

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.748 of 2018

Sadananda Mishra **Appellant**
Mr. H.K. Mund, Advocate

-versus-

State of Odisha **Respondent**
(Vigilance Department)

Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.756 of 2018

Ranjan Kumar Kar **Appellant**
Mr. H.K. Mund, Advocate

-versus-

State of Odisha **Respondents**
(Vigilance)& another

Mr. Srimanta Das,
Senior Standing Counsel
(For Respondent No.1)

CRLA No.757 of 2018

**Shyam Sundar Sethy &
another** **Appellants**
Mr. H.K. Mund, Advocate

-versus-

State of Odisha **Respondent**
(Vigilance Department)

Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.815 of 2018

Kumudini Nayak & others **Appellants**
Mr. H.K. Mund, Advocate

-versus-

State of Odisha **Respondent**
(Vigilance)

Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.14 of 2019

Dr. Surath Kumar Biswal ***Appellant***
Mr. H.K. Mund, Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance Department)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.23 of 2019

***Dambarudhar Jena &
another*** ***Appellants***
Mr. D.P. Das, Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.47 of 2019

***Swayambhu Prasad
Mishra*** ***Appellant***
Mr. D.P. Das, Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.48 of 2019

Maheswar Sethi ***Appellant***
Mr. D.P. Das, Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.49 of 2019

***Pradeep Chandra Sahu &
another***

.... ***Appellants***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***

*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.76 of 2019

***Surendra Kumar Mohanty
& another***

.... ***Appellants***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***

*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.77 of 2019

***Debendra Kumar Mishra
& another***

.... ***Appellants***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***

*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.197 of 2019

Sudhir Kumar Panda

.... ***Appellant***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***

*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.225 of 2019

***Basudev Mohapatra &
another***

.... ***Appellants***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.285 of 2019

***Jyotsna Priya Swain &
another***

.... ***Appellants***
Mr. J.K. Panda, Advocate

-versus-

***State of Odisha (G.A.
Department)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.327 of 2019

Banamali Das

.... ***Appellant***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.328 of 2019

Bichitrananda Nayak

.... ***Appellant***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.329 of 2019

***Kailash Chandra Sahoo &
another***

.... ***Appellants***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.382 of 2019

Bishnupada Grahacharya

.... ***Appellant***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.383 of 2019

Dusmanta Kumar Sahoo

.... ***Appellant***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.550 of 2019

Ashok Kumar Jena

.... ***Appellant***
Mr. D.P. Dash, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.551 of 2019

Laxmidhar Moharana ***Appellant***
Mr. D.P. Das, Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.637 of 2019

Duryodhan Naik @
Duryodhan Nayak ***Appellant***
Mr. D.P. Das, Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.657 of 2019

Smt. Renu Singh ***Appellant***
Mr. A.K. Mohanty, Senior Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.677 of 2019

Sri Madan Mohan
Samantaray & others ***Appellants***
Mr. G.N. Mohapatra, Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.746 of 2019

Sri Chakradhar Mohanta ***Appellant***
Mr. J.N. Panda, Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.747 of 2019

Sri Baidhar Panda & others ***Appellants***
Mr. J.N. Panda, Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.757 of 2019

Nirakar Parida ***Appellant***
Mr. D.P. Das, Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.758 of 2019

Akshaya Kumar Nayak ***Appellant***
Mr. D.P. Das, Advocate

-versus-

State of Odisha ***Respondent***
(Vigilance)
Mr. Srimanta Das,
Senior Standing Counsel

CRLA No.773 of 2019

***Manoj Kumar Mohanty &
another***

.... ***Appellants***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.775 of 2019

***Bhabataran Sahu &
another***

.... ***Appellants***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.31 of 2020

Srinivas Panigrahy

.... ***Appellant***
Mr. H.K. Mund, Advocate

-versus-

***State of Odisha
(Vigilance Department)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.146 of 2020

Sri Ajay Kumar Mandal

.... ***Appellant***
Mr. S.R. Mohapatra, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.179 of 2020

***Dhrub Charan
Panchabhaya***

.... ***Appellant***
Mr. D.P. Das, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

CRLA No.221 of 2020

Sri Ashok Kumar Bag

.... ***Appellant***
Mr. S.R. Mohapatra, Advocate

-versus-

***State of Odisha
(Vigilance)***

.... ***Respondent***
*Mr. Srimanta Das,
Senior Standing Counsel*

PRESENT:-

THE HON'BLE SHRI JUSTICE SATRUGHANA PUJAHARI

Date of judgment:- 23.09.2022

S. PUJAHARI, J. In all the Criminal Appeals similar questions of law and facts being involved, they were heard together and are disposed of by this common order.

