
(1984) 02 PAT CK 0009

In the Patna High Court

Case No : Criminal W.J.C. No. 69 of 1980 (R)

Benoy Krishna Ghosh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-02-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Penal Code, 1860 (IPC) — Section 120B, 409, 420, 467, 471

Citation : (1985) 33 BLJR 517 : (1984) PLJR 356

Hon'ble Judges : Satyeshwar Roy, J;M.M. Pradesh, J

Bench : Division Bench

Judgement

Satyeshwar Roy, J.—By this application under Articles 226 and 227 of the Constitution of India, the petitioners have prayed for directing the respondents to release the properties under attachment besides those sought to be forfeited under Criminal Law Amendment Ordinance, 1944 (1944 Ordinance) and further to determine the value of the properties sought to be forfeited, to release those properties not required after adjusting the same with the amount to be realised.

2. The relevant facts which are to be noticed are that one Shanto Kumar Mitra (S.K. Mitra) and three others were tried together in a criminal case for offences under Sections 409, 420, 467, 471 and 120-B of the Indian Penal Code (the Penal Code). The trial Court found that total amount of Government Money defalcated by the accused persons as a result of the conspiracy was Rs. 17,95,374/9/9. S.K. Mitra was found guilty for both under the substantive charges and also conspiracy. He was sentenced to undergo rigorous imprisonment for ten years u/s 409 of the Penal Code and was also sentenced to various terms of imprisonment under other Sections of the Penal Code, which were to run concurrently. He was also sentenced to pay a fine of rupees five lakhs. He filed an appeal in this Court and in that appeal an application was filed on behalf of the State for enhancing the sentence. this Court dismissed the appeal and allowed the prayer of the State in part by increasing the fine from rupees five lakhs to rupees fifteen lakhs.

3. After the first information report was lodged against S.K. Mitra and Ors. an application u/s 3 of 1944 Ordinance was made on behalf of the State Government in the Court of the Judicial Commissioner, Ranchi for attachment under the Ordinance of a large number of properties. That was registered as M.J. C. No. 31 of 1949. The Judicial Commissioner, Ranchi, passed an order of ad-interim attachment of all the properties and later appointed a receiver. A number of applications were filed by third parties claiming some of the properties. Some claim applications have been disposed of and some are still pending.

4. As ordered by this Court in Criminal Revision No. 163 of 1978 CR), the Judicial Commissioner, Ranchi, treated the application filed on 3-1-1976 as an application u/s 13 (5) of 1944 Ordinance and by order dated 30th June, 1980 rejected the same. The petitioners thereafter filed this application.

5. The main contention of the petitioners before the Judicial Commissioner, as appears from paragraphs 10 and 25 of the order was that the State Government was entitled to pray for forfeiture of the properties to the extent of the valuation of rupees seventeen lakhs and odd, as found in the criminal case, and the fine. Rest of the properties in excess of this were to be released. Two other contentions were also made before the Judicial Commissioner, namely, recovery of fine was barred by limitation and 1944 Ordinance was no longer a good law. The Judicial Commissioner rejected all the contentions.

6. The admitted facts are that an interim order of attachment under 1944 Ordinance was passed by the Judicial Commissioner, Ranchi, in respect of a large number of properties, moveable and immovable. The Additional Judicial Commissioner, Ranchi, who tried the criminal case held that the amount defalcated was Rs. 1795374/99. On 5-4-1963 an application was filed on behalf of the State before the Judicial Commissioner, Ranchi for forfeiting the properties, moveable and immovable, given in schedules A and B to that application. By order No. 670 dated 2-5-1963 the Judicial Commissioner, Ranchi, ordered that all the properties of schedules A and B to that application filed on 5-4-1963 except item No. 4 of schedule B were forfeited to the State Government. It is also admitted fact that some moveable property i.e., gold bars, were sold and the sale proceed was deposited in the treasury. Various claims lodged by third parties are pending for disposal with regard to the properties so attached.

7. At the time of hearing, on behalf of the petitioners the question whether 1944 Ordinance was good law or not was not pressed.

