

**(2012) 02 OHC CK 0019**  
**In the Orissa High Court**  
**Case No : Criminal M.C. No. 4294 of 2011**

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| Bipin Bihari Panda and Another | Vs | APPELLANT  |
| State of Orissa                |    | RESPONDENT |

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**Date of Decision :** 02-02-2012

**Acts Referred:**

Constitution of India, 1950 — Article 20(2)  
Criminal Procedure Code, 1973 (CrPC) — Section 2, 4, 482, 6  
Orissa Forest Act, 1972 — Section 56  
Orissa Special Courts Act, 2006 — Section 13, 13(1), 14, 15, 15(3)  
Orissa Special Courts Rules, 2007 — Rule 10, 11, 12, 13(3), 14  
Penal Code, 1860 (IPC) — Section 21, 228

**Citation :** (2012) CriLJ 2160

**Hon'ble Judges :** C.R. Dash, J

**Bench :** Single Bench

**Advocate :** Bijan Ray, C. Choudhury, B. Mohanty, D. Chhotray, D.R. Das and S. Mohanty, for the Appellant;

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## Judgement

C.R. Dash, J.—The petitioners are husband and wife. Confiscation proceeding vide C.C. No. 1 of 2010 has been initiated against them before the Authorised Officer, Special Court, Bhubaneswar for confiscation of properties alleged to have been procured by them illegally by means of the offence they are alleged to have committed. They have moved this Court u/s 482, Cr.P.C. for issuance of a direction obliging the State and the Authorised Officer to do the things as the Orissa Special Courts Act, 2006 (for short "the Act") and the Rules made thereunder provides and not to do anything otherwise. Facts relevant for disposal of this petition are as follows :

Sub-Section (1) of Section 13 of the Act provides thus :-

13. Application for confiscation - (1) Where the State Government, on the basis of prima-facie evidence, have reasons to believe that any person, who held high public or political office 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.

(emphasis supplied)

Sub-Rule (3) of Rule 13 of the Orissa Special Courts Rules, 2007 (for short "the Rules") provides that the application filed before the Authorised Officer shall be in Form No. III.

2. In the present case, the State Government in Home Department, vide authorization dated 12.01.2009, has authorised the Public Prosecutor concerned for making an application u/s 13(1) of the Act to the Authorised Officer, Bhubaneswar for confiscation of properties/pecuniary resources, as mentioned in the authorization. It is alleged that in derogation of the provisions in Section 13(1) of the Act, Rule 13(3) of the Rules and the aforesaid authorization dated 12.01.2009 issued by the Government in Home Department, the application for confiscation has been made by the I.O. of the case, whom the Public Prosecutor has only identified. Further it is alleged that the application is not in Form No. III, as provided in Sub-Rule (3) of Rule 13 of the Rules.

3. It is strenuously contended by Mr. Bijan Ray, learned Senior Counsel appearing for the petitioners that the action of the Authorised Officer in accepting the application for confiscation made in contravention of the provisions contained in Section 13(1) of the Act and Rule 13(3) of the Rules amount to abuse of the process of the Court, and the Authorised Officer through direction by this Court should be obliged to follow the mandates of the Act and Rules so far as acceptance of the application for confiscation is concerned. It is further contended that requirement of the Authorised Officer being moved by the Public Prosecutor by making the application himself being a safeguard in favour of the petitioners, it was not proper for the Authorised Officer to overlook such a statutory safeguard.

4. Learned Additional Standing Counsel appearing for the Vigilance Department, with all the vehemence at his command, submits as follows :-

(i) The proceeding before this Court, in the present form, is hit by Sections 17 and 22 of the Act in view of specific bar for any other proceeding there in those Sections.

(ii) The Public Prosecutor having identified the I.O., who has made the application for confiscation u/s 13 of the Act, there is no violation or contravention of Section 13(1) of the Act or Rule 13(3) of the Rules.

(iii) The Public Prosecutor having presented the application before the Authorised Officer, such act of presenting the application is wholesome compliance of Section 13(1) of the Act and Rule 13(3) of the Rules.

(iv) The proceeding of confiscation being a quasi civil proceeding and the

Authorised Officer being not a Court, inherent power of this Court u/s 482, Cr.P.C. cannot be exercised in respect of any proceeding before the Authorised Officer.

