
(2007) 06 JH CK 0015
In the Jharkhand High Court

Dr. Chandra Bhushan Dubey and Others APPELLANT
Vs
State RESPONDENT

Date of Decision : 21-06-2007

Acts Referred:

Criminal Law (Amendment) Ordinance, 1944 — Section 11, 4, 5

Citation : (2008) 1 JCR 120

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 first appellant and second appellant are husband and wife respectively and other appellants are members of that family. The first appellant was facing trial in R.C. Case No. 35 (a)/1996 Pat. and other Fodder Scam cases.

2. According to the prosecution, the first appellant, a public servant, while working as Piggery Development Officer, AHD, Ranchi, defalcated Government of Bihar, now Jharkhand, to the tune of Rs. 1297.58 lacs during the period September, 1995 to December 1995. He acquired huge moveable and immovable properties in different places in his name and also in the names of other appellants, namely, his wife and children. Appellant No. 1 was also involved in other criminal cases and in conspiracy with others had defalcated the Government to the extent of Rs. 80 Crores approximately.

The respondent CBI filed an application on 30.11.1996 for an ad interim order of attachment of the properties listed in Annexure 2 u/s 3 of the Criminal Law (Amendment) Ordinance, 1944, apprehending that the appellants would withdraw the amount by disposing off the moveable and immovable properties on the basis of the authorization granted by the Government of Bihar. Therefore, ad -interim order of attachment of properties mentioned in Annexure 2 was passed by the Court below on 6.12.1996. The opposite party appellants on

30.5.2000 had filed their show-cause against the ad interim order of attachment denying the allegations made on behalf of C.B.I, against them. They had claimed that each appellant was having his own business and that those properties were purchased out of their own source of income. However, contending that those properties were purchased from ill-gotten money, C.B.I., requested the Court below to pass a final order making the ad interim order of attachment absolute.

3. During enquiry, the parties were allowed to adduce evidence. After consideration of the evidence and materials on record, the ad interim order of attachment passed on 6.12.1996 was made absolute mainly because the opposite party-appellants had not raised any specific objection with regard to the identity of Annexure-2 properties. Challenging the same, this appeal has been filed by all the appellants.

4. The main ground of objection as to the maintainability of the appeal raised by C.B.I., is that the appellants have not challenged the order dated 6.12.1996 passed by the Court below by which ad interim order of attachment was passed and that having not filed an appeal against that order, the opposite party-appellants cannot challenge the present order of attachment making the ad interim order of attachment absolute as it to not maintainable.

5. It is pointed out by the counsel for C.B.I., that right of appeal is available u/s 11 of the Ordinance and that as per the said provision, an appeal can be filed only u/s 4 or 6 against any order passed u/s 8 or 9 of the Ordinance. In the present case, ad interim order of attachment was passed u/s 4 of the Ordinance on 6.12.1996. Admittedly, the said order was not challenged, which was appealable u/s 11 of the Ordinance. Now the order of attachment making the ad interim order of attachment absolute is passed u/s 5 of the Ordinance, which is not appeal lable.

6. Counsel for the appellants has not shown any provision, nor produced any authority to show that the appeal is maintainable.

8. In the light of the specific objection with regard to the maintainability of the appeal as raised by the counsel for the C.B.I., which has not been refuted by the counsel for the appellants, this Court finds no other alternative than to reject this appeal. Hence, this appeal is dismissed.

Narendra Nath Tiwari, J.

9. I agree.