8. At the out-set it was submitted by Mr. Prasad on behalf of the respondents that in view of the stay order of the Supreme Court passed in Criminal Miscellaneous petition No. 4780 of 1980 on 26-2-1982 filed in Criminal Appeal No. 771 of 1981 his case cannot proceed. From the perusal of that order it appears that the Supreme Court ordered that the proceeding shall go on except that no further sale of properties shall take place pending the final hearing and disposal

of the Criminal Appeal. In my opinion, there is no order of the Supreme Court which may be a bar for this Court to hear this writ petition.

9. It was contended on behalf of the petitioners by Mr. B.C. Ghosh that the fine cannot be recovered as the same had become barred by limitation. Alternatively, he submitted that even if it can still be recovered as rupees forty lakhs, the sale proceed of the gold bars seized in Bombay and attached under 1944 Ordinance was sufficient to satisfy the amount to be forfeited together with cost of attachment and also the amount to be recovered as fine, all other properties must be released from attachment. Mr. Sambhu Prasad submitted that the recovery of the fine has not become barred and that all properties, movable and immovable which were obtained from out of the defalcated money are liable to be forfeited, notwithstanding the fact that the amount defalcated was rupees seventeen lakhs and odd and that (he value of the attached property may exceed the defalcated amount, fine and cost of attachment taken together. Mr. Ghosh and Mr. Prasad in support of their respective contentions relied on different provisions of 1944 Ordinance. The relevant provisions of 1944 Ordinance relied upon and to be looked into for the disposal of this application are as follows:

12. Criminal Courts to evaluate property procured by scheduled offences (1) where before judgment is pronounced in any criminal trial for a scheduled offence it is represented to the Court that an order of attachment of property has been passed under this Ordinance in connection with such offence, the Court shall, if it is convicting the accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence.

(2) In any appeal or revisional proceedings against such conviction, the appellate or revisional Court shall unless it sets aside the conviction, either confirm such finding or modify it in such manner as it thinks proper.

(3)....

(4)....

(5)....

13. Disposal of attached property upon termination of Criminal Proceedings=-

1. Upon the termination of any criminal proceedings for any scheduled offence in respect of which any order of attachment of property has been made under this Ordinance or security given in lieu thereof, the agent of the State Government shall without delay inform the District Judge, and shall where criminal proceedings have been taken in any Court, furnish the District Judge with a copy of the judgment or order of the trying Court and with copies of the judgments or orders, if any of the appellate or revisional Courts thereon.

2....

(3). Where the final judgment or order of the Criminal Courts is one of conviction, the District Judge shall order that from the property of the convicted

person attached under this Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to Government such amount or value as is found in the final judgment or order of the Criminal Courts in pursuance of Section 12 to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge and where the final judgment or order of the Criminal Courts has imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment.

(4). Where the amounts to be forfeited or recovered under Sub-section (3) exceed the value of the property of the convicted person attached, and where the property of any transferee of the convicted person has been attached u/s 6, the District Judge shall order that the balance of the amount ordered to be forfeited under Sub-section (3) together with the costs of attachment of the transferee's property as determined by the District Judge shall be forfeited to the Government from the attached property of the transferee or out of the security given in lieu of the transferee or out of the security given in lieu of such attachment ; and the District Judge may order, without prejudice to any other mode or recovery, that any fine referred to in Sub-section (3) or any portion thereof not recovered under that sub-Section shall be recovered from the attached property of the transferee or out of security given in lieu of such attachment.

(5) If any property remains under attachment in respect of any scheduled offence or any security given in lieu of such attachment remains with the District Judge after his orders under Sub-sections (3) and (4) have been carried into effect, the order of attachment in respect of such property remaining shall be forthwith withdrawn or as the case may be, the remainder of the security returned, under the orders of the District Judge.

(6)....

10. Admittedly as required u/s 12 (1) of 1944 Ordinance, the trial Court held that rupees seventeen lakhs and odd has been defalcated. This has been confirmed in appeal. The question, therefore, is whether the State Government can pray for forfeiture of property of that value or forfeiture of all the properties alleged to have been procured out of that money. So far recovery of fine is concerned, I will deal with that separately.

