IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1371 of 2022

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

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1. Naresh Paswan Son of Late Dhibu Paswan the then District Transport officer, Nawada, address - Chitkohra Basti, Near Noor Masjid, P.O. Anisabad, P.S.- Gardanibagh, District - Patna Permanent address - resident of Village Tekni, P.S.- Rajoun, District – Banka. **(Expunged)**
2. Uma Devi Wife of Naresh Paswan address- Chitkohra Basti, Near Noor Masjid, P.S. Gardanibagh, District - Patna.
3. Amresh Kunal Son of Sri Naresh Paswan address- Chitkohra basti Near Noor Masjid, P.S. Gardanibagh, District - Patna.

... ... Appellant/s

Versus

The State Of Bihar Through Vigilance

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Ritrik Thakur, Advocate
Mr.Udbhav, Advocate

For the Respondent/s : Mrs. Archana Palkar Khopde, Advocate
Mr. Utkarsh Bhushan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 27-09-2023

I.A. No. 01 of 2023

The instant interlocutory application has been filed on behalf of the appellants with a prayer to expunge the name of appellant no. 1 namely, Naresh Paswan submitting that during the pendency of the present appeal, appellant no. 1 died on 24.08.2022.

2. It has been submitted on behalf of the appellants that appeal has abated against appellant no. 1 due to his death

and his name be expunged from the array of the parties.

3. Having considered the death of appellant no. 1 Naresh Paswan, his name is ordered to be expunged from the array of the parties and the appeal stands abated against him.

4. Accordingly, I.A. No. 01 of 2023 stands disposed of.

Cr. Appeal (SJ) No. 1371 of 2022

5. The instant appeal has been filed under Section 17 of the Bihar Special Courts Act, 2009 (hereinafter referred to as the 'Act, 2009') by the appellants namely, Naresh Paswan (since deceased), Uma Devi (wife of late Naresh Paswan) and Amresh Kunal (son of late Naresh Paswan) against the order dated 25th March, 2022 passed by learned Additional Sessions Judge -cum- Authorized Officer, Vigilance, Patna in Special (Vigilance) Case No. 03 of 2017, whereby and whereunder the application filed by the State for confiscation of properties mentioned in its schedule was partly allowed and all the assets mentioned in para 'f' at serial nos. 1 to 17 and 19 to 23 were allowed to be confiscated in favour of State of Bihar under Section 13 of the Act, 2009.

6. As it appears from record, shorn of unnecessary details, the facts leading to this appeal are as follows:-

A Vigilance Case bearing No. 48 of 2008, dated 20.07.2008 was instituted against appellant no. 1 Naresh Paswan (since deceased) under Sections 7/13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 on the ground that he was apprehended while accepting bribe of Rs.45,000/-. Subsequently, Vigilance P.S. Case No. 81 of 2010, dated 08.12.2010 was instituted against the appellant Naresh Paswan (since deceased) under Sections 7/13(2) read with 13(1)(e)(2) of the Prevention of Corruption Act, 1988 wherein it has been alleged that in course of raid total property worth Rs. 14,42,182/- was assessed and cash of Rs.4,14,300/- and several policies in the name of deceased Naresh Paswan and Amresh Kunal were seized.

7. An application under Section 13 of the Act, 2009 was filed before the Authorized Officer in Vigilance P.S. Case No. 81 of 2010 which was numbered as Special (Vigilance) Case No. 03 of 2017 in which a request has been made for confiscation of properties worth Rs. 14,55,128.35/- only under the provisions of the Act, 2009 as per declaration under Section 5 of the Act, 2009 read with Rule 7 of the Bihar Special Courts Rules, 2010. An affidavited list of documents along with description of the properties were also provided

with the application under Section 13 of the Act, 2009. It further transpires that without serving any notice to the original appellant, the final order was passed by the learned Authorized Officer on 29.11.2018 and the said order was challenged by the appellant before this Court vide Cr. Appeal (SJ) No. 4706 of 2018. This Court vide its order dated 22.02.2020 set aside the order dated 29.11.2018 and remitted back the matter to the learned trial court for fresh hearing. The appellants appeared before the learned Authorized Officer -cum- Special Court, Vigilance, Patna and filed their respective show cause on 09.03.2021.

