04.2016 passed by the learned Authorized Officer, Vigilance Court No. II, Patna in Special Case No. 05 of 2010 arising out of Vigilance P.S. Case No. 16 of 2000 whereby the learned court below has refused the prayer of the appellants to drop the confiscation proceeding.

2. A brief background leading to this appeal is that Vigilance Police Station Case No. 16 of 2000 was registered against



Late Kalika Prasad Sinha and the appellants. All the seven appellants are family members of Late Kalika Prasad Sinha. Allegation against the appellants is that they were conspirators with Late Kalika Prasad Sinha who was a public servant and retired on 30th June, 1996 from the post of Chairman, P.R.D.A. On 27.11.1997, the Income Tax Department raided his house and recovered movable and immovable property disproportionate to his known sources of income. Thereafter the aforesaid Vigilance Police Station Case No. 16 of 2000 was registered which gave rise to Special Case No. 05 of 2010.

3. The list of disproportionate property at Annexure-1 shows that some of the properties were purchased in the name of the appellants also by Late Kalika Prasad Sinha. During the pendency of the Vigilance Case, for offences under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988, Bihar Special Courts Act, 2009 came into force. Chapter 3 thereof provides for confiscation of property of such public servant.

4. The Public Prosecutor filed a petition under Section 13 of the Act, for confiscation of the property disclosed in the list, vide Annexure-1, on 08.12.2010, before the Authorized Officer under the Act. Kalika Prasad Sinha and his wife appellant no. 1 Parmeshwari Sinha filed separate petitions before the Authorized Officer to drop the confiscation proceeding. Before any order could be passed Kalika



Prasad Sinha died on 29.10.2011. Then his wife filed another petition to drop the confiscation proceeding on the ground that the criminal trial has already been dropped against Kalika Prasad Sinha and there is provision for return of the confiscated property after acquittal in the criminal trial. Therefore, no purpose would be served by continuance of the confiscation proceeding. By order dated 21.01.2014, the Authorized Officer, i.e., Vigilance, Court No. 2, Patna refused the prayer. The aforesaid order was challenged before this Court in Cr. Appeal (SJ) No. 225 of 2014 (Parmeshwari Sinha vs. The State of Bihar through Vigilance). By judgment dated 04.02.2015, this Court allowed the appeal considering the different provisions of the Act, specially, Section 13 of the Act on the ground that after death of the public servant confiscation proceeding is not maintainable. Section 13 of the Bihar Special Courts Act, 2009 reads as follows:-

“13. Confiscation of property.---(1) Where the State Government, on the basis of prima-facie evidence, have reasons to believe that any person, who has held or is holding public office and is or has been a public servant has committed the offence, the State Government may, whether or not the Special Court has taken cognizance of the offence, authorise the Public Prosecutor for making an application to the authorised officer for confiscation under this Act of the money and other property, which the State Government believe the said person to have procured by means of the offence.

(2) An application under sub-section (1) –

(a) shall be accompanied by one or more affidavits,



stating the grounds on which the belief, that the said person has committed the offence, is founded and the amount of money and estimated value of other property believed to have been procured by means of the offence; and

(b) shall also contain any information available as to the location for the time being of any such money and other property, and shall, if necessary, give other particulars considered relevant to the context.”

5. A bare perusal of the aforesaid provision makes it clear that prayer for confiscation is to be made in respect of the property procured by means of the offence committed by a public servant.

6. In Cr. Appeal (SJ) No. 225 of 2014, this Court held that after death of the concerned public servant, the confiscation proceeding cannot proceed in respect of the alleged disproportionate assets acquired by him in absence of the statutory provisions. The relevant portions of the judgment vide para 21 to 23 are being reproduced below:-

“21. Hence from perusal of the provision under Chapter III it is apparent that a confiscation proceeding can be initiated by a Public Prosecutor duly authorised by State having reason to believe that a public servant has earned a property by offence defined under Section 2(e) of Special Court Act. The Public Prosecutor shall file petition before an Authorised Officer duly appointed and



constituted under Section 3 of the Special Court Act then notice under Section 14(1)(e) to the public servant holding the property on his behalf and under Section 15 the Authorised Officer after considering the show cause and after giving opportunity of being heard to the Government Servant shall pass an order declaring the property to be confiscated if satisfied that the same has been earned by an offence. However this order of confiscation shall be subject to the order reversed in appeal provided under Section 17 or acquitted of public servant in trial before Special Court for offence defined under Section 2 (e) provided under Section 19 of the Special Court Act. There is no provision for the substitution of the heirs of the public servant and no provision that proceeding shall continue after the death of public servant who has been noticed under Section 14(1).