11. The scope and ambit of Sections 12 (1) and 13 (3) of 1944 Ordinance were the subject-matter in State of West Bengal Vs. S.K. Ghosh, .. In that case Ghosh was charged for embezzlement of rupees thirty lakhs and it was alleged that he purchased properties out of the same. On an application filed u/s 3 of 1944 Ordinance two house properties were attached. The Supreme Court held that u/s

3 of 1944 Ordinance two kinds of properties may be attached, namely (i) the properties which have been procured by commission of the offence, whether it being in the form of the money or in the form of moveable or Immovable property (ii) the properties other than the above. As the money embezzled was not available for attachment, i.e., the property procured by the offence, property purchased from that money was attached. In other words item (ii) above i.e., property other than the embezzled property (money) was attached. With reference to Section 12 (1) of 1944 Ordinance, the Supreme Court held that in a case where money was embezzled, the criminal Court is required to determine the amount of money procured by means of offence, i.e. the amount of money embezzled. In that case the Criminal Court found that the money embezzled was rupees thirty lakhs. With reference to Section 13 (3) of 1944 Ordinance, the Supreme Court held.-

That Section clearly contemplates that the District Judge will first forfeit the attached properties up to the amount of money determined u/s 12.

12. The Supreme Court upheld the order of the District Judge who held that out of the properties attached he had first to forfeit properties upto the value of rupees thirty lakhs u/s 13 (3).

13. In the present case, the amount determined u/s 12 (1) of 1944 Ordinance in the criminal case was rupees seventeen lakhs and odd. Applying the law laid down in Ghoshe's case, out of the attached property belonging to S.K. Mitra firstly that much will be forfeited, the value of which will satisfy rupees seventeen lakhs and odd. It is unfortunate that inspite of the decision of the Supreme Court, the Court below held that all properties which were alleged to have been procured out of embezzled money and attached will be forfeited, irrespective of the consideration as to what was the value of the same. The submission of Mr. Prasad on this point is against the law laid down by the Supreme Court and must be rejected.

14. So far as the recovery of fine is concerned, in my opinion, that stage has yet not arrived. The reason is that u/s 13 (3) of 1944 Ordinance firstly out of the attached property belonging to the convicted person, the amount embezzled i.e. rupees seventeen lakhs and odd together with cost of attachment as may be determined by the Judicial Commissioner shall have to be recovered and if any thing is left then the Judicial Commissioner may order, without prejudice to any other mode of recovery, that the fine shall be recovered from the residue of the attached property. Therefore, once rupees seventeen lakhs and odd together with cost of attachment is satisfied from of the attached property belonging to S.K. Mitra, the Judicial Commissioner. Ranchi shall pass order of recovery of rupees fifteen lakhs out of the residue, if any. of his attached property. If the total amount of fine cannot be so covered then only the same may be recovered under the general law. That being the petition in law, recovery of fine under 1944 Ordinance is not barred. The contention of Mr. Ghosh on this point is without any substance.

15. In this case, therefore, all the properties which have been attached, even if it belonged to S.K. Mitra cannot be forfeited if the value of the same exceeds Rs. 32,95, 374/99 (the amount embezzled and the fine imposed) and the cost of attachment as may be determined by the Judicial Commissioner,

16. To sum up:

(i) Out of the properties attached, and which belonged to S.K. Mitra. property valued at Rs. 17,95, 371/99 and the cost of attachment shall be forfeited first.

(ii) Out of the residue, property valued at rupees fifteen lacs shall be forfeited.

(iii) If any property shall still be left, the same must be released from attachment.

17. In the result, the application is allowed in part as indicated above.

18. It is, however, not possible to forfeit properties of the value of rupees seventeen lacs and odd as the properties are yet to be valued. The cost of attachment has not been determined. The Judicial Commissioner is ordered to direct the parties to submit their estimates as to the value of all the properties attached and/or forfeited belonging to S.K. Mitra and if there be no agreement between the parties, it shall appoint a values to evaluate the properties. It shall direct the receiver to submit a report as to the cost of attachment including the income and outgoings in the management of the same. Thereafter the Judicial Commissioner shall proceed according to law. As the case is very old, the Court below shall proceed expeditiously.