IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.662 of 2013

Arising Out of PS. Case No.-84 Year-2009 Thana- C.B.I CASE District- Muzaffarpur

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1. Sudha Singh Wife of Shri Ravindra Singh At Present Resident Of Mahakali Tower C-Block Flat No. 208 Ranjan Path Abhiyanta Nagar, Baily Road, P.S. - Danapur, District - Patna.
2. Ravindra Prasad Singh Son of Late Tulsi Singh Resident Of Village - Jaitipur, P.S. - Bihta, District - Patna At Present Resident Of Mahakali Tower C-Block Flat No. 208 Ranjan Path Abhiyanta Nagar, Baily Road, P.S. - Danapur, District - Patna. (**Expunged**)

... ... Appellant/s

Versus

The State Of Bihar Through Vigilance

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr.Ranjan Kumar Sinha, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

Date : 27-09-2023

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, Sudha Singh, appellant no. 1/opposite party no. 2 (wife of late Rabindra Prasad Singh) and Ravindra Prasad Singh, appellant no. 2/opposite party no. 1 (since deceased) against the judgment and order dated 5th August, 2013 passed by learned Additional

District & Sessions Judge -cum- Authorized Officer, Special Court No. 1, Muzaffarpur in Confiscation Case No. 06 of 2012, whereby and where under the learned court passed order for confiscation of the property of the appellants as per description in Schedule A and B of the petition under Section 13 of the Act.

2. Brief facts of the case are as follows:-

A Vigilance P.S. Case No. 52 of 2009, dated 12.05.2009 was instituted under Sections 7/13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 and under Sections 409, 201, 120B of the Indian Penal Code against appellant no. 2/opposite party no. 1 and another on the basis of complaint received from one Sri Rajeev Ranjan. The allegation against opposite party no. 1, the Inspector, Weights and Measurement, Muzaffarpur was for demanding bribe. A raid was conducted and opposite party no. 1 and another person were caught red handed while accepting bribe of Rs.1,700/- from the complainant. After conducting enquiry, the authorities came to know that opposite party no. 1 has amassed property worth Rs.10,50,501/- which was disproportionate to his known source of income. After submission of charge sheet in Vigilance P.S. Case No. 52 of 2009, a regular FIR bearing Vigilance P.S. Case No. 84 of 2009, dated 10.08.2009 under Sections 7/13(2) read with section 13(1)(E) of the Prevention of Corruption Act, 1988 was instituted against opposite party no. 1. During investigation it was found that opposite party no. 1 has amassed movable and immovable property in his own name as well as in the names of his wife (appellant no. 1 herein), sons and other family members. After further investigation the disproportionate assets have been found to be worth Rs.12,96,516/-. Accordingly, charge sheet has been submitted in Vigilance P.S. Case No. 84 of 2009 before the court of learned Special Judge, Vigilance-I, Patna. Thereafter, application has been moved before the learned Authorized Officer under Section 13 of the Bihar Special Courts Act, 2009 and prayer has been made for confiscation of property as shown in Schedule A and B of the petition.

3. Notices were issued and served upon three opposite parties and O.P. Nos. 1 and 2 are the appellants in the instant appeal. Opposite Party No. 3 died before investigation of the case and her death certificate was brought on record. Both the appellants/opposite parties filed rejoinder making prayer to reject the petition of State for confiscation of Schedule A and B of the properties of the notice issued. The learned Authorized Officer having considered the material

before him partially allowed the confiscation in favour of the State holding that except for certain items in Schedule A and B, rest of the items were acquired by illegal means by O.P. No.1/Appellant No. 2.

4. Being aggrieved by the order dated 5th August, 2013 of the learned Authorized Officer, the appellants filed the instant appeal.

