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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 490 of 2025

Nirakara Rout	....	***Appellant***
		Ms. Bini Mishra, Advocate
State of Odisha (Vig.)	....	***Respondent***
		Mr. Srimanta Das Sr. Standing Counsel

CRLA No. 134 of 2018

Nirakara Rout	....	***Appellant***
		Ms. Bini Mishra, Advocate

-versus-

State of Odisha (Vig.)	....	***Respondent***
		Mr. Srimanta Das Sr. Standing Counsel

CORAM:
THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 09.07.2025

Chittaranjan Dash, J.

1. By means of this Appeal, the Appellant has assailed the orders dated 20.03.2025 and 23.09.2024, passed by the learned Authorised Officer, Special Court, Bhubaneswar, and has sought to have the prayer rejected therein allowed in the present appeal.

2. The factual matrix of the case is that the Appellant is a retired Senior Geologist who was serving in the Ground Water Remote Sensing Division at Bhubaneswar. He was implicated in Cuttack Vigilance P.S. Case No.19 of 1996 for possession of disproportionate assets, leading to the initiation of proceedings under Sections 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988. Upon investigation, a charge sheet was filed and the matter was tried as T.R. Case No. 21/43 of 2012/2002 before the Special Judge, Special Court, Bhubaneswar. The charge alleged acquisition of disproportionate assets by the Appellant beyond his known sources of income. During the pendency of the criminal proceedings, the State filed an application under Section 13 of the Orissa Special Courts Act, 2006, seeking the confiscation of certain properties allegedly acquired through corrupt means. The Authorised Officer issued notice to the Appellant on 12.03.2013, initiating confiscation proceedings. On 05.02.2018, the Special Judge, Special Court, Bhubaneswar convicted the Appellant in TR Case No. 21/43 of 2012/2002 under Sections 13(1)(e) and 13(2) of the PC Act, 1988, and sentenced him accordingly. The Appellant preferred an appeal, CRLA No. 134 of 2018, before this Court.

While the said appeal was pending, the Appellant approached the Authorised Officer, Special Court, seeking to adduce additional evidence under Section 243 Cr.P.C. to justify the sources of income and acquisition of the properties. The Authorised Officer, vide order dated 23.09.2024, rejected the application on the ground that it lacked specificity and was filed only to delay proceedings. The Appellant filed another application under Section

243 Cr.P.C. on 03.10.2024, detailing the witness list and reasons for examination. This too was rejected by the Authorised Officer by order dated 20.03.2025, citing that permitting such evidence post-conviction would be a futile exercise. Aggrieved by the orders dated 23.09.2024 and 20.03.2025, the Appellant has filed the present appeal, CRLA No. 490 of 2025, challenging the refusal to summon witnesses and to adduce evidence for the defence at the confiscation proceedings.

3. Ms. B. Mishra, learned counsel for the Appellant, contended that the impugned orders dated 23.09.2024 and 20.03.2025 passed by the Authorised Officer rejecting the Appellant's applications under Section 243 Cr.P.C. are arbitrary and contrary to the statutory rights available to the Appellant. She argued that, under Rules 11 and 14 of the Orissa Special Courts Rules, 2007, the provisions of the Cr.P.C. and the Indian Evidence Act are applicable to confiscation proceedings, unless inconsistent with the parent statute, and therefore, the Appellant's request to summon witnesses under Section 243 Cr.P.C. was maintainable. The learned Counsel further submitted that the confiscation proceedings are separate and independent of the criminal trial, though they arise out of the same set of facts, and that the standard of proof and scope of evidence differ. On this basis, it was asserted that the Appellant was well within his rights to present fresh evidence and call additional witnesses including some prosecution witnesses to rebut findings and clarify errors in asset computation that were allegedly overlooked during trial. Mr. Mishra also claimed prejudice on account of not being allowed to present legitimate sources of

income, such as rental proceeds, scholarships, and gifted property, which were not considered by the State authorities. Lastly, the learned counsel challenges the confiscation itself in lieu of pendency of Appeal and further submitted that the delay in confiscation proceedings was attributable to the State, not the Appellant, and that unless the impugned orders were set aside, the Appellant would suffer serious prejudice, especially when the conviction itself is under challenge in CRLA No. 134 of 2018.