8. Having considered the matter, the learned trial court came to the conclusion that the deceased Naresh Paswan acquired and possessed property by means of criminal misconduct during the check period. The learned trial court further held that assets mentioned in para 'f' (except serial no. 18) of application filed under Section 13 of the Act, 2009 which have been identified for confiscation have been acquired and possessed by the delinquent in his name and in the name of his family members, the properties were absolutely disproportionate to his known source of income for which delinquent has failed to give satisfactory account and

source of his disproportionate assets by the plausible explanation. The learned trial court, accordingly, went on to order that all assets worth Rs.14,48,839.35 mentioned in para 'f' serial no. 1 to 17 and 19 to 23 in the application filed by the State under Section 13 of the Act, 2009 stood confiscated to the State of Bihar free from all encumbrances and directed the appellants to surrender or deliver possession of the aforesaid assets in favour of the District Magistrate, Patna, who has been authorized to take possession within 30 days from the date of service of this order.

9. Aggrieved by the aforesaid order, the appellants approached this court assailing the said order on a number of grounds. However, during the pendency of this appeal, the public servant, who was originally appellant no. 1 namely, Naresh Paswan died and his name has been expunged and the appeal is held to have abated against him.

10. Learned counsels for the parties have been heard on previous dates.

11. It has been submitted by the learned counsel on behalf of the rest of the appellants that after death of the person who was the public servant and allegation was against him for acquiring the assets disproportionate to his known

source of income, nothing remains in the matter. Thus, the argument has been confined on behalf of the appellants only to the ground that after death of the public servant, against whom allegation of acquiring disproportionate assets has been made, the confiscation proceeding against other appellants would not remain maintainable. Learned counsel, however, submitted that the appellant Naswan Paswan was convicted by the learned Special Judge, Vigilance (Trap Cases), Patna in Special Case No. 36 of 2008 vide judgment dated 27.03.2019.

12. It has been submitted on behalf of the appellants that the Act, 2009 does not take into consideration the situation what would be the fate of the proceeding going on either before the Authorized Officer or in case of appeal before the High Court if the delinquent public servant dies. However, Section 19 of the Act, 2009 could be considered to see that what could be the possible scenario in case of death of the delinquent public servant. Section 19 provides that where an order of confiscation made under Section 15 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the money or the property or both shall be returned to the person affected and in case it is not possible for any reason to return the property,

such person shall be paid the price thereof including the money so confiscated with the interest @ 5% per annum thereof calculated from the date of confiscation. The learned counsel further submitted that the death of the delinquent public servant effectively means acquittal since trial would not proceed further against him. Moreover, as per the provision, if it is found that it is a case of acquittal, the money or property or both shall be returned to the person affected. If the concerned public servant is not alive to continue with the trial/appeal, it is the basic premise of the criminal law that proceeding would not move against a dead person. The learned counsel further submitted that as the concerned public servant namely, Naresh Paswan is dead, proceeding of confiscation in this appeal has automatically abated in absence of any other statutory safeguard or remedy provided under the Act itself. The learned counsel further submitted that there is no provision in the Act or even under Cr.P.C. for substitution of the heirs in the confiscation proceeding. The learned counsel further submitted that any order of confiscation passed under Section 15 of the Act, 2009 is subject to the order passed in appeal and if the concerned public servant has died during pendency of the appeal, the matter would not proceed against his heirs who are the appellants in the present case.

13. In this regard, learned counsel relied on two decisions Co-ordinate Benches of this Court, namely ***Parmeshwari Sinha, Widow of late Kalika Prasad Sinha Vs. The State of Bihar through Vigilance, Criminal Appeal (SJ) No. 225 of 2014***, and ***Criminal Appeal (SJ) No. 405 of 2016, Parmeshwari Sinha and others Vs. The State of Bihar through Vigilance***, in support of his contention. In the similar facts and circumstances, different Co-ordinate Benches of this Court have held in unequivocal terms that after death of a public servant, confiscation proceeding in respect of the property said to be acquired by him by unknown source of income is not maintainable. Moreover, the appellants have not been arrayed as accused with deceased Naresh Paswan either as abettor or as conspirator and even then in the aforesaid case, Criminal Appeal (SJ) No. 405 of 2016, it has been held by the Co-ordinate Bench that a confiscation proceeding would not lie against the conspirator if the properties were acquired by the public servant from unknown source of income who has since died.

