

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.694 of 2021

Srikanta Kumar Mishra.

....

Appellant

-versus-

State of Odisha (Vigilance).

....

Respondent

CORAM: JUSTICE S. PUJAHARI

ORDER

05.01.2022

Order

No.

02.

I.A. No.1273 of 2021

1. This matter is taken up through Hybrid mode.
2. This I.A. has been filed for condonation of delay of 609 days in filing the criminal appeal.
3. On consideration of the prevalent situation, especially the fact that due to Pandemic Covid-19 there was disruption in functioning of the Court and also the restriction on the movement of the people, the delay in filing the appeal is condoned.
4. Accordingly, the I.A. stands disposed of being allowed.

(S. Pujahari)
Judge

CRLA No.694 of 202103

ORDER
05.01.2022

Order
No.
03.

1. Heard the learned counsel for the appellant and the learned counsel appearing for the Vigilance Department.

2. On the consent of the parties, this CRLA is taken up for disposal at the stage of admission as the sustainability of the order is challenged on the point of law.

3. As it appears, the appellant in this criminal appeal challenges the order dated 26.02.2020 passed by the learned Authorized Officer, Special Court, Cuttack in Confiscation Case No.3 of 2014 rejecting his petition to drop the proceeding initiated against him in view of the introduction of Section 18-A in the Prevention of Corruption Act (hereinafter referred to as “the P.C. Act”) giving the power of Criminal Law Amendment Ordinance, 1944 to the learned Special Court trying the offence. According to the appellant, in view of the conferment of such power vide the amendment of the P.C. Act, a proceeding initiated under the Orissa Special Courts Act, 2006 before the learned Authorized Officer for confiscation is incompetent and cannot be continued.

4. However, it is submitted by the learned counsel appearing for the Respondent (Vigilance) that the provision under Section 18-A as introduced being not repugnant to the other provisions under the P.C. Act, and the validity of the Orissa Special Courts Act, 2006 having already been upheld by the Apex Court in the case of *Jogendra Kumar Jaiswal, etc. vrs. State of Bihar and others, reported in 2016 Criminal Law Journal 2129* and the aforesaid being an intermediate provision to empower the Special Judge to take steps for disposal of the property procured by means of offence, during the trial, the same cannot be a ground to challenge the confiscation proceeding pending before the Authorized Officer under the Orissa Special Courts Act, 2006.

5. Section 18-A of the P.C. Act has conferred power of the District Judge under the Criminal Law Amendment Act, 1944 to deal with ill-gotten property and its disposal of person who is being prosecuted under the P.C. Act, on the Special Judge under the P.C. Act. The Criminal Law Amendment Ordinance, 1944 was very much in existence when the Odisha Special Court Act was brought to force containing a provision of the pre-trial disposal of property stated to be disproportionate to the known

source of income of categories of accused tried under the Odisha Special Court Act. The constitutional validity of the Orissa Special Court Act has already been upheld by the Apex Court in the case of ***Jogendra Kumar Jaiswal (supra)***. In view of the same, this Court finds no merit in this criminal appeal, inasmuch as Section 18-A of the P.C. Act has only conferred power of the District Judge under the Criminal Law Amendment Ordinance, 1944 on the Special Judge under the P.C. Act and nothing more.

6. Accordingly, this CRLA stands dismissed on merit at the stage of admission.

(S. Pujahari)
Judge

MRS