5. Mr. Bijan Ray, learned Senior Counsel oppugns the contentions raised by learned Addl. Standing Counsel (Vigilance) on the grounds that the bar provided in Section 22 of the Act does not affect the inherent power of the High Court, as this Court has plenary power u/s 482, Cr.P.C. to exercise for the three purposes provided there in the Section. To substantiate his contention, he relied on a catena of decisions of Hon''ble the Supreme Court. He further submits that when the Act has provided to do a certain thing in a certain way, it is the duty of the authority concerned to implement the same as has been provided in the Act and not otherwise.

It is further contended by Mr. Bijan Ray, learned Senior Counsel that from the provisions of the Act and Rules, there is no escape from the conclusion that the Proceeding before the Authorised Officer is a criminal proceeding though the consequence thereof may be civil or quasi civil in nature till the judgment by the Special Court is pronounced.

Elaborating his contention, Mr. Ray, learned Senior Counsel submits that the Authorised Officer competent to take up the confiscation proceeding is a person belonging to the cadre of Orissa Superior Judicial Service (Senior Branch), as provided in Section 2(a) of the Act and Rule 9 of the Rules; the proceeding before the Authorised Officer, according to Rule 10 of the rules, is to be deemed as a judicial proceeding; rule 11 of the Rules provides for application of the provisions of the Code of Criminal Procedure to the proceedings before the Authorised Officer in so far as they are not inconsistent with the provisions of the Act; rule 12 of the Rules provides for application of the provisions of the G.R. & C.O. (Criminal) and (Civil) to the conduct of business so far as the proceeding before the Authorised Officer is concerned. Mr. Ray, learned Senior Counsel taking me through the aforesaid provisions submits that the aforesaid provisions, if read together, would lead to definite conclusion that the proceeding before the Authorised Officer is a judicial proceeding on criminal side and this Court, u/s 482, Cr.P.C., has necessary power to interfere and issue direction.

6. Coming to the question of bar to any suit or other legal proceeding in any Court as raised by learned Additional Standing Counsel, Vigilance Department, the provisions in the Act are, Sub-section (6) of Section 15 and Section 22.

Sub-section (6) of Section 15 provides thus :-

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The order of confiscation passed under the Section shall, subject to the order passed in appeal, if any, u/s 17, be final and shall not be called in question in any Court of law.

Section 22 of the Act provides thus :-

22. Bar to other proceedings - Save as provided in Sections 9 and 17 and notwithstanding anything contained in any other law, no suit or other legal proceedings shall be maintainable in any Court in respect of any money or property or both ordered to be confiscated u/s 15.

7. The aforesaid provisions read in conjunction with Sections 9 and 17 of the Act (which are provisions for appeal against the order of Special Court and the Authorised Officer respectively) would make it clear in unambiguous term that there is bar to suit or any other legal proceeding so far as final order passed in the confiscation proceeding is concerned. It needs further examination and insight whether any proceeding u/s 482, Cr.P.C. to prevent or augment the three purposes provided therein is also barred or there is any kind of fetter so far as exercise of inherent jurisdiction u/s 482, Cr.P.C. by this Court in respect of the proceeding before the Authorised Officer is concerned.

8. Before addressing the questions raised by Learned Counsels for the parties and the question that has arisen in the preceding paragraph, I feel persuaded to understand the nature of confiscation proceeding and how has this proceeding been viewed so far by the Apex Court. It is not disputed that confiscation is aimed against the goods/properties, which are tangible; it consists in condemnation of the goods/properties, whereas the trial by the Special Court is aimed against the person alleged to have procured the goods/properties by way of corruption. I may refer to a Constitution Bench decision of the Hon'ble Supreme Court in *Maqbool Hussain Vs. The State of Bombay*, in which confiscation aspect of the matter was examined in the context of Article 20 (2) of the Constitution of India. That case dealt with the power of confiscation given to Sea Customs Authorities, and Hon'ble Apex Court opined in paragraph-16 of the judgment that though the Sea Customs Authorities can impose confiscation as one of the penalties, that is more in the nature of proceedings in rem than proceedings in personam, the object being to confiscate the offending goods, which were dealt with contrary to the provisions of the law in respect of which also an option has been given to the owner of the goods to pay in lieu of confiscation, such fine, as the officer thinks fit. (It is worthwhile to mention here that proviso to Sub-section (3) of Section 15 of the Orissa Special Courts Act, 2006 also contains a similar provision). It is further observed in that paragraph (para-16 of the judgment) that Sea Customs Officers are not required to act judicially on legal evidence tendered on oath and they are not authorised to administer oath to anybody. It was then observed in paragraph-17 of the judgment that such authorities competent to pass order of confiscation are not judicial tribunals. Because of this and similar other provisions, it may be said that Sea Customs Authorities are merely constituted as administrative machineries for the purpose of adjudging confiscation.