4. Mr. S. Das, learned counsel for the State (Vigilance) opposed the appeal by contending that the confiscation proceedings under the Orissa Special Courts Act, 2006 are a direct and statutory consequence of the Appellant's conviction for offences under the Prevention of Corruption Act, 1988. He submitted that once the Appellant was convicted by the Special Court on 05.02.2018, the confiscation of properties acquired through corrupt means followed as a matter of law under Section 13 of the Special Courts Act. Mr. Das further argued that the applications under Section 243 Cr.P.C., filed long after the conviction, intended only to delay the confiscation process, and lack any substantive merit. He asserts the Appellant had ample opportunity during the trial to produce evidence and examine witnesses, and having failed to do so, could not now seek to re-open or supplement the defence through collateral proceedings. Mr. Das also emphasised that the Authorised Officer rightly found the applications to be vague, speculative, and procedurally unwarranted at the post-conviction stage. He added that the confiscation proceedings, being civil in nature and summary in scope, cannot serve as a platform to relitigate or

challenge findings already rendered in a criminal trial, and hence, no illegality or procedural lapse exists in the impugned orders.

5. The present Criminal Appeal, i.e., CRLA No. 490 of 2025, has been preferred by the Appellant challenging the orders dated 23.09.2024 and 20.03.2025 passed by the learned Authorised Officer, Special Court, Bhubaneswar, whereby the Appellant's applications filed under Section 243 Cr.P.C. seeking summoning of witnesses were rejected. In addition, the Appellant has also questioned the validity of the cognizance taken in the confiscation proceedings under the Orissa Special Courts Act, 2006. It may be noted that the Appellant's earlier appeal, CRLA No. 134 of 2018, challenging the judgment of conviction dated 05.02.2018 passed in T.R. No. 21/43 of 2012/2002 by the learned Special Judge, Special Court, Bhubaneswar, remains pending consideration before this Court. During the course of hearing, learned counsel for the Appellant submitted that the prayer in the present CRLA is not confined to procedural issues in the confiscation proceeding, but substantially aims to undermine the confiscation itself, by seeking to lead further evidence. It is, therefore, argued that admitting such evidence in the confiscation proceeding may affect the merits of the conviction appeal as well.

6. The Appellant filed two successive applications under Section 243 Cr.P.C. during the pendency of confiscation proceedings initiated after his conviction. The First Application, dated 05.12.2023, sought the issuance of summons to witnesses in defence of the Appellant's claim regarding lawful acquisition of the properties. However, the application did not specify the names of

the proposed witnesses or the reasons for their examination. Consequently, the learned Authorised Officer rejected the said application by order dated 23.09.2024, holding it to be a vague and unsubstantiated petition, evidently filed to delay the proceedings, particularly in light of the fact that the Appellant had already been convicted. The Second Application, dated 03.10.2024, was filed subsequent to the rejection of the earlier petition. This time, the Appellant provided a detailed list of witnesses along with specific reasons for seeking their examination. Nevertheless, the learned Authorised Officer, by order dated 20.03.2025, dismissed the application once again, holding that the Appellant having already been convicted, there existed no scope to reintroduce or expand his defence through the confiscation proceeding. The order further recorded that allowing such a request would only result in protraction of the matter without serving any useful purpose.

7. It was fairly admitted by learned counsel for the Appellant during the hearing that the defence now sought to be introduced was never raised during the trial, and that no application for summoning such witnesses was made at any point prior to the conviction dated 05.02.2018. Notably, by that time, the Appellant had already filed CRLA No. 134 of 2018, and the confiscation proceedings under the Orissa Special Courts Act were also underway.