2. The Appellants in all these Criminal Appeals have challenged the order of the Authorized Officer, Cuttack and the Authorized Officer, Bhubaneswar, as the case may be, of the concerned Special Courts established under the Odisha Special Courts Act, 2006 (hereinafter referred as "Special Courts Act"), who are in seisin over the confiscation proceeding in respect of the

properties which the State has sought for pre-trial confiscation, as those properties are stated to have been acquired by committing the offence under Section 13(1)(e) of the Prevention of Corruption Act (in short “the P.C. Act”), for which the accused are facing trial in the respective Courts of Special Judge, Special Court.

3. It appears that vide the impugned orders, the Authorized Officers have rejected the prayers of the Appellants to drop the confiscation proceeding. The Appellants had sought for closure of the confiscation proceedings initiated, on the ground that by virtue of P.C. (Amendment) Act, 2018, Government of India has made a provision under the Section 18-A in the P.C. Act, which provides that the Criminal Law Amendment Ordinance, 1944 (for short “1944 Ordinance”) as far as may be applied to the attachment, administration of attached property and execution of order of attachment or confiscation of the money or property procured by means of an offence under the P.C. Act and for the purpose, the provision of the 1944 Ordinance shall be subject to the modification that the reference to District Judge shall be construed as the reference to Special Judge. In view of such power conferred on the Special Judge under the P.C. Act, the confiscation of the property under the Odisha Special Courts Act, 2006 is no more maintainable after coming into the force of the aforesaid amended provisions with effect from 26th July, 2018. However, the Authorized Officer, Special Court,

Cuttack refused to accept such plea in some of the cases on the ground that since the aforesaid amendment has come into force after initiation of the confiscation proceeding, and the amendment aforesaid being prospective in application has no impact on the confiscation proceedings started earlier, and accordingly rejected the prayer.

4. But, taking note of the law laid down in the case of **Jogendra Kumar Jaiswal, etc. vrs. State of Bihar and others, reported in 2016 Criminal Law Journal 2129** wherein the Apex Court have held that the provisions of Odisha Special Court Act, 2006 are not repugnant to the P.C. Act, 1988, the Prevention of Money Laundering Act and the 1944 Ordinance, as the same do not encroach into the occupied field, the learned Authorized Officer in the Court of the Special Judge, Special Court at Bhubaneswar, refused the prayer.

5. During course of the hearing, Mr. Asok Kumar Mohanty, learned Senior Counsel appearing for the Appellant in CRLA No.657 of 2019 assailing the order impugned, would submit that the very initiation of the pre-trial confiscation is impermissible in view of the enactment of Section 18-A of the P.C. Act empowering the Special Court to exercise such jurisdiction.

6. Mr. Deba Prasad Das, learned counsel appearing for the Appellants in CRLA Nos.23, 47, 48, 49, 76, 77, 197, 225, 327, 328, 329, 382, 383, 550, 551, 637, 757,

758, 773 & 775 of 2019 and 179 of 2020 would submit that since by virtue of Section 18-A incorporated in the P.C. Act by way of an amendment, Special Judge under the P.C. Act has been vested with the power with regard to attachment, administration and confiscation of the property allegedly earned through committing schedule offence under the P.C. Act, the Authorized Officer vested with jurisdiction to confiscate the property acquired committing offence under the P.C. Act pursuant to the State law of the Odisha Special Courts Act, 2006, is divested of the said power in view of the fact that the aforesaid is a superior legislation made by the Government of India in respect of the subject matter of concurrent list (list III), and the same always supersedes the inferior legislation, i.e., the legislation made by the State Government in case of repugnancy.