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

23. Hence coming to the fact and circumstance of this case the confiscation proceeding initiated on satisfaction of State that property earned by an offence by filing a



petition by Public Prosecutor duly appointment and notice issued under Section 14(1) and (2) of the Special Court Act. The show cause filed but before affording the opportunity of being heard given to the public servant and the person holding the property on his behalf, the public servant died. Hence the question whether the confiscation proceeding for confiscation of money and property earned by offence can proceed against a dead person and order be passed against dead person shall sustain when there is provision to be heard and that order subject to appeal and acquittal in criminal case is impossible to pursue in absence of public servant. There is no provision that the case shall proceed even on death of public servant or substituting the heirs of public servant. So the first question is whether the order can be passed under Section 15 of Special Court Act behind the back of the public servant who is dead and further can proceed with case after substitution of the heir particularly when there is no provision for substitution. The answer in both cases is negative. The Court can neither proceed behind the back nor proceed with after substituting the heir when there is no provision for substitution.”

7. After the aforesaid judgment of this Court, the appellants again moved before the Authorized Officer to drop the proceeding and by the impugned order dated 29.04.2016, the Authorized Officer has refused the prayer on the ground that the judgment of the High Court in Cr. Appeal (SJ) No. 225 of 2014 was confined in respect of the property of Late Kalika Prasad Sinha. The appellants were accused of the same case as conspirators, hence,



confiscation proceeding will continue in respect of the property standing in the name of the appellants. The same is under challenge in this appeal.

8. Contention of the appellants is that this Court while considering Cr. Appeal (SJ) No. 225 of 2014 had considered in details the provisions of the Bihar Special Courts Act, as well as the aim and object of the Act and came to the conclusion that since there was no provision for substitution in confiscation proceeding, the legal heirs of the public servant cannot be substituted nor the proceeding of confiscation in respect of the disproportionate property acquired by the public servant would continue after death of the public servant concerned. His next contention is that provision of Section 13 of the Act is specific that on the basis of, prima facie, evidence if the State Government has reason to believe that any person in the public office or a public servant has committed the offence, the Authorized Officer may approach, by a Public Prosecutor, for confiscation of the money and other property which the State Government believe to be of the said person to have procured by means of the offence. According to the learned counsel, since the public servant Kalika Prasad Sinha is himself dead, the proceeding on confiscation automatically abated in absence of any other statutory safeguard or remedy provided under the Act itself.

9. Next submission of the appellants is that the appellants



are themselves, individually, assessee of the income tax and the so-called properties said to be acquired by Late Kalika Prasad Sinha are, in fact, individual self acquired property of the appellants in whose name the property stands. This issue has already travelled up to the Income Tax Appellate Tribunal and by order dated 09.08.2011, the learned Appellate Tribunal held that those properties of the appellants are their self acquired property and this fact was not taken care of at the time of initial raid committed against Late Kalika Prasad Sinha by the Income Tax Department.

10. Learned counsel for the Vigilance Department submits that since appellants are co-accused as conspirators of the offence and they would continue facing trial, there is no reason to drop confiscation proceeding, at least, in respect of the property standing in the name of the appellants which were acquired by Late Kalika Prasad Sinha. Learned counsels supports the reason and finding of the learned Authorized Officer.

11. After hearing the parties and considering the material available on the record, this Court is of the view that in the very same matter, this Court has already held in criminal appeal aforesaid that after death of the public servant confiscation proceeding in respect of the properties said to acquired by him by unknown source of income is not maintainable. The court below has not considered the prosecution



allegation that the properties standing in the name of the appellants were, in fact, alleged as acquired by Late Kalika Prasad Sinha. There is no case of the respondent that the appellants were also public servants, hence, proceeding of confiscation would continue against the appellants. It is not a plausible ground that since the appellants are facing the criminal trial as conspirator with Late Kalika Prasad Sinha, hence, confiscation proceeding for properties standing in the name of the appellants would continue, specially, without case of the prosecution that the properties standing in the name of the appellants were acquired by the appellants from unknown source of income.

12. Hence, the impugned order is not sustainable in law. Accordingly, the same is set aside. This criminal appeal is allowed.

(Birendra Kumar, J)

Kundan

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	24.01.2017
Transmission Date	24.01.2017

