
(2014) 05 OHC CK 0024

In the Orissa High Court

Case No : Writ Petition (Crl.) No. 241 of 2014

Iswar Chandra Behera and Others

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2 (u), 2(u), 24, 24(8) — Orissa
Special Courts Act, 2006 - Section 13

Citation : (2015) 1 ILR 58

Hon'ble Judges : P. Mohanty, J; Biswajit Mohanty, J.

Bench : Division Bench

Advocate : Srimanta Das, S.C., for the Respondent

Final Decision : Dismissed

Judgement

P. Mohanty, J. Heard Mr. Mishra, learned counsel for the petitioner and Mr. Srimanta Das, learned Standing Counsel (Vigilance) Department. In this writ application, the petitioner prays for quashing of the confiscation proceeding No. 6 of 2012 pending before the Authorized Officer, Cuttack on the ground that the Additional Special Public Prosecutor is incompetent to initiate such a proceeding.

2. Mr. Mishra, learned counsel for the petitioner submits that the application under Section 13 of the Orissa Special Courts Act 2006 read with Rule 13(1) of the Orissa Special Courts Rule, 2007 has been filed by the Additional Special Public Prosecutor on 1.6.2012, who according to him is not the competent authority to file such an application. According to him only the Public Prosecutor is competent to file such an application.

3. Mr. Das, learned Standing Counsel submits that though on 1.6.2012 the confiscation case was initiated by the Additional Special Public Prosecutor, but a notification was published on 25.10.2012 re-designating Additional Special Public Prosecutor in the Court of the Authorized Officer, Special Court, Cuttack as the Special Public Prosecutor and it was indicated in the said notification that the

same shall take effect from 21.9.2011. Thus for all purposes a Special Public Prosecutor has filed the application on 1.6.2012.

4. Mr. Das, learned counsel relying on the decision of the High Court of Kerala in the case of P.V. Antony and Another Vs. State of Kerala, submits that the appeal has been filed by the Special Public Prosecutor and the Special Public Prosecutor appointed under sub-section (8) of Section 24 of the Code of Criminal Procedure is a Public Prosecutor and as such a Special Public Prosecutor is competent to file the appeal.

5. There is no dispute that in this case, the appeal has been filed by a Special Public Prosecutor.

6. The definition of Public Prosecutor as has been given under Section 2(u) of the Cr.P.C. since relevant, is quoted as hereunder.

2(u) "Public Prosecutor" means any person appointed under Section 24, and includes any person acting under the directions of a Public Prosecutor.

7. Now coming to Section 24 of Cr.P.C., it may be seen that Sub-section (1) of Section 24, nowhere says that the persons appointed under sub-section (1) of Section 24 alone would be known as Public Prosecutors. Rather, Section 2 (u) of Cr.P.C. makes it clear that any person, who is appointed vide Section 24 is a Public Prosecutor. So, the definition of Public Prosecutor as given in Section 2(u) of the Cr.P.C. includes a Special Public Prosecutor as appointed under section 24(8) of the Code of Criminal Procedure.

8. Further let us have a look at Rule-9(3) of the Orissa Special Courts Rules, 2007. The same reads as follows:-

9. Authorized Officer-

... ..

(3) The State Government may appoint one or more Special Public Prosecutors on such terms and conditions to make application to the authorized officer and conduct cases before the said officer for confiscation of the money and the other property under the Act.

9. Considering the aforesaid aspect, it is crystal clear that a Special Public Prosecutor, who is also a Public Prosecutor is competent to file an application under section 13 of Orissa Special Courts Act 2006 before the Authorized Officer and he can conduct cases before the said officer for confiscation of the money and the other property under the said Act.

10. In the case in hand, the Special Public Prosecutor has filed the application on 1.6.2012, which this Court finds to have been filed in accordance with law. Mr. Mishra, learned counsel for the petitioner urges no other point.

11. In view of the above, this Court is not inclined to interfere with the impugned order and the writ petition is accordingly dismissed. A free copy of this order be

handed over to Mr. Srimanta Das, learned Standing Counsel (Vigilance).