14. However, learned counsel appearing on behalf of the Department of Vigilance vehemently contended that the

confiscation proceeding would be continued even if the public servant against whom there has been allegation of acquiring property from unknown source of income has died since the nature of confiscation proceedings is predominantly civil. Learned counsel further submitted that confiscation is not a punishment and hence, it cannot be considered as a proceeding which is criminal in nature. On this aspect learned counsel relied on a decision of the Hon'ble Supreme Court in the case of ***Yogendra Kumar Jaiswal Vs. State of Bihar and others*** reported in ***(2016) 3 SCC 183***. Learned counsel further submitted that a proceeding under Section 13 of the Act, 2009 is an independent proceeding different from one initiated under Section 5 of the Act, 2009. This fact is evident from reading of Sections 14 and 15 of the Act as after giving notice for confiscation under Section 14(1), what is only necessary under Section 15(3) that the Authorized Officer records a finding to the effect that any property has been acquired by means of offence and the said Officer declares that such property stands confiscated to the State Government free from all encumbrances. Learned counsel further relied on a decision in the case of ***Shiva Shankar Varma & Ors. Vs. The State of Bihar through Vigilance*** reported in ***2011(3) PLJR 813,*** wherein a Co-ordinate Bench of this Court held that a proceeding of adjudicating petition under Section 13 of the Act by an order under Section 15 of the Act is not a trial and analogy has been drawn with Criminal Law Amendment Ordinance, 1944 especially Section 5 of the Ordinance which provides for taking of evidence as per mode of receiving evidence in a suit under the Civil Procedure Code.

15. Learned counsel has placed reliance on a decision in the case of ***U. Subhadramma and others Vs. State of Andhra Pradesh*** reported in ***(2016) 7 SCC 797*** regarding analogy of confiscation proceedings under Act, 2009 with the provisions of Criminal Law Amendment Ordinance, 1944 to submit that attachment proceedings would be continued even if the prosecution did not result in conviction.

16. Learned counsel for the State submits that the nature of confiscation proceeding under the Act of 2009 is similar to imposition of fine under Section 394 of the Code of Criminal Procedure and even if the appellant has died, the appeal would not abate. Learned counsel relied on the decision of ***Ramesan (dead) Through L.R. Vs. State Of Kerala, Criminal Appeal No. 77 Of 2020 Order Dated 21.01.2020,*** wherein the Hon'ble Apex Court laid down that when

sentence of fine is imposed along with sentence of imprisonment, the appeal against sentence of fine was required to be heard. Learned counsel stressed on the observation of the Hon'ble Apex Court that where accused was sentenced for imprisonment as well as for fine the appeal in such case has to be treated as an appeal against fine and would not abate in case of death of appellant. Thus, contention has been raised by the learned counsel for the State with analogy of confiscation proceeding with fine imposed with sentence and appeal preferred against the confiscation order not getting abated even after death of the appellant.

17. Learned counsel also harped on the fact that in every case the intention of the legislature is to be seen and under what circumstances the present Act has been enacted. Learned counsel submitted that vires of the Act was examined and upheld by the Hon'ble Apex Court in the case of ***Yogendra Kumar Jaiswal Vs. State of Bihar and others*** *(supra)*. Learned counsel submitted that the Act of 2009 was brought into existence to curb the tendency of public servant in acquiring wealth by illegal means and if on technicalities such cases are closed, it would only embolden such unscrupulous person to indulge into corruption with impunity. Moreover, if

