
(2008) 01 GAU CK 0001
In the Gauhati High Court

Madhab Barthakur

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 09-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 3, 4, 452, 5
Penal Code, 1860 (IPC) — Section 4, 5

Citation : (2008) CriLJ 1701 : (2008) 2 GLT 743

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—Heard Mr. K. Agarwal, learned Counsel for the petitioner, and