
(1995) 05 OHC CK 0038

In the Orissa High Court

Case No : Criminal Appeal No. 314 of 1994

Hoor Bano and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-05-1995

Acts Referred:

Orissa Special Courts Act, 1990 — Section 13, 14, 15

Citation : (1995) 2 OLR 223

Hon'ble Judges : R.K. Dash, J

Bench : Single Bench

Advocate : Amalkrishna Ray, S. Ray, S. Dey, S.P. Das and A.K. Mohanty, for the Appellant; Addl. Standing Counsel, for the Respondent

Judgement

R.K. Dash, J.—The short question that arises for consideration is whether the present appellants being daughters and son of Habibullah Khan against whom a confiscation proceeding u/s 13 of the Orissa Special Courts Act (for short, "the Act") has been initiated can be added as parties or given an opportunity to have their say.

2. Appellant's case, in short, is this. There was vigilance raid in the residential premises of their father, wherefrom, cash amounting to Rs. 7,58,000/- and gold ornaments weighing about 75 tolas were seized. Claiming major part of the seized cash and gold ornaments to be their own, the appellants approached the Authorised Officer for impleading them as parties and to afford them an opportunity of being heard. Their such prayer having been resisted by the State hearing was taken up and, on conclusion whereof, the impugned order was passed rejecting their prayer with an observation that under the Act it is the accused against whom the case has been registered under the Prevention of Corruption Act should only be impleaded as a party in the confiscation proceeding and that unlike the CPC there is no provision in the Act for adding or striking off parties. It is against this order that the present appeal is filed.

3. To appreciate the law involved it is necessary to reproduce these relevant

provisions of the Act as under :

"13. Application for confiscation :

(1) Where the State Government on the basis of prima facie evidence has reason 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, authorise, the Public Prosecutor for making an application to the authorised officer for confiscation under this Act of the money or other property which the State Government believes the said person to have produced by means of the offence.

(2) An application under Sub-Section (1) shall be accompanied by one or more affidavits stating the grounds on which the belief that the said person has committed the offence is founded, and the amount of money or value of other property believed to have been procured by means of the offence. The application shall also contain any information available as to the location for the time being of any such money or other property and shall, if necessary, give particulars including the estimated value of other property of the said person.

14. Notice for Confiscation :

(1) Upon receipt of an application made u/s 13 the authorised officer shall serve a notice upon the person in respect of whom the application is made hereinafter referred to as the person affected calling upon him within such time as may be specified in the notice, which shall not be ordinarily, less than thirty days, indicate the source or his income, earnings of assets, out of which or by means of which he has acquired such money or property, the evidence on which he relies and other relevant informations and particulars, and to show cause why all or any of such money or property, as the case may be, should not be declared to have been acquired by means of the offence and confiscated to the State Government.

(2) Where a notice under Sub-Section (1) to any person specifies any money or property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

(3) Notwithstanding anything contained in Sub-Section (i), the evidence, information and particulars brought on record before the authorised officer by the person affected shall not be used against him in the trial before the Special Court.

15, Confiscation of property in certain cases :

(1) The concerned authorised officer may, after considering the explanation, if any, to the show cause notice issued u/s 14, and the materials available before it and after giving to the person affected (and in case where the person affected holds any money or property specified in notice through any other person, to such other person also), a reasonable opportunity of being heard by order,

records finding whether all or any other money or properties in question have been acquired illegally.

(2) Where the authorised officer specifies that some of the money or property referred to in the show cause notice is acquired by means of the offence but is not able to identify specifically such money or property, then it shall be lawful for the authorised officer to specify the money or property which, to the best of his judgment, has been acquired by means of the offence, and record a finding accordingly under Sub-Section (1).

(3) Where the authorised officer records a finding under this section to the effect that any money or property has been acquired by means of the offence, he shall declare that such money or property shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances :

Provided that if the market price of the property confiscated is deposited with the authorised officer, the property shall not be confiscated.

(4) Where any share in a company stands confiscated to the State Government under this Act, then the company shall, notwithstanding anything contained in the Companies Act, 1956, (1 of 1956) or the Articles of Association of the company, forthwith register the State Government as the transferee of such share.

(5) Every proceeding for confiscation of money or property under this Chapter shall be disposed of within a period of six months from the date of service of the notice under Sub-Section (1) of Section 14.

(6) The order of confiscation passed under this section shall, subject to the order passed in appeal, if any, u/s 18 be final and shall not be called in question in any Court of law."

4. A reading of the aforesaid provisions would indicate if a person while holding high public or political office acquires money or other properties by means of corruption, a confiscation proceeding may be initiated against him and on being noticed he shall be called upon to indicate the source of his income, earning or assets out of which he acquired such money or property. Thereupon, the authorised officer before whom the proceeding is initiated shall pass orders after giving an opportunity of being heard regarding all or any other money or the properties in question that are alleged to have been acquired illegally. Provisions of the Act as referred to above are not restricted to mean that it is only that person against whom the proceeding has been initiated shall be heard and no other. In this context, it would be apposite to refer to Sub-Section (2) of Section 14 which provides that if any money or, property is held by any other person, on behalf of the notice a copy of such notice under Sub-Section (1) shall also be served . upon such other person, The, legislature in its wisdom has made such provision keeping in mind that money or property which according to the State Government held by such other person on behalf of the notices cannot be

confiscated without giving an opportunity to that person to have his say. A confiscation proceeding being civil in nature the authorised officer is not denuded of jurisdiction to implead any person as a party to such proceeding if he claims that any of the properties in dispute belongs to him. Authorised Officer cannot presume that whatever allegations have been made by the State regarding ownership of the property are true and so, the proceeding can only continue against that person named in the confiscation proceeding and none others. Supposing in course of hearing, it is brought out in evidence that certain properties belong to some others who are not parties to the proceeding, then can it be said that the authorised officer has the power to confiscate the same without hearing the true owners ? To this, my answer is emphatically no the reason being that it is the settled principle of law that no one shall be condemned unheard. In this context, I would profitably refer to what has been observed by the apex Court in the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, where their Lordships held that:

"Natural justice is a great humanising principle intended to invent law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be: does fairness in action demand that an opportunity" to be heard should be given to the person affected ?"

5. In view of the above dictums of the Supreme Court, I am of the considered opinion that natural justice demands that the person likely to be adversely affected by the orders of confiscation should be given an opportunity to have their say. This being my finding I have no other alternative but to set aside the impugned order and direct the authorised officer to bring the appellants on record and give them an opportunity of hearing. While doing so, he shall supply them the copies of the application, affidavits if any filed by the State Government and such other documents and papers on which the State relies upon to support its case.

6. In the result, the appeal is allowed.