7. Mr. Smruti Ranjan Mohapatra, learned counsel appearing for the Appellants in CRLA Nos.146 and 221 of 2020; and Mr. G.N. Mohapatra, learned counsel appearing for the Appellant in CRLA No.677 of 2019; so also Mr. J.N. Panda, learned counsel appearing for the Appellant in CRLA Nos.746 and 747 of 2019, have also echoed the submission of Mr. Deba Prasad Das.

8. Mr. Hemanta Kumar Mund, learned counsel appearing for the Appellants in CRLA Nos.748, 756, 757 & 815 of 2018, 14 of 2019 and 31 of 2020, would submit that in view of the proviso contained in Article 254(2) of the Constitution of India, the provision of

‘confiscation’ in the Special Courts Act has been put to eclipse. He has drawn the notice of this Court to Article 254 of the Constitution of India in this regard which reads as thus:-

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of states.-

(1) If any provision of law made by the Legislature of a State is repugnant to any provision of law made by Parliament, which Parliament is competent to enact, or to any provision of an existence law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

According to him, no doubt, the Odisha Special Courts Act was held to be valid in spite of existence of Central Legislation under the P.C. Act in view of the provisions under Article 254(2) of the Constitution of India as that is the law enacted under the Concurrent list and was enacted being reserved for the assent and has also been assented by the President. However, subsequent to

such provisions contained in the Legislation, when the Central Legislature again made a law empowering the Special Judge under the P.C. Act power of confiscation, the aforesaid law of the State Government with regard to confiscation being repugnant to the same and, as such, the same denude the Authorized Officer under the Odisha Special Courts Act to proceed with any confiscation proceeding. So, after such amendment, the Authorized Officer under the Odisha Special Courts Act has become *functus officio* with regard to any confiscation proceeding pending in view of proviso to Article 254(2) of the Constitution of India.

9. Mr. Jugal Kishore Panda, learned counsel appearing for the Appellant in CRLA No.285 of 2019, has echoed the submission of Mr. H.K. Mund.

10. Per contra, Mr. Srimanta Das, learned Senior Standing Counsel appearing for the Vigilance Department would submit that the contention advanced assailing the impugned orders are all fallacious and contrary to law. According to him, the amendment has never taken away the jurisdiction of the Authorized Officer for pre-trial confiscation. The same has only vested the power of District Judge exercised under the 1944 Ordinance in respect of the property allegedly acquired committing the offence under the P.C. Act, on the Special Judge, who shall exercise the power in the manner provided in the 1944 Ordinance. Such contention challenging validity of the pre-trial

confiscation proceeding before the Authorized Officer as per the provisions of the Special Courts Act, 2006, was tested in the Hon'ble Supreme Court, and the Hon'ble Supreme Court by rendering its judgment in the case of **Jogendra Kumar Jaiswal** (supra) held the proceeding to be valid, and not repugnant to any of the provisions under the 1944 Ordinance. The Prevention of Money Laundering Act also contains provisions for attachment and confiscation of such property and the P.C. Act provides for establishment of Special Court for trial of the persons, who held high public or political office, involved in commission of offence under Section 13(1)(e) of the P.C. Act and also makes provision of pre-trial ad-interim measure of confiscation of such property acquired as by them by means of the said offence. In view of the same, all the contentions raised challenging the orders impugned are devoid of merit and liable to be dismissed, submits the learned counsel for the Vigilance Department.

11. Mr. Deba Prasad Das, learned counsel, in rejoinder submits that in the 1944 Ordinance, no provision for confiscation is there and only forfeiture of the property has been prescribed on the attached property at post trial stage on conviction of the accused, but now confiscation power having already been given to the Special Judge, the same is in conflict with the State vesting jurisdiction on the Authorized Officer for confiscation. Therefore, it is fallacious to say that there

is no repugnancy and that the said amendment has brought nothing new but empowering the Special Judge under the P.C. Act instead of the District Judge in respect of the money/property acquired by means of the schedule offence under the P.C. Act for attachment, administering of attached property, execution of the order of attachment and forfeiture of the same under the 1944 Ordinance. In view of such repugnancy, the Authorized Officer is divested of the jurisdiction to deal with the confiscation after such amendment in P.C. Act, notwithstanding the fact that in some cases, it has been held that the amendment being prospective in nature does not affect the confiscation proceeding. Needless to say that the aforesaid is a matter of procedure and vesting of jurisdiction on a particular forum. Therefore, it is fallacious to say that the same has prospective application only and not to be applied in the cases which have already been initiated, as held by the Authorized Officers in some of the cases.