9. In *Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others*, Hon'ble Apex Court was dealing with the power of the Authorised Officer given by the Andhra Pradesh Forest Act to confiscate goods in relation to which a forest

offence had been committed. In paragraph-12 of the judgment it was stated that the confiscation proceeding is distinct from trial before Court and the power of the confiscation conferred on Authorised Officer was not dependent upon whether a criminal prosecution for commission of the forest offence has been launched against the offender or not. The Special Court Act in the present case also authorizes the State Government to file application for confiscation before the Authorised Officer, whether or not the Special Court has taken cognizance of the offence.

10. Some other statutes like Customs Act, 1962, Essential Commodities Act, 1955, Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and, of course, Orissa Forest Act, 1972 are central enactments barring the last one. In all the aforesaid enactments, power of confiscation is conferred on administrative officers like Customs Authorities, District Collectors, competent officers appointed by the Central Government or competent forest officials. The scheme of the aforesaid enactments and the judicial decisions referred to supra make it clear that confiscation proceeding is independent of criminal prosecution against the offender; it aims at confiscation of goods only; the proceeding is chaired mostly by administrative officials of the concerned departments or any other official having supervisory powers over the subject matter of the statute like the District Collectors under the scheme of the Essential Commodities Act; and the confiscating authorities are constituted as administrative machineries for the purpose of adjudging confiscation.

11. With the aforesaid in mind, let me now examine the questions raised by Learned Counsels for the parties so far as status and position of Authorised Officer under the Act is concerned.

Section 2(a) of the Act provides thus :-

"authorized officer" means any serving officer belonging to Orissa Superior Judicial Service (Senior Branch) and who is or has been an Additional Sessions Judge, nominated by the State Government with the concurrence of the High Court for the purpose of section 13.

No doubt, in view of Section 2(a) of the Act, the post of Authorised Officer is to be filled up by a judicial officer belonging to Orissa Superior Judicial Service (Senior Branch), who is or has been an Additional Sessions Judge. The aforesaid provision alone cannot be held to have clothed the Authorised Officer to be a Court or the proceeding before him to be a judicial proceeding, because the word "Officer" in the Section has been used qua the person holding the office of the Authorised Officer. Further, any office held by a judicial officer cannot be held to be a Court or the proceeding before him to be judicial proceeding on that ground alone, because there are many posts which are filled up by judicial officers who perform purely administrative functions or man quasi judicial tribunals.

12. Proceeding further, it is found from Sections 13, 14 and 15 of the Act that the function of the Authorised Officer is to order confiscation of property in certain

cases, as provided in Section 15 of the Act. Provision of Section 13 deals with application for confiscation, as to who has to make the application, as to what should accompany the application for confiscation and as to what such application for confiscation should contain. Section 14 of the Act deals with notice for confiscation and Section 15 provides for certain procedures for confiscation and final order of confiscation. If Sections 13, 14 and 15 are taken into consideration together, there is no room for doubt that all the aforesaid Sections under Chapter - III of the Act provides for procedures and safeguards so far as confiscation proceeding is concerned and, above all, a Senior Judicial Officer being the Authorised Officer, there should be presumption of necessary safeguard against arbitrariness. Further it is made clear by the aforesaid provisions that the proceeding before the Authorised Officer aims at confiscation of goods/properties and there are exhaustive procedures in Chapter-III itself as to the mode of making the application, notice, and the method for reaching at the decisions. Provisions of Section 15 of the Act further makes it clear that the Authorised Officer has to record a finding only on the point as to whether all or any other money or properties in question have been acquired illegally. Such a finding is not final and according to provisions of Section 19 of the Act, in case of acquittal of the accused by the Special Court money or properties or both are to be refunded to the accused in accordance with procedures there in Section 19. Besides the act of reaching the findings for confiscation, the Authorised Officer by virtue of Section 18 of the Act has the administrative power of taking possession of the properties confiscated.

