

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.148 of 2017

Arising Out of PS. Case No.-14 Year-2006 Thana- C.B.I CASE District- Patna

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Balroop Das S/o Late Raghuni Das, R/o Mohalla Nalanda Colony, East Indra Nagar, New Bypass Road, P.S. Kankarbagh, town and District Patna.

... .. Petitioner

Versus

The State Of Bihar, Through Vigilance, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Adv.
	:	Mr. Nazir Alam, Adv.
For the Respondent/s	:	Mr. Rana Vikram Singh, Spl.P.P, Vigilance

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 26-09-2022 At the outset, Mr. Shivendra Kishore, learned senior counsel assisted by Mr. Nazir Alam, Advocate submits that though in paragraph '11' of the writ petition the petitioner has assailed the order as contained in Annexure P-5 to the writ petition passed by the Authorized officer on 19.11.2016 in Special Case No. 1 of 2013 on the petition dated 03.06.2016 under section 451 of the Cr.P.C filed by the petitioner but in paragraph '1' of the writ application, the petitioner while seeking a direction to the Vigilance department to allow the petitioner as well as his wife to operate their bank accounts etc. has not specifically prayed for quashing of Annexure P-5.

Learned senior counsel submits that since the foundation of facts assailing the order as contained Annexure P-



5 are available on record, this Court may permit the petitioner to add the prayer to quash the Annexure P-5 to the writ application.

Mr. Rana Vikram Singh, learned counsel representing the Vigilance Investigation Bureau (hereinafter referred to as the 'Vigilance') has gone through paragraph '11' of the writ petition and does not dispute the submission of learned senior counsel for the petitioner.

In the aforesaid view of the matter considering that this writ petition is already pending for five years and the matter has been heard in detail, this Court permits the petitioner to add the prayer to quash Annexure P-5 (order dated 19.11.2016 passed in Special Case No. 01 of 2013) to the writ application.

Let the same be carried out in paragraph '1' of the writ application.

Facts of the Case

In this case a very short question has arisen for consideration. It is submitted that this petitioner retired from the post of Joint Commissioner, Commercial Taxes Department from the Government of Bihar on 31.01.2003. Three years after his retirement based on unknown source information that petitioner has constructed houses at Patna, Gaya and



Aurangabad from ill-gotten money, a preliminary enquiry was conducted and found that the information was correct. Accordingly Vigilance Case No.14/2006 dated 17.03.2006 for the offence under section 13(2) read with 13(1)(E) of the Prevention of Corruption Act 1988 (hereinafter referred to as the 'Act of 1988') has been registered against the petitioner for accumulating assets disproportionate to income worth Rs. 10,32,419/-.

On completion of investigation a charge-sheet has been filed in the court of learned Special Judge, Vigilance. The petitioner was restrained from using some of his properties. In this regard the investigating officer (in short 'I.O.')

issued the letter being no. 4205 dated 08.08.2012 (Annexure P- 1) restraining the petitioner and his wife Mrs. Shanti Devi from using their properties and from disposing of their properties in any manner and also from operating their bank accounts, post office accounts, fixed deposits, NSC, LIC policies and in this regard letters were sent to the bank and post office also. This action of the I.O. has been challenged by the petitioner and a prayer has been made to quash the same. The communication as contained in the letter dated 08.08.2012 issued by the I.O. is Annexure P-1).



It is further submitted that a supplementary charge-sheet has been filed for the offence under section 13(2) read with section 13(1)(E) of the Act of 1988 for the disproportionate assets worth Rs. 13,16,212/-. On 19.06.2013, the Dy.S.P., Vigilance submitted an application under section 13 of Bihar Special Courts Act, 2009 (hereinafter referred to as the 'Act of 2009') on behalf of the State in Special Case No. 01 of 2013 for confiscation of the properties mentioned in Para (f) of the application. Prayer was made to confiscate (1) house situated in Nalanda colony, circle no. - 8 E, holding no. 823, Purvi Indira Nagar, New Bypass Road, Kankarbagh, Patna standing in the name of Mrs. Shanti Devi, wife of the Petitioner and (2) land in Nalanda colony circle no. 8 E, holding no 823. , Purvi Indira Nagar, New Bypass Road, Kankarbagh, Patna standing in the name of Mrs. Shanti Devi, wife of the petitioner. Value of both the properties is said to be 13,39,419/-.

It is the specific case of the petitioner that no other movable/immovable property is involved in the confiscation case. Under these circumstances, he filed an application under Section 451 of the Cr.P.C in the special case no. 12 of 2006 in the court of learned A.D.J. VIII, Patna for lifting of ban from utilization of movable property which was rejected on the



ground that the court where confiscation proceedings were going on is the only competent court to pass an appropriate order.

Learned Senior counsel submits that petitioner had no option but to file a fresh application under section 451 Cr.P.C in the court of learned A.D.J. X cum Authorized Officer, Special Court No. II, Vigilance, Patna for allowing the petitioner to utilize his other movable and immovable properties.

This time by the impugned order dated 19.11.2016 (P-5), learned A.D.J. X cum Authorized Officer, Special Court No. II, Vigilance, Patna took a view that petitioner should have approached in appeal or revision after the order of the learned A.D.J. VIII, Court Patna. After saying this, the court observed that “from the perusal of the petition filed under section 13 by the State, it appears that Bank Accounts, Postoffice Accounts and other movable items are also part of the confiscation petition.”

Learned senior counsel submits that the learned A.D.J.-X-cum-Authorized Officer in fact erred in rejecting the application on the solitary consideration that the Bank Accounts, Postoffice Accounts and other movable items are part of the confiscation proceeding. He could not appreciate that the



confiscation petition discloses the income of the petitioner and his wife from the known sources, the estimated expenditure and the details of the properties, whereafter a prayer has been made to confiscate only the two assets which are the immovable properties stated in paragraph (f) worth Rs. 13,39,401/-.

Learned senior counsel submits that the petitioner is moving from one court to another for release of his movable and other immovable properties for almost one decade.

It has been informed that against the confiscation of two properties the petitioner has moved separately by filing appeal under the statutory provision which is pending consideration before this Court.

Mr. Rana Vikram Singh, learned counsel, Vigilance has though opposed this application but towards the end of his submission, learned counsel does not dispute that in this case after investigation a petition under section 13 of the Act of 2009 was filed seeking confiscation of only two of the properties standing in the name of wife of the petitioner and a confiscation order has already been passed in respect of those properties worth Rs. 13,39,420/-.

So far as the movable and other immovable properties mentioned in Annexure 'P-1' i.e. the communication of the I.O.



are concerned, those are not the subject matters of confiscation.

The petition filed under section 13 of the Act of 2009 (Annexure P-3) refers the movable properties and other immovable properties of the petitioner and his wife but after all calculation assets disproportionate to income has been found at Rs. 13,16,205 /- against which the confiscation have been ordered.

Consideration

Having heard learned senior counsel for the petitioner and learned counsel for the Vigilance, this Court finds that by this time the investigation has settled the facts as regards the assets disproportionate to income found against the petitioner.

The two properties for the given value have already been confiscated by the Authorized Officer. So far as the other movable and immovable properties (except two which have already been confiscated) as contained in the letter of the I.O. (Annexure 1) are concerned, those are not the subject matters of the confiscation proceedings. In that view of the matter, apparently the learned A.D.J.-X-cum-Authorized Officer's assertion that some other movable and immovable properties formed part of the confiscation petition is only a vague assertion.

Learned Authorized officer should have carefully



gone into the materials available in the petition under Section 13 of the Act of 2009 and found out the fact that only two properties were sought to be confiscated.

In this admitted position, not controverted in course of submission on behalf of the Vigilance, this Court would have no hesitation in quashing Annexure P-1 and P-5 to the extent that save and except the two properties which are already confiscated, the communication with regard to other movable and immovable properties of the petitioner either holding singly or jointly with his wife can not remain seized for ever. Annexure P-1(letter 4205 dated 08.08.2012) and P-5(order dated 19.11.2016 passed in Special Case No. 01 of 2013) are therefore set aside to the extent indicated hereinabove.

This writ application stands disposed of.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