12. Before addressing the contentions of the parties, it would be apposite to have a look to the History of Anti-Corruption Law in India. As it appears, there was no special law dealing with prevention of corruption basically perpetrated by the public servants in pre-independence period. Such cases of corruption were being dealt with under the provisions as made under Sections 161 to 165A of the Indian Penal Code. Since there is no provision in the Code of Criminal Procedure

under which those cases were tried, to prevent the disposal of the property acquired by the accused-officer by committing such offences, for the first time the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No.XXXVIII of 1944) was enacted under the Government of India Act, 1935 to prevent the disposal or concealment of money or other property procured by committing the scheduled offences under the Indian Penal Code including those under Sections 161 to 165 of I.P.C. to recoup the loss caused to the Government owing to commission of such offences. The aforesaid Ordinance is permanent in nature and has acquired the status of law, inasmuch as when the aforesaid Ordinance was promulgated the Burma Emergency Provisions were in effect in which the six month clause requiring ordinances to be statutorily enacted by the Government of India Act, 1935 was under suspension. The first direct and consolidated law on the subject of corruption was the Prevention of Corruption Act, 1947, enacted in independent India supplementing the provisions of the IPC as the provisions in the IPC were felt to be inadequate to deal with the cases of bribery and corruption committed by public servants. The aforesaid offences were also included as scheduled offences to prevent the disposal or concealment of the property procured by committing such offences in the 1944 Ordinance. Thereafter, the aforesaid Act was repealed, and the Prevention of Corruption Act, 1988

was enacted criminalizing the attempts to commit certain offences under the Act. The 1944 Ordinance has also application to the property to prevent the disposal and concealment of property procured by committing such offence in view of the inclusion of the same in Entry 4A of the Schedule of the 1944 Ordinance. In the meanwhile, the law relating to corruption by public servant as provided in Section 161 to 165A of IPC has been repealed and, as such, the same has also been deleted from the scheduled offence under the 1944 Ordinance. The 1944 Ordinance empowers the Central Government and State Government, as the case may be, when they have reason to believe that any scheduled offences as given in the schedule of the 1944 Ordinance, have been committed by any person, whether or not any Court has taken cognizance of the said offence, to make an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment under 1944 Ordinance, of the money or other property which the State Government or the Central Government, as the case may be, believes the said person, to have procured by means of the offence, or if such money or property cannot for any reason be attached, of other property of the said person or value as nearly as may be equivalent to that of the aforesaid money or other property. The provisions of the Code of Civil Procedure under Order-XXVII shall apply to

proceedings for an order of attachment under 1944 Ordinance as they apply to suits by the Government. It is incumbent on the Government to provide the details of such money or other property including the estimated value of other property of the said person. The name and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said persons shall also be furnished supported by affidavit. Upon receipt of such application, the District Judge shall, unless for reasons to be recorded in writing is of the opinion that there exists no prima-facie grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of the said person or equivalent value as the District Judge may think fit. However, the District Judge, if he thinks that it is not a case for ad-interim attachment, before refusing to pass such order, may examine the person or persons making the affidavits accompanying the application. But on an order of ad-interim attachment being passed, the District Judge shall issue to the person whose money or other property is being attached, a notice, accompanied by copies of the order, the application and affidavits and

of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute. Then, upon hearing such person or any other person claiming interest over such property who makes objection to such attachment, investigate into the objection of such attachment and after investigation of the same, the District Judge shall pass an order either making the ad-interim order of attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order. However, the District Judge, shall not release the order of attachment of any interest on such property, when he is satisfied that the person believed to have committed a scheduled offence has in the property, unless he is also satisfied that there will remain under attachment an amount of the said person's property of value not less than that of the property believed to have been procured by the said person by means of the offence, or withdraw the order of attachment unless he is satisfied that the said person had not, by means of the offence, procured any money or other property. So also, the District Judge has been empowered to attach the property procured by means of committing such scheduled offence with mala fide transferers of such property, by giving such notice, to the extent the property was acquired by committing such offence. The order of attachment shall be made effective in the manner as provided in the Code of Civil