13. My attention is drawn by Mr. Ray to some of the provisions in the Rules to substantiate his contention that the proceeding before the Authorised Officer is a judicial proceeding on the criminal side and the authorized officer acts as a Court. The provisions are Rule 10, 11 and 12 of the Rules made under the Act, which are as follows :-

10. Authorized Officer to be public servant -The authorized officer shall be a public servant within the meaning of Section 21 of the Indian Penal Code and any proceeding before him be deemed to be judicial proceeding for the purpose of Section 228 of the Code.

11. Application of Code of Criminal Procedure -The provisions of the Code of Criminal Procedure, 1973 shall, in so far as they are not inconsistent with the provisions of the Act apply to the proceedings before the authorized officer.

12. Application of provisions of G.R. & C.O. - The provision of G.R. & C.O. (Criminal) and (Civil) shall mutatis mutandis be applicable to the conduct of business of the Court and the authorized officer in respect of the proceedings before them.

According to Rule 10 of the Rules, the Authorised Officer shall be a public servant within the meaning of Section 21 of the Indian Penal Code, and any proceeding before him be deemed to be a judicial proceeding for the purpose of section 228

of the Code. In view of the definition of "Code", as given in Section 2 (b) of the Act, some confusion arises though the same can be obliterated by conscious reading of Rule 10. If the word "that" would have been used before the word "code" or the word "thereof" would have been used in place of the words "of the code", there would have been no room for any confusion. If the legislature would have intended the Authorized Officer to be a Court, they would not have enacted Rule 10 to bring the Authorised Officer within the meaning of "public servant" u/s 21 of the I.P.C. and they would not have provided for the proceeding before him to be deemed to be a judicial proceeding for the purpose of Section 228 of the I.P.C. Provision of Rule 10, therefore, cannot be read for the benefit of the petitioners, as contended by Mr. Ray, learned Senior Counsel, to hold the Authorised Officer to be a Court and further to hold the proceeding before him to be a judicial proceeding.

Rule 11 of the Rules provides for application of the Code of Criminal Procedure so far as they are not inconsistent with the provision of the Act to the proceedings before the Authorised Officer. Such a provision in the Rules, which may be resorted to by the Authorised Officer for the purpose of the proceeding, though there is little scope for the same does not make the Authorised Officer a Criminal Court, especially when there are self-contained procedures as to making of application, materials to be accompanied with the application, notice and procedure for confiscation in Sections 13, 14 and 15 under Chapter-III of the Act.

Rule 12 of the Rules provides for application of the provisions of the G.R. & C.O. (Civil) and (Criminal) for conduct of business or the proceeding before the Authorised Officer. Such a provision in the Rules makes it obligatory on the part of the Authorised Officer to maintain necessary Registers and conduct business before him in a judicial fashion. But application of the G.R. & C.O. (Civil) and (Criminal) also does not make the Authorised Officer a Court.

14. Rule 14 of the Rules provides that the Indian Evidence Act shall mutatis mutandis be applicable to the proceedings before the Court and the Authorised Officer in recording the evidence. Taking clue from the aforesaid provisions in Rule 14 of the Rules, Mr. Bijan Ray, learned Senior Counsel appearing for the petitioners draws my attention to Section 2 (i) of the Code of Criminal Procedure, which runs as under :-

"Judicial Proceeding" includes any proceeding in course of which evidence is or may be legally taken on oath.

The aforesaid definition of the "judicial proceeding" as given in the Code of Criminal Procedure is the touchstone to decide the nature of different proceedings occurring in course of investigation, enquiry and trial under the provisions of the Code and runs contrary to the legislative intent as reflected in the Act, which is a Special Statute. As has been discussed supra, had the proceeding before the Authorised Officer been a judicial proceeding and had the Authorised Officer been a Court, no provision under Rule 10 would have been

made to deem the proceeding before the Authorised Officer to be a judicial proceeding for the purpose of Section 228 of the Indian Penal Code and it was also not necessary to declare the Authorised Officer as a "public servant" within the meaning of Section 21 of the Indian Penal Code. Provision of Rule 14 is to be read in conjunction with the provisions contained in Sections 13, 14 and 15 of the Act, and it is to be understood that Rule 14 of the Rules provides for an additional safeguard against arbitrariness so far as confiscation proceeding is concerned. It is established law that when any authority, not being a court, is required to give findings affecting rights of the parties, not arbitrarily or in his discretion alone or on his subjective satisfaction but according to the facts and circumstances of the case, as determined upon an enquiry after giving opportunity to the parties to be affected of being heard, and whenever necessary allowing production of evidence in support of their contentions, such authority is held to be acting quasi judicially. In the light of the above principles if the provisions of Chapter-III of the Act coupled with the aforesaid provisions are taken into consideration, there is no escape from the conclusion that the Authorised Officer discharges a quasi judicial function so far as confiscation of goods/properties is concerned and the proceeding before him is not purely a judicial proceeding and the Authorised Officer is not a Court.