8. For better appreciation of the case at hand, it is imperative on the Court to examine the scope and application of Section 243 of the Code of Criminal Procedure, that reads as –

> (1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.
>
> (2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing;
>
> Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.
>
> (3) The Magistrate may, before summoning any witness on an application under Sub-Section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

9. The aforesaid provision provides the procedural mechanism by which an accused may lead defence evidence during the trial of a warrant case. The provision, by its very structure, applies only prior to the conclusion of trial, and is intended to enable the accused to establish his defence before the court reaches a finding of guilt. Once a judgment of conviction has been rendered, as in the present case, the trial stands concluded, and the stage for adducing defence evidence stands closed. The law does not contemplate a second opportunity to reconstruct or supplement the defence through collateral proceedings such as confiscation. More importantly, the

confiscation proceedings are not a retrial, and cannot be converted into a forum for introducing material which was consciously or negligently omitted at the stage of trial.

10. The contention that the opportunity to examine witnesses in the confiscation proceedings is central to the Appellant's defence and necessary to rectify alleged omissions made during trial does not merit acceptance at this stage. The Appellant was duly represented during the trial in T.R. No. 21/43 of 2012/2002 and had sufficient opportunity to adduce evidence and contest the findings. The plea that the confiscation proceedings may serve as a forum to supplement or revisit the defence post-conviction is misconceived. Such a course would not only defeat the object of the Special Courts Act but would also amount to reopening matters already concluded in trial. If any aspect of income or property valuation was overlooked or misappreciated, it is for the appellate court in CRLA No. 134 of 2018 to examine the same in the context of the conviction itself. This Court cannot permit a fragmented or collateral attempt to alter the effect of the conviction through evidence introduced belatedly in a parallel proceeding, which is clearly an afterthought.

11. Moreover, the Appellant's present challenge appears to be a collateral attack on the legality of the confiscation proceedings without actually seeking or obtaining relief against the conviction, which continues to stand unless set aside in CRLA No. 134 of 2018. The confiscation proceeding, it must be reiterated, is a statutory consequence of the conviction recorded under the Prevention of Corruption Act. Once a conviction is recorded by the Special Court

for offences under the Prevention of Corruption Act, the jurisdiction of the Authorised Officer under Section 13 of the Orissa Special Courts Act, 2006 is triggered. The object of the legislation is to enable the State to promptly recover and vest in itself any property deemed to have been acquired through corrupt means, without requiring a separate adjudication of guilt. Thus, the confiscation is not the result of a fresh judicial inquiry, but flows directly from the finding of guilt recorded by the competent criminal court. It is not a retrial or an adjudication on culpability but a consequential step to vest such tainted property in the State. The claim that examination of witnesses in the confiscation stage would materially impact the pending appeal is therefore unfounded, as the defence of the Appellant must be assessed primarily within the scope of CRLA No. 134 of 2018.

12. Accordingly, this Court is of the view that the confiscation proceedings, being a statutory consequence of the conviction, cannot be challenged in a fragmented or collateral manner without first securing relief against the conviction itself.

Furthermore, the examination of new witnesses at the post-conviction stage is not permissible in law, and the learned Authorised Officer, in rejecting both applications under Section 243 Cr.P.C., acted well within jurisdiction and in accordance with the legal framework. The findings that such applications were vague, belated, and intended to delay the proceedings or reopen issues already concluded during trial, do not warrant interference. In view of the above, the present Appeal is devoid of merit.

13. Since the prayers made in the present appeal, i.e., CRLA No. 490 of 2025, have been duly considered and answered herein, this Court refrains from expressing any opinion on the merits of the statutory appeal filed in CRLA No. 134 of 2018, which shall be heard and adjudicated in accordance with law on its own merits.

14. In light of the above discussion, this Court finds no illegality or infirmity in the impugned orders dated 23.09.2024 and 20.03.2025 passed by the learned Authorised Officer, Special Court, Bhubaneswar. Accordingly, CRLA No. 490 of 2025 stands disposed of.

(Chittaranjan Dash)
Judge

A.K.Pradhan/Bijay

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