Procedure, 1908. On receipt of the security for the amount, if that is found sufficient to the extent of the property acquired by committing such scheduled offence, the District Judge may withdraw the order of attachment. In the matter of administration of the attached property, it also provides that even if the property is attached, after giving reasonable opportunity of hearing to the State Government or the Central Government the District Judge may release a portion of the property for maintenance of the applicant and his family, and for the expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in any Court for a scheduled offence, so also to take measures as far as practicable, to safeguard the interests of any business affected by the attachment, and in particular, the interests of any partners in such business. Furthermore, it has also been provided with regard to appointment of receiver in respect of any property attached under the said 1944 Ordinance, and where a receiver is so appointed, the provisions of Rules 2, 3, 4 and 5 of Order XL of the First Schedule to the Code of Civil Procedure, 1908 shall be applicable to the same. If the District Judge ceases to exercise jurisdiction in the territories to which 1944 Ordinance extends, the order of attachment made by him shall be deemed to be an order made by the District Judge within the local limits of whose jurisdiction the Court taking cognizance of the scheduled offence is

situate, and all functions of the District Judge under 1944 Ordinance in regard to the attached property shall be exercised by the District Judge. The duration of the attachment, unless the same is withdrawn in accordance with the provisions of the 1944 Ordinance, is continued to have force, where no Court has taken cognizance of the alleged scheduled offence after making of the order under sub-section (1) of Section 4 or sub-section (2) of Section 6 of the 1944 Ordinance within one year unless the same is extended on the application of the State Government or Central Government for such period. But, when cognizance has been taken, unless any order is passed in accordance with the provisions as contained earlier, the same shall continue till termination of the criminal prosecution. An appeal has also been provided against any order passed by the District Judge, to the High Court. So also, it has been made incumbent upon the Criminal Court trying such offence to evaluate the property acquired in committing such offence while convicting an accused and record a finding as to the amount of money or value of other property procured by the accused by means of the offence. If it is a case of acquittal, in any appeal or revision proceeding against the said acquittal, the Court shall also do the same, and if the conviction is confirmed, the Appellate Court or the Revisional Court may confirm such finding or modify such finding as it may deem just and proper. Furthermore, it has also

been provided that when the property procured by committing such scheduled offence which has caused loss to more than one Government or local authority the finding referred to in this section shall indicate the amount of loss sustained by each such Government or local authority. It is also incumbent upon the Court while convicting and determining the loss to record finding as to by committing offence under which scheduled offence how much amount of property or money was procured. Upon termination of the criminal proceeding for any schedule offence, where any order of attachment of property has been made under the 1944 Ordinance or security given in lieu thereof, the Central Government or the State Government, as the case may be, shall without delay intimate the same to the District Judge and shall where the criminal proceeding has been taken in any Court, furnish the District Judge with a copy of the judgment and order of the trying Court and with copies of the judgments or orders if any, of the appellate or revisional Courts thereon. On receipt of the same, if the order is one of refusal to take cognizance or where the final judgment or order of the criminal court is one of acquittal, the District Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned. Where the final judgment or order of the criminal Courts is one of

conviction, the District Judge shall order that from the property of the convicted person attached under the 1944 Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to Government such amount or value as is found, in the final judgment or order of the trial Courts in pursuance of Section 12, to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge, and where the final judgment or order of the criminal Courts has imposed or upheld a sentence of fine on the said person, (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment. Where the amounts ordered to be forfeited or recovered exceeds the value of the property attached, or where the property of the transferee of the convicted person has been attached therefrom, the District Judge shall order that the balance of the amount ordered to be forfeited together with cost of attachment of the transferee's property is determined shall be forfeited to the Government from the attached property of the transferee or out of the security given in lieu of such attachment; and the District Judge may order, without prejudice to any other mode of recovery, that any fine or any portion thereof not recovered under that sub-