15. When the Authorised Officer is not a court and the proceeding before him is a quasi judicial proceeding, it is to be seen whether power u/s 482, Cr.P.C. can be exercised to issue the direction as sought for.

Inherent power u/s 482, Cr.P.C. can be exercised -

- (i) to give effect to any order under the Code of Criminal Procedure, or
- (ii) to prevent abuse of the process of any Court, or
- (iii) to otherwise secure the ends of justice

The words "any order under this Code" occurring in Section 482, Cr.P.C. are unambiguous and there is no confusion in my mind to hold that Section 482, Cr.P.C. can be invoked to give effect to any order under the Cr.P.C. or in other words to give effect to any order passed under any provision of the Cr.P.C. By necessary implication, it is to be understood that any order passed under any Special Statute cannot be brought under the mischief of Section 482, if those orders have not been passed in exercise of powers derived from any provisions of the Code. For illustration, we may refer to the order passed by the Authorised Officer u/s 56 of the Orissa Forest Act or the appellate order passed by the District Judge u/s 56 (2-a) thereof.

The words "any court" as occurring in item No. (ii) supra must be read in conjunction with Sections 4 and 6 of the Cr.P.C. Section 4 deals with application of the provisions of the Code for investigation, enquiry and trial of cases involving offence under Indian Penal Code and other laws and Section 6 deals with classes of Criminal Courts under the Code. For the purpose of our

discussion, Section 4 of the Cr.P.C. may be extracted for ready reference.

Trial of offence under the Indian Penal Code and other laws -

4. (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, enquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, enquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiring into, trying or otherwise dealing with such offences.

It is thus apparent from Section 4 that the provisions of the Code of Criminal Procedure are applicable when an offence under the Indian Penal Code or under any other law is being investigated, enquired into, tried or otherwise dealt with. In the absence of a specific provision made in a Special Statute indicating that offences will have to be investigated, enquired into, tried, and otherwise dealt with according to that Statute, the same will have to be investigated, enquired into, tried, and otherwise dealt with according to the Code of Criminal Procedure. In other words, the Code is the parent statute, which provides for investigation, enquiring into and trial of cases by Criminal Courts of various designations. ( see *Khatri and Others Vs. State of Bihar and Others*, and *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*,

It is, therefore, clear that reference to "any court" in Section 482, Cr.P.C. refers to the Court, which enquires into, tries or otherwise deals with the offence under the Indian Penal Code or under any other law in accordance with the provisions and procedures of the Code of Criminal Procedure. The third purpose of "otherwise to secure the ends of justice" cannot be held to be all pervasive to embrace any "order" beyond the code or to embrace any action pending or contemplated before any authority which cannot be brought under the meaning of "any court" as understood supra. Provision of Section 482, Cr.P.C. cannot therefore be invoked in respect of any judicial or quasi judicial proceeding, if those proceedings are beyond the purposes, as understood supra.

16. In the present case, as discussed supra, the confiscation proceeding has nothing to do with the offence. It deals with the confiscation of goods/properties in accordance with the procedures prescribed in Sections 13, 14 and 15 of the Act. I have already held that the proceeding before the Authorised Officer is not a judicial proceeding and the Authorised Officer does not act as a Court. Discipline is the hallmark of exercise of power by judicial authorities. When the power is plenary, there is requirement of caution and circumspection. Such caution and circumspection can be met by any judicial authority in exercise of its power or discretion if attempt is made to fix the location of the jurisdiction invoked to be exercised and the extent of power that can be exercised. In other words, the Court exercising such plenary power is to be careful to find its jurisdiction first and then to set the limit as to how far is too far. If such a test is

applied before exercise of jurisdiction or power, there may not be any chance of arbitrariness or abuse. If the aforesaid test is applied in the background of my discussion supra, I am constrained to hold that the Authorised Officer being not a Court and the proceeding before him being governed by a Special Statute like the Special Courts Act, 2006, and the Authorised Officer being empowered to deal with confiscation of property only and not the offence, power u/s 482, Cr.P.C. cannot be invoked for any purpose specified therein. In view of the above, the CRLMC is dismissed.