

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4706 of 2018

Arising Out of PS. Case No.-81 Year-2010 Thana- VIGILANCE District- Patna

1. Naresh Paswan S/o Late Dhibu Paswan, the then District Transport Officer, Nawada, R/o Mohalla- Chitkohra Basti, near- Noor Masjid, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna- 800002, Permanent Address of Vill.- Tekari, P.S.- Rajaun, District- Banka.
2. Smt. Uma Devi W/o of Naresh Paswan, R/o Mohalla- Chitkohra Basti, near- Noor Masjid, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna-800002.
3. Amaresh Kunal Son of Naresh Paswan Resident of Mohalla -ChitkohraBasti,Near-Noor Masjid,P.O-Anishabad,P.S-Gardanibagh,District-Patna-800002

... .. Appellant/s

Versus

The State Of Bihar Through Its Principal Secretary Vigilance Department ,
Government Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajiv Kumar Verma, Sr. Advocate Mr. Rajneesh, Advocate
For the Respondent/s	:	Mr. Anil Singh, Spl. P.P. Vigilance

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date : 25-02-2020

Heard learned counsel for the parties.

2. This is an appeal under Section 17(1) of the Bihar Special Courts Act, 2009 against ex parte judgment dated 29.11.2018 passed by learned Additional Sessions Judge-X-cum-Authorized Officer, Special Court No.II, Vigilance, Patna, in Special Case No.3 of 2017, arising out of Vigilance P.S. Case No.81 of 2010, whereby the Authorized Officer has attached the movable and immovable property of the appellants in exercise



of power under Section 13 of the Act.

3. The challenge is on the ground that there is non-compliance of notice of confiscation against the appellants as required by Section 14 of the Act. Hence, the impugned order suffers from violation of the natural justice and mandate of the law.

4. Learned counsel for the appellants has drawn attention of this Court towards requirement of notice as mentioned in Section 14 of the Act which is being reproduced below:

“14. Notice for Confiscation.- (1)

Upon receipt of an application made under section 13 of this Act, the authorised 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 authorised 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. Submission of learned counsel for the appellants is that the entire order sheet of the judicial record before the Court-below would show that there was no service report of summons issued against the appellants and the Court was awaiting for receipt of service report till 10.05.2018 when the Special Public Prosecutor filed a petition for permission to get the notice published in the daily newspaper. According to the learned counsel there was no material before the Court-below to substantiate that the Court-below had reason to believe that the appellants herein were keeping out of the way of the process of the court. Reliance has been placed on a Division Bench Judgment of this Court in **Shikha Priyadarshni Vs. Neeraj Kumar** reported in **2020(1) BLJ 359**.

6. Submission is that the aforesaid judgment was delivered considering the provision of Order V Rule 20 CPC which is applicable in this case also as there is no provision of manner of service of summons against the respondent in the Special Act or in the Code of Criminal Procedure.

7. Next contention is that the notice was published in the daily newspaper on 07.08.2018 wherein date for appearance was fixed on 09.08.2018, which was against the mandate of Section 14(1), which requires 30 days prior notice.



Therefore, sufficient time for appearance was not mentioned in the newspaper publication. Contention is that the appellant had no knowledge of the pending proceeding or of the newspaper publication.

8. Learned counsel for the respondent contends that after expiry of more than two and half months of publication of the notice the impugned order was passed. The law requires that opportunity of hearing should be given and it does not require that, if anyone is deliberately avoiding appearance, the Court would sit stagnant over the matter.

9. I have carefully gone through the records. There was no service report of summons issued against the appellant by the Court-below under Section 14 of the Act. It is further evident from order dated 10.05.2018 whereby the court-below allowed the respondents to publish the notice against the appellant, in a daily newspaper, that the court-below recorded a positive finding that it was satisfied that there was reason to believe that the defendant was keeping out the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. In absence of the aforesaid finding or material on the record the step for substituted service was itself contrary to the requirement of law.



10. Considering the fact that the record does not reveal that the appellants were properly noticed before the impugned order was passed or appellants had knowledge of the proceeding before the Court-below, the impugned order is not sustainable in law for the reason that it was in violation of the rights of the appellants to be heard.

11. Accordingly, the impugned order is hereby set aside and the matter is remitted back to the learned Court-below to pass order in accordance with law. There would not be any need to issue fresh notice to the appellants who has already got knowledge of the case now. Therefore, the appellants may appear before the Court-below within 15 days and file appropriate representation/show cause thereat.

11. Accordingly, this appeal stands disposed of.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	AFR
CAV DATE	NA
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