section shall be recovered from the attached property of the transferee or out of the security given in lieu of such attachment. So also, the 1944 Ordinance provides that any property under attachment in respect of the scheduled offence of any security given in lieu of such attachment remains with the District Judge after his orders as above, have been carried into effect, the order of attachment in respect of such property remaining shall be forthwith withdrawn or as the case may be, the remainder of the security returned, under the orders of the District Judge. It is incumbent upon the District Judge to remit such amount to the Government concerned of such property forfeited to such Government and be credited to the Government being a Government referred to in the said schedule or local authority, the same shall also be deducted as aforesaid.

13. The aforesaid is the scheme of the Code under the 1944 Ordinance and its purpose is to realize the property which has been acquired by committing such scheduled offence after conviction which remains under attachment by the order of the District Judge under such Ordinance. Thereafter, the Government of Odisha in 2006 brought a Special Legislation, i.e., Odisha Special Courts Act, 2006 dealing with the corruption, commission of offence under Section 13(1)(e) of the P.C. Act by the persons, who held high public or political office. The said Act has an overriding effect over the

provisions of the Prevention of Corruption Act and the 1944 Ordinance or any other law then in force in case of inconsistency. The same provides for dealing with the offences of criminal misconduct under sub-section (1) of Section 13 of the P.C. Act, 1988 which shall be dealt with by the Special Court established under the said Act is manned by an officer who has been a Sessions Judge for not less than two years. The same also contained a provision for ad-interim measure of confiscation of the property by the Authorized Officer on an application being made by the Public Prosecutor authorized by the State Government in that behalf, indicating that the State Government has reason to believe that the persons, who held high public or political office, have committed the offence and acquired such property. The aforesaid is a provision for pre-trial / ad-interim confiscation of the property after giving reasonable opportunity of being heard to the persons who have interest on the property or the money or both. On the market price of the property being deposited by the person whose property is attached before the Authorized Officer, the property shall not be confiscated so also it provides for disposal of the application for confiscation within six months. Such order of confiscation, however, is subject to appeal to the High Court. Any transfer made after notice of initiation of such confiscation is stated to be null and void. The State Government has also been authorized for

confiscation of the same unless the possession of the same is surrendered and delivered. However, if it is a residential house, the Authorized Officer may on such order of confiscation, may permit the owner thereof to stay there and pay market rent to the State Government, and thereafter such person shall deliver the vacant portion of the property. But, if the accused upon being tried by the Special Judge, Special Court, stands acquitted, the order of confiscation of money or property or both shall be returned to him and in case it is not possible to return the property, such person shall pay the price thereof including the money 5% per annum therein calculated from the date of confiscation. So also, the aforesaid order of confiscation is subject to the order of the Appellate court. Besides the same, the PMLA Act has also been enacted to deal with the scheduled offence in which the offence under the P.C. Act are there with provisions for attachment and confiscation of the property. The constitutional validity of the Special Courts Act of Bihar as well as the Odisha Special Courts Act was challenged in the case of **Jogendra Kumar Jaiswal** (supra) and in a batch of writ petitions attached thereto, wherein the aforesaid provision of confiscation was upheld notwithstanding the provisions contained in the PMLA Act, the 1944 Ordinance and the P.C. Act.

