

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1270 of 2018**

- Amit Kumar Choubey S/o Late Pradeep Kumar Choubdy Aged About 40 Years R/o Amapara Kanker District- Uttar Bastar Kanker, Chhattisgarh.
- Smt. Sudha Choubey W/o Late Late Pradeep Kumar Choubdy Aged About 60 Years R/o Amapara Kanker District- Uttar Bastar Kanker, Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh Through Anti Corruption Unit Jagdalpur, District : Bastar(Jagdalpur), Chhattisgarh

---- Respondent

For Applicants	: Shri Ashutosh Trivedi, Advocate
For Respondent/State	: Shri Rahul Mishra, Dy.G.A.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****10/07/2019**

Present revision arises out of impugned order dated 10.07.2018 passed by the Special Judge (PC Act) North Bastar (Kanker) in Criminal Case No. 01/2014 whereby the learned Special Judge has rejected the application filed by the legal heirs of the accused/applicant Pradeep Kumar Choubey (deceased).

2. Before the court below, charge sheet was filed against accused Pradeep Kumar Choubey on 31.01.2014 before the Special Judge (Anti Corruption Bureau), Raipur under Sections 13 (1) (e) and 13(2) of the Prevention of Corruption Act and fixed the trial for prosecution

evidence. During trial, accused Pradeep Kumar Choubey died on 22.3.18. Learned trial court after verification, declared the accused/applicant dead on 26.04.2018 and fixed the trial for reconciliation of the attached property and called for the report from the Anti Corruption Bureau. Amit Kumar Choubey and Smt. Sudha Choubey (revisioners herein) filed application on 31.5.18 and demanded for *supurdnama* of the attached property.

3. Learned trial court called for the report from the Anti Corruption Bureau and on 10.7.18 rejected the application of the applicants and confiscated the attached property of accused Pradeep Choubey (deceased). Hence, this present revision.

4. Learned counsel for the applicants submit that the order of the learned trial court is contrary to the material available on record. The trial court has completely ignored the settled principles of law involved in the case. The trial court has passed the order in the application of the applicants in regular trial that since no documents or affidavit was produced at the time of trial in relation to the attached property as mentioned in the schedule, the same is rejected. He submits that after the intimation of the death of accused, no order could be passed in regular trial and it could have been abated. Order of confiscation of property in an arbitrary manner is bad in the eye of law because without giving opportunity of hearing to the legal representatives of the applicant, any order is passed, could be set aside. Learned trial court has overlooked that the applicants are legal representatives of the deceased. They have filed the affidavit that the ornaments are very old and it is *stridhan* though the affidavits were never challenged

by the prosecution but the learned trial court has never relied upon the affidavit and rejected the application of the applicants. In support of his argument, counsel for the applicants has placed his reliance in the matter of ***U.subhadramma & Others Vs. State of Andhra Pradesh*** reported in ***(2016)7SCC 797***.

5. On the other hand, counsel for the respondent/State supports the order impugned and submits that the findings recorded by the Court below is strictly in accordance with law and there is no infirmity in the same.

6. Heard counsel for the parties and perused the material available on record.

7. In the matter of **U. Subhadramma & Others Vs. State of Andhra Pradesh & Another** reported in **(2016) 7 SCC 797**, it has been held by the Apex Court that the criminal court cannot continue proceedings against a dead person and find him guilty. It has also held that the attachment proceedings against a dead person is impermissible as there is no legal provision which enable continuance of prosecution upon death of the accused. If the law requires then such orders of attachment should be withdrawn when the prosecution abates and cannot result in conviction due to death of the accused, whose property is attached. Order of attachment can be withdrawn where prosecution against the accused concerned abates or cannot result in conviction due to death of the accused concerned abates or could not result in conviction due to death of the accused during trial.

8. In the light of above, it is clear from the order sheet that the

prosecution against accused/applicant (deceased) Pradeep Kumar Choubey stands abated due to death of the accused during trial so the order of confiscation is liable to be set aside.

9. Consequently, order dated 10.07.18 passed by the Special Judge (PC Act) North Bastar (Kanker) in Criminal Case No. 01/2014 is set aside. Trial court is directed that after due verification, the attached property be handed over to the LRS of the deceased Pradeep Kumar Choubey. Order of the court below is accordingly, set aside. Revision thus succeeds.

Sd/-
(Rajani Dubey)
Judge