
(2007) 06 JH CK 0016
In the Jharkhand High Court

Dr. Birsa Oraon and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-06-2007

Acts Referred:

Criminal Law (Amendment) Ordinance, 1944 — Section 3, 4

Citation : (2007) 4 JCR 632

Hon'ble Judges : M. Karpaga Vinayagam, C.J.;Narendra Nath Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Karpaga Vinayagam, C.J.

The appellants are husband and wife. The first appellant was facing trial in R.C. Case No. 32(A)/1996 and R.C. Case 24(A)/1996. He was convicted in disproportionate of assets case against which the appeal is still pending before this Court.

2. According to the prosecution, the first appellant defalcated Government of Bihar, now Jharkhand, to the extent of Rs. 8.64 Crores during the period May, 1995 to December, 1995 and acquired movable and Immovable properties in different places in his name and also in the name of his wife, daughter and son.

3. Earlier an application u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 was filed before the Court below by C.B.I, praying to pass ad interim order of attachment with respect to the properties detailed in Annexure - 1. After being satisfied about the prima facie case, ad interim order of attachment was passed on 18.2.1997. Thereafter a request had been made by the counsel for C.B.I, to pass a final order making the ad interim order of attachment absolute. After enquiry, final order was passed on 16.2.2005. Challenging the same, this appeal has been filed by both the appellants.

4. In the appeal as well as in the written argument, counsel for the appellants

would raise several points mainly contending that evidence adduced on behalf of the appellants have not been properly considered by the Court below.

5. The main argument, which has been advanced by the counsel for the C.B.I., is with regard to the maintainability of the appeal, contending that the right of appeal is available u/s 11 of the Ordinance only as against that order passed u/s 8 or 9 of the Ordinance. In this case, ad interim order of attachment was passed on 18.2.1997 u/s 4 of the Ordinance, which was appealable, but the same was admittedly not challenged. As against the order making the ad interim order of attachment absolute as per Section 5, there is no appeal provided as per the Ordinance. Therefore, the appeal has to be rejected in limine.

6. There is no proper reply given on behalf of the appellants with reference to the maintainability of the appeal. Further the written arguments and appeal grounds would make it clear that the ground mainly argued is that the evidence adduced by the appellants to show that the properties which are purchased in the names of the appellants and their family members were out of their own source of income have not been properly considered by the Court below.

7. On going through the order dated 16.2.2005, which has been passed in detail, clearly show that the evidence adduced by the appellants have been discussed in detail with minute particulars and as a result of the conclusion arrived at by the Court below, some of the properties were released from attachment and some of the properties in respect of which ad-interim order of attachment was made absolute. The reasons given for the same in the order impugned are cogent and convincing.

Therefore, the contention that proper appreciation has not been made by the Court below in respect of the evidence adduced by the appellants, in our view, cannot be countenanced. The appeal is dismissed.

Narendra Nath Tiwari, J.

8. I agree.