14. Reverting back to the case in hand, it is the contention of Mr. Mohanty that the power of pre-trial confiscation is void and contrary to the provision of law. However, the same having been tested in the case of **Jogendra Kumar Jaiswal** (supra), such contention of Mr. Mohanty is without any substance. Furthermore, a contention has been raised basically challenging the maintainability of confiscation proceedings before the Authorized Officer on the ground of repugnancy inasmuch as when the aforesaid amendment was brought being repugnant to the provision of the State Legislation, Central Legislation would prevail. No doubt, the aforesaid provision has been brought by the Central Legislation by way of amendment. But the Central Legislation which has given power of the District Judge regarding administrations and forfeiture of the property that has been procured by committing the scheduled offences under the P.C Act, 1944 Ordinance to the Special Judge under P.C. Act, and nothing more, as would be evident from a bare reading of Section 18-A of the P.C. Act which runs as follows :-

“18A. (1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002, the provisions of the Criminal Law Amendment Ordinance, 1944 shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act. (2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 shall

have effect, subject to the modification that the references to “District Judge” shall be construed as references to “Special Judge”.

15. As per the amendment quoted above, the Special Judge under the P.C. Act hereinafter shall exercise the power for attachment, administration and forfeiture of the property made under the 1944 Ordinance as done by the District Judge. No doubt, in the 1944 Ordinance, the word ‘confiscation’ is clearly missing which has been mentioned in Section 18-A. “Confiscation” necessarily refers to any property, but “forfeiture” refers to the property of a owner. So, for the word ‘confiscation’ which was not there in the Criminal Law Amendment Act, much emphasis has been laid inasmuch as the Special Judge under the P.C Act has been given power of confiscation. Therefore, it is submitted with emphasis that since the Central Legislation occupies the field with regard to confiscation of the property, the same is repugnant to the provision with regard to the power of the Authorized Officer for confiscation of the property under the Special Court providing pre-trial confiscation by the Authorized Officer of Special Courts under Special Courts Act in respect of an accused who held high public or political office alleged to have procured such property by committing offence under Section 13(1)(e) of the P.C. Act.

16. One of the significant aspects of the Constitution of India is with regard to Center-State relation. Various

doctrines are there in various articles in that respect. One of the doctrines that of repugnancy within the ambit of the Constitution of India that has been stated in Article 254(2) of the Indian Constitution along with the proviso and to the extent stated in the said Article.

17. Black Law Dictionary defines “repugnancy” as inconsistency or contradiction between two or more parts of a legal instrument such as a statute or a contract. Therefore, repugnancy means the conflict between two pieces of legislations which, when applied to the same facts, produces different results. Repugnancy arises when the provisions of two laws are so inconsistent and irreconcilable that it is impossible to do one without disobeying the other. However, in the Constitution of India in its Schedule VII sets out various subjects in which the Centre and State can legislate. That in the subjects mentioned in list-I the Center can only legislate and in the subjects included in List-II, it is within the exclusive domain of the State Govt. to legislate. But, in the subjects in the List-III both the Central and State have competence to legislate. The said list is called “concurrent list”. When there is a central legislation occupying the field and State legislation is there on the subject of the concurrent list, then the Central legislation would prevail. This has been stated in Article 254 of the Constitution through some exceptions and clarifications. Article 254 of the

Constitution of India dealing with repugnancy and to resolve the question of repugnancy between Centre and State laws. According to Article 254 (1) if any provision of a state law is repugnant to a provision in a law made by the Parliament, which the Parliament is competent to enact, or with any existing law regarding any matter in the concurrent list, then the Parliamentary law would prevail over the State law. It is of no importance whether the Parliamentary law was enacted before or after the State law. However, State law would be repugnant to the extent, it is inconsistent with the law made by the Parliament. The Article gives an overriding effect to any statute which the Parliament is competent to enact and which has been enacted by it. The application of this provision most commonly arises when there is a direct conflict between statutes enacted by both the Center and the State on the matters in this concurrent list and there is repugnancy between them. Repugnancy arises between two statutes when they occupy the same field and are completely inconsistent with each other, and carry absolutely irreconcilable provisions. The said question would arise when there is a conflict between the statute enacted in the Center and State in the matter of concurrent list and there is repugnancy between them.

18. The Apex Court in the case of ***Bharat Hydro Power Corporation Ltd. vrs. State of Assam***, reported

in (2004) 2 SCC 553 as well as in the case of **Central Bank of India vrs. State of Kerala**, reported in (2009) 4 SCC 94, held that every effort should be made to reconcile the two enactments and construe them both, in such a way, so as to avoid them being repugnant to each other. If the two enactments operate in different fields without encroaching upon each other, then there will be no repugnancy. So also, in the case of **Jogendra Kumar Jaiswal** (supra) the aforesaid aspect has also been dealt with.