the legal heirs succeed in getting the order reversed in the present appeal, their right to property survive and maxim *actio personalis moritur cum persona***,** i.e., a personal right of action that dies with the person will not be applicable. Lastly the learned counsel relied on the decision of ***Ravi Sinha and Ors. Vs. State of Jharkhand***, reported in ***(2018) 11 SCC 242*** wherein the Hon'ble Apex Court held that though after death of a person no prosecution could have been proceeded against him, when the properties under attachment had come in the hands of the accused who was one of the legal representatives and who has been convicted for such a case, making attachment order absolute cannot be faulted with. The learned counsel also pointed out that the deceased-appellant was convicted under the provisions of the Prevention of Corruption Act, 1988 by the learned Special Judge, Vigilance, Patna. Thus, on the aforesaid grounds, learned counsel for the Department of Vigilance submitted that confiscation proceedings would continue, the appeal would not abate and the same is required to be decided on merits.

18. The issue raised by the appellants in this appeal is very simple. Whether the confiscation proceedings could continue against the present appellants after the death of public

servant against whom there has been allegation of acquiring disproportionate assets since the confiscation proceeding against public servant could not continue whereas the other appellants before this Court were not even accused in the case lodged under the Prevention of Corruption Act and was not proceeded under the Act of 2009?

19. For consideration of different aspects of the case on which submission has been advanced by both the sides, it is relevant to produce the provisions relating to confiscation of property under Bihar Special Courts Act, 2009. Section 13, 14, 15 and 19 read as under:-

> ***"13. Confiscation of property.*** *- (1) Where the State Government, on the basis of prima-facie evidence, have reasons to believe that any person, who has held or is holding public office and is or has been a public servant. has committed the offence, the State Government may, whether or not the Special Court has taken cognizance of the offence, authorise the Public Prosecutor for making an application to the authorised officer for confiscation under this Act of the money and other property, which the State Government believe the said person to have procured by means of the offence.*
>
> *(2) An application under sub-section (1)-*
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> *(a) shall be accompanied by one or more affidavits, stating the grounds on which the belief,*

that the said person has committed the offence, is founded and the amount of money and estimated value of other property believed to have been procured by means of the offence; and

(b) shall also contain any information available as to the location for the time being of any such money and other property, and shall, if necessary, give other particulars considered relevant to the context.

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.

15. Confiscation of property in certain cases. *- (1) The authorised officer may, after considering the explanation, if any, to the show cause notice issued under section 14 and the materials available before it, and after giving to the person affected (and in case here the person affected holds any money or property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any other money or properties in question have been acquired illegally.*

(2) Where the authorised officer specifies that some of the money or property or both referred to in the show cause notice are acquired by means of the offence, but is not able to identify specifically such money or property, then it shall be lawful for the authorised officer to specify the money or property or both which, to the best of his judgment, have been acquired by means of the offence and record a finding, accordingly, under sub-section (1).

(3) Where the authorised officer records a finding under this section to the effect that any money or property or both have been acquired by means of the offence, he shall declare that such money or

property or both shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances:

Provided that if the market price of the property confiscated is deposited with the authorised officer, the property shall not be confiscated.

(4) Where any share in a Company stands confiscated to the State Government under this Act, then, the Company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the Articles of Association of the Company, forthwith register the State Government as the transferee of such share.

(5) Every proceeding for confiscation of money or property or both under his Chapter shall be disposed of within a period of six months from the date of service of the notice under sub-section(1) of section-14.

(6) The order of confiscation passed under this section shall, subject to the order passed in appeal, if any, under section 17, be final and shall not be called in question in any Court of law.

***19. Refund of Confiscated money or property.** - Where an order of confiscation made under section 15 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the price thereof including the money so confiscated with the interest at the rate of five percent per annum* *thereon calculated from the date of confiscation".*

20. From plain reading of the provisions of the Act, the fact is explicit that no provision has been made for continuation of confiscation proceedings in such eventuality when the public servant, against whom the allegation for acquiring wealth by illegal means and from unknown source of income, has died. Nothing in the aforesaid provision allows the State to continue with the proceeding even after the death of the public servant against whom notice has been issued under Section 14(1) of the Act. There is further no provision for substitution of heirs of the public servant or even continuing the proceeding against other appellants. Continuation of confiscation proceedings against the present appellants when the allegation of acquisition of illicit wealth is against the public servant who has since died and in absence of any allegation that such appellants were public servant or they acquired properties of their own, would be travesty of justice in absence of any statutory provisions. There is no provision akin to levy of fine in Cr.P.C. wherein the appeal does not abate even on the death of appellant or as under the provisions of Criminal Law Amendment Ordinance, 1944 which have been cited by the learned counsel for the Department of

Vigilance.

21. At this stage, I would like to distinguish the facts of the present case and the provisions of law from the authorities cited by the learned counsel for the Department of Vigilance. If the statutory provisions do not provide for continuance of proceeding even after death of public servant against whom the proceedings for acquisition of disproportionate assets has been initiated and who has been facing trial under the provisions of Prevention of Corruption Act and undergoing trial in the Act of 2009, no reliance of any of the authorities cited *supra* would be of help to the State since the facts and the law are quite different from the decision cited above. Similarly, the legal heirs of deceased public servant could not be substituted in his place for the purpose of continuation of confiscation proceedings. Moreover, the contention that the proceedings under Act, 2009 are civil in nature would not cut much ice since the Act of 2009 is a complete code and when it does not provide for such situation, this Court cannot read something which is not there and prescribe a procedure which has not been provided by the legislature in its wisdom. So reliance placed on ***Shiv Shankar Varma & Ors. Vs. The State of Bihar trhough Vigilance***

(supra) is misconceived and not applicable to the facts of this case. Similarly, the reliance placed by the learned counsel for the State on **U.Subhadramma and Ors. (***supra***)** and **Ravi Sinha and Ors. (***supra***)** is of no help to the State since in both the cases the Hon'ble Apex Court held that attachment of property against a deceased would not proceed. At this same time in **Ravi Sinha's** case *(supra)*, though he was legal heir yet he was himself accused in the case. Moreover, when Section 19 of the Act, 2009 itself provides that upon acquittal by the Special Court or in case of modification or annulment or the order of confiscation under Section 15 of the Act, the money or the property is liable to be returned to the person affected, such order needs to be withdrawn when the proceedings are dropped or cannot result in conviction due to death of the accused whose property is attached. Since the appeal is deemed to be continuance of trial and presumption of innocence of the accused would continue and could not vanish upon the death of the accused, so I hardly find any merit in the submission made on behalf of the learned counsel for the State. Reliance placed by learned counsel for the State on the case of **Ramesan** (*supra*) is simply not applicable in the facts, circumstances and the express provisions of law. There is no

provision under Act, 2009 to treat the confiscation order as fine and to continue the same against the legal heirs of the deceased-appellant. Hence, this contention is misconceived and therefore, rejected.

22. Coming back to the facts of the present case, the confiscation proceedings were initiated against the appellants after issuance of notice under Section 14(1) and (2) of Bihar Special Courts Act, 2009. After proceedings, the learned Authorized Officer partially allowed the application filed by the State through Public Prosecutor for confiscation of property. Since the appellants were never accused in the case lodged under the Prevention of Corruption Act and the deceased-appellant was the sole accused in the case, in absence of any provision to sustain the proceeding in case of death of public servant who illegally acquired the wealth disproportionate to his known source of income, confiscation proceeding could not be continued. Moreover, there is no provision under the law for substitution of legal heirs or continuance of trial against opposite parties when the public servant has died, such proceeding could not continue against the present appellants. Therefore, notwithstanding the conviction of deceased-appellant, the order of learned

Authorized Officer against the present appellants for confiscation of properties could not be upheld since it has not remain maintainable.

23. In the result, the impugned judgment and order dated 25th March, 2022 passed by learned Additional Sessions Judge -cum- Authorized Officer, Vigilance, Patna in Special (Vigilance) Case No. 03 of 2017 become unsustainable against the appellants, Uma Devi and Amresh Kunal, and is liable to be set aside and, hence, the same is set aside.

24. Accordingly, the appeal stands allowed.

25. Let the lower court records be returned to the learned court below forthwith.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	AFR
CAV DATE	01.09.2023
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