IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 544 of 2013

Arising out of P.S. Case No. - null Year - null Thana - null District - PATNA

Rita Prasad, W/O Sri Ajay Kumar Prasad, Resident of Nasariganj Biscuit Factory Mod, P.O. - Digha, P.S. - Danapur, District - Patna

.... Petitioner

Versus

1. The State of Bihar
2. The State of Bihar through the Principal Secretary to Government, Vigilance Department, Patna

.... Respondents

Appearance :

For the Petitioner	:	Mr. Binod Kumar Sinha, Advocate
For the Vigilance	:	Mr. Ramakant Sharma, Sr. Advocate
		Mr. Amresh Kumar, Advocate
For the State	:	Mr. Kinkar Kumar, S.C. IX

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date:20-03-2017

The sole petitioner is wife of Mr. Ajay Kumar Prasad, a public servant. Mr. Ajay Kumar Prasad is an accused in connection with Vigilance Police Station Case No. 24 of 2011 registered under Section 7/13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. After investigation, the police have already submitted charge-sheet in the case on 02.03.2012. A notice was served against the petitioner vide Annexure-3 to the writ petition under Section 14 of the Bihar Special Courts Act, 2009 calling upon to explain the source of income and as to why the property standing in her name should not be confiscated to the State Government as the same was acquired by means of offence by her husband.

2. The petitioner has questioned the validity of that notice in this writ application on the ground that the petitioner is not an accused in

the referred vigilance case, hence, entire confiscation proceeding is without jurisdiction, illegal and arbitrary as well as contrary to the provision of the Bihar Special Courts Act, 2009. According to the petitioner, since the petitioner is not an accused and no declaration under Section 5 of the Act has been issued against the petitioner either as abettor or conspirator with her husband, prima facie, there is no material for issuance of notice vide Annexure-3.

3. Submission of the learned counsel for the Vigilance Department one of the respondents is that the FIR of aforesaid vigilance case vide Annexure-1 reveals that Mr. Ajay Kumar Prasad, the then Chief Engineer, Bihar State Electricity Board was apprehended while accepting bribe and on search different records were seized from his house showing different deposits in his name as well as in the name of the petitioner and the daughter. He further submits that the petition under Section 13 of the Act for confiscation of the property was filed against both i.e. the husband of the petitioner who is co-accused of the referred case as well as this petitioner with specific averment that the property which is proposed to be confiscated was procured by the husband of the petitioner, in the name of the petitioner, from the source of offence. Therefore, there is no merit in the submission of the learned counsel for the petitioner that since the petitioner is not an accused in the case, therefore, not liable to confiscation proceeding.

4. The statutory provision of the Bihar Special Courts Act,

2009 is abundantly clear to the extent that the trial for the offences against the accused would go on before the Special Courts established under the Act in pursuance of the provisions under Chapter 2 of the Act and the confiscation of property is permissible before the authorized officer as defined under the Act in pursuance of Chapter 3 of the Act. This Court is concerned with Chapter 3, especially, starting Section 13 and 14 of the Act which are being reproduced below:-

> *"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 authorized 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.*
>
> *14. Notice for confiscation.---(1) Upon receipt of an application made under Section 13 of this Act, the authorized officer shall serve a notice upon the person in*

respect of whom the application is made (hereafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the source of his income, earnings or assets, out of which or by means of which he has acquired such money or property, the evidence on which he relies and other relevant information and particulars, and to show cause as to why all or any of such money or property or both, should not be declared to have been acquired by means of the offence and be confiscated to the State Government.

(2) Where a notice under sub-section (1) to any person specifies any money or property or both as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

(3) Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the authorized officer, by the person affected or the State Government shall be open to be rebutted in the trial before the Special Court provided that such rebuttal shall be confined to the trial for determination and adjudication of guilt of the offender by the Special Court under this Act."

5. A bare perusal of Section 13 of the Act above makes it clear that if the State Government believes that any property is of the said person (of the accused) to have been procured by means of the offence, it is immaterial as to in whose name the property stands and the only requirement is that the person in whose name property stands must be given an opportunity of hearing. Moreover, the petition under Section 13 of the Act was filed against the husband of the petitioner who is accused in the aforesaid vigilance case as well as against the petitioner

specifically mentioning that the property standing in the name of the petitioner was acquired by her husband by means of the offence alleged.

6. When the matter was being heard in the past, an objection was raised on behalf of the petitioner by filing a supplementary affidavit that the petition, which was filed under Section 13 of the Act before the authorized officer, was filed by an incompetent person, i.e., the Deputy Superintendent of Police, Vigilance, Investigation Bureau, hence, the same was vitiated for that reason. The original record was called for and the question was decided by order no. 20, dated 04.05.2015 that there was no such infirmity. Moreover, the petition filed is signed by the Special Public Prosecutor, Vigilance also. Thereafter by filing second supplementary affidavit, the petitioner stated that along with notice at Annexure-3 copy of the petition filed under Section 13 of the Act was not supplied, though it is mentioned in Annexure-3 that the copy of the petition to be attached.

7. Learned counsel for the respondents submitted that this point should have been raised before the authorized officer because whole purpose of supply of the petition is that the noticed person may not be taken by surprise. The petitioner deliberately did not raise this issue before the authorized officer nor raised the same at the earliest opportunity of filing of this writ application. Just to distort the matter belated question has been raised. The respondent-Vigilance Bureau has already served through supplementary counter affidavit a copy of the

application which contains details of the matter vide Annexure-D. Therefore, there is no grievance of the petitioner to be redressed in regard to supply a copy of the petition filed under Section 13 of the Act.

8. On consideration of the provisions of the Bihar Special Courts Act, it is clear that the property, which is proposed to be confiscated is said to be acquired, by the public servant concerned, who was the husband of this petitioner, in the name of the petitioner. Therefore, for the purpose of confiscation, it is not necessary that the petitioner should be accused in the case since the property standing in the name of the petitioner was, allegedly, procured by her husband who is accused in the case. Notice to the petitioner was needed which was validly served on him. Moreover, the notice was served on the husband of the petitioner also as the application for confiscation under Section 13 of the Act was filed against both.

9. Hence, this writ application has got no merit. Accordingly, it stands dismissed.

(Birendra Kumar, J)

Kundan

AFR/NAFR	AFR
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