19. Reverting to the contentions with regard to repugnancy and validity of the provision of confiscation under the Special Courts Act, it would be apposite to mention here that the question of confiscation in the Special Courts Act is at-interim measure which is dependent on the ultimate result that is passed in the trial against the accused facing the trial for commission of offence under Section 13(1)(e) of the P.C. Act. But, the question of forfeiture under the 1944 Ordinance is a post-trial measure depending on the factum of penalty of the conviction, if any recorded and also finding with regard to the ill-gotten money acquired under the P.C. Act, a scheduled offence. The validity of the confiscation proceeding of the Odisha Special Courts Act has already been upheld by the Apex Court in the case of **Jogendra Kumar Jaiswal** (supra) notwithstanding the existence of the 1944 Ordinance. The amendment brought as

aforesaid does not provide the detailed procedure with regard to confiscation and when such a confiscation to be exercised by the Special Judge which only says that so far offence under the P.C. Act is concerned, a scheduled offence under the 1944 Ordinance, in respect of the property with regard to attachment, administration and confiscation has to be exercised by the Special Judge under the P.C. Act in place of District Judge. No detailed procedure for such confiscation has also been provided. So, notwithstanding the fact that the word 'confiscation' was missing under the 1944 Ordinance, it is fallacious to say that the power of confiscation which has given in the Odisha Special Courts Act to the Authorized Officer, has now to be exercised by the Special Court after such amendment in view of proviso to Article 254(2) of the Constitution of India, more so when the aforesaid confiscation in the Special Court Act is an ad-interim measure which is dependent on the final outcome of the case of accused there before the Special Judge, under the said Act. The said amendment does not touch any provisions of the Odisha Special Courts Act. Hence, the proviso to Article 254(2) of the Constitution of India does not make the provisions of confiscation under the Special Courts Act inoperative after such amendment in the P.C. Act. So, in the considered opinion of this Court, notwithstanding mentioning of the word 'confiscation' which appears to have been used as against the word 'forfeiture'

mentioned in 1944 Ordinance, the same is not occupying the field with regard to ad-interim confiscation of the ill-gotten money allegedly acquired by means of the offence committed under Section 13(1)(e) of the P.C. Act by the persons, who held high public or political office and triable by the Special Court under the Odisha Special Courts Act. Therefore, the contention that is advanced that the Authorized Officer in the Special Court, after the aforesaid amendment is denuded of the power of confiscation and, as such, a confiscation proceeding therein is not maintainable, is devoid of merit, even though this Court do not agree with the rejection of the prayer made by the Authorized Officer in some cases with regard to the fact that prospective application of the amendment being a ground for rejection of such prayer. Approving such reasoning of Authorized Officer would amount to giving a seal of approval to the contention made that proviso to Article 254(2) has application to such amendment, to which this Court do not agree, as according to my humble opinion, the aforesaid is not an enactment which affects the provisions of ad-interim confiscation, exercised under the Odisha Special Courts Act.

20. In view of the same, I am unable to agree with the submission that in such amendment the Special Judge under the P.C Act has been vested with the power of confiscation and the Authorized Officer

thereafter is divested of the jurisdiction to deal with confiscation proceeding initiated under the provision of the Special Courts Act. Hence, refusal of the Authorized Officer by the impugned order to drop the proceeding cannot be found fault with on the said ground, though this Court is not in agreement with the ground assigned by the Authorized Officer that the aforesaid enactment having come into force after initiation of the confiscation proceeding, has no application to the proceeding initiated prior to the said amendment, which is retrospective in nature.

21. So, for the aforesaid reasons, this Court is of the view that all the Criminal Appeals challenging the impugned orders refusing to drop the confiscation proceeding on the ground as raised, i.e., repugnance between the two enactments being devoid of merit, stand dismissed.

22. Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

Orissa High Court, Cuttack.
The 23rd day of September, 2022/DA/MRS/PKS