IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5232 of 2018

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Awadhesh Kumar Mandal S/o- Late Dhaneshwar Mandal, R/v- 202, Monika Apartment Anandpuri, West Boring Canal Road, P.S.- Sri Krishnapuri, District- Patna at present retired Executive Engineer, Building Construction Department, Muzaffarpur, Bihar.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
4. The Deputy Secretary, Building Construction Department, Government of Bihar, Patna.
5. The Superintendent of Police, Economic Offence Unit, Patna, Bihar.
6. The Senior Deputy Superintendent of Police, Economic Offence Unit, Patna, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vijay Kumar Sinha, Adv.
For the State/s	:	Mr. Sheo Shankar Prasad -SC8
	:	Mr. Ruchikar Jha, AC to SC8
For the EOU	:	Mr. V.N.P. Sinha, Sr. Adv.
	:	Mrs. Soni Shrivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

5 30-01-2024 Heard learned counsel for the petitioner and learned Senior counsel, Mr. V.N.P. Sinha for the Economic Offence Unit.

2. The present writ petition has been filed to challenge the letter No. 03 of 2017-69 contained in Annexure-15 dated 03.01.2018.

3. Counsel for the petitioner submits that the said letter is absolutely illegal and not in accordance with law due to the reason that the F.I.R. has been lodged in the year 2013 and

the investigating officer has seized the entire property of the petitioner after lapse of 5 years, issuance of such letter for confiscation which has already in the custody of the Government by way of seizure, is illegal and not permissible.

4. Counsel further submits that the Special Courts Act, 2009 particularly, sections 5, 7 and 11 are relevant for the present case due to the reason that delay proceeding for the confiscation of the property of the petitioner and his relatives which has already been in custody of the State, is absolutely illegal and therefore, the said letter be set aside.

5. Counsel also submits that the criminal case under the Prevention of Corruption Act is already going on against the petitioner as well as process of confiscation of the property has been initiated for the same Act, is amount to violation of Article 20(2) of the Constitution of India i.e., doctrine of double jeopardy.

6. Learned senior counsel for the Economic Offence Unit submits that letter dated 03.01.2018 is absolutely legal and has been passed completely in accordance with Section 13(1) of Special Courts Act, 2009. He submits that the process of seizure of property and process of confiscation of the property are two phenomenon in law. Counsel submits that by virtue of issuance

of the said letter, special public prosecutor has been authorized to proceed for confiscation under the law laid down. As such, the said letter is absolutely in accordance with law.

7. In the light of the submissions made by the parties and upon going through the documents, it is made clear to this Court that in the said letter, there are 3 paragraphs. The first paragraph indicates the involvement of petitioner in crime for which criminal case has been lodged under the provisions of the Prevention of Corruption Act, 1988 bearing Economic Offence P.S. case no. 16 of 2013 dated 29.05.2013 lodged under section 13(2) read with section 13 (1)(e) of the Prevention of Corruption Act, 1988 and the second paragraph deals about the running of proceeding under the Special Courts Act, 2009. These two paragraphs indicate that two different proceedings under two different statutes are going on. From the third paragraph of the said letter, it transpires to this Court that operative part of this letter which is under third paragraph, has been passed in consonance of section 13(1) of the Special Courts Act, 2009 which talks about the methodology of confiscation of property. The provision under section 13(1) of the Special Courts Act, 2009 states as follows:-

> ***“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, authorize 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."

8. It transpires to this court upon bare perusal of section 13(1) of the Special Courts Act, 2009 that the State Government shall authorize the public prosecutor for making an application to the authorized 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 offence. It is an offence for which the case under Prevention of Corruption Act, 1988 has been lodged.

9. Under the said statute, there is a provision of notice for confiscation after filing an application. The provision for granting opportunity is available to the petitioner under law.

10. It is made clear that the provision of seizure of property and confiscation of property are two different things in law. It is also made clear that the principle of doctrine of double jeopardy shall not apply in the present case as proceedings are

going on, on the basis of two different statutes, and therefore, it is not the case in contradiction of Article 20(2) of the Constitution of India.

11. In the light of the discussion made, this Court is of the firm view that letter No. 03 of 2017-69 dated 03.01.2018 challenged as impugned order in the writ petition, is absolutely in accordance with law, and hence, the present writ application is hereby dismissed.

(Dr. Anshuman, J.)

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