5. However, during pendency of the appeal, appellant no. 2 died on 18th January, 2018 and the fact has been brought to notice of this Court by the son of the deceased by filing supplementary affidavit. It has been submitted on behalf of the appellants that further proceeding against appellant no. 2, Ravindra Prasad Singh before the court of learned Special Judge, Vigilance-I, Patna in connection with Special Case No. 60 of 2009, arising out of Vigilance P.S. Case No. 84 of 2009 has been dropped vide order dated 16th March, 2021. Hence, the name of appellant no. 2, Ravindra Prasad Singh is ordered to be expugned from the array of parties and appeal stands abated against him.

6. Learned counsel for the parties have been heard on previous dates.

7. It has been submitted on behalf of the appellants

that after death of the public servant confiscation proceeding does not remain maintainable since the case of the prosecution would not fall under Section 13 of the Act, 2009 and the properties of appellant no. 1 cannot be confiscated by the State Government as the appellant no. 1 is not a government servant and she is not accused in aforesaid vigilance case. Learned counsel further submitted that after death of concerned public servant, the confiscation proceeding cannot proceed in respect of alleged disproportionate assets acquired by him in absence of statutory provisions and on this aspect learned counsel for the appellants relied on a decision of a Co-ordinate Bench of this Court dated 4th February, 2015 passed in ***Criminal Appeal (SJ) No. 225 of 2014***, ***Parmeshwari Sinha, Widow of late Kalika Prasad Sinha Vs. The State of Bihar through Vigilance***. It has been further submitted on behalf of the appellants that procedure and findings under the Bihar Special Courts Act, 2009 is not an independent procedure and as per Section 19 of the Act, the execution of order of confiscation proceeding is subject to result of main case under the Prevention of Corruption Act. In the instant case the proceeding under the Prevention of Corruption Act has already been dropped and the presumption of innocence will always be available to the deceased public servant. Learned counsel further submitted that another Co-ordinate Bench in ***Criminal Appeal (SJ) No. 405 of 2016, Parmeshwari Sinha and others Vs. The State of Bihar through Vigilance*** has also held that after death of public servant confiscation proceedings in respect of property said to be acquired by him by unknown source of income is not maintainable. It is not the case of the respondent that the present appellant namely, Sudha Singh, is a public servant and it is not the case of the respondent that said properties were acquired by the present appellant. Moreover, the present appellant is also an income tax payee. Since there is provision for return of the confiscated property after acquittal under Section 19 of the Act, no useful purpose would be served even if the order of the learned Authorized Officer is upheld without final decision of the learned trial court in the vigilance case. The State is only the custodian of the property and the confiscation is dependent upon the outcome of the trial before the Special Court of Vigilance and since the trial has been dropped, the confiscation proceedings against the present appellant is not maintainable.

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

confiscation proceeding could 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 reported 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.

9. 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 could be continued even if the prosecution did not result in conviction.

10. 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. Then, 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.

11. 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. 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.

12. The issue raised by the appellant in this appeal is very simple. Whether the confiscation proceedings could continue against the present appellant after the death of public servant against whom there has been allegation of acquiring disproportionate assets since the vigilance case against public servant was dropped whereas the other appellant before this

Court was not even accused in the case lodged under the Prevention of Corruption Act and was not proceeded under the Act of 2009?

13. 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.*
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> *(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".*

14. 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 appellant/opposite part. Continuation of confiscation proceedings against the present appellant 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 appellant/opposite party was public servant or she acquired properties of her 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.

15. 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.

16. 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 appellant was 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 party when the public servant has died, such proceeding could not continue against the present appellant. Therefore, the order of learned Authorized Officer against the present appellant for confiscation of properties could not be upheld since it has not

remain maintainable.

17. In the result, the impugned judgment and order dated 5th August, 2013 passed by learned Additional District & Sessions Judge -cum- Authorized Officer, Special Court No. 1, Muzaffarpur in Confiscation Case No. 06 of 2012 become unsustainable against the appellant, Sudha Singh, and is liable to be set aside and, hence, the same is set aside.

18. Accordingly, the appeal stands allowed.

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

(Arun Kumar Jha, J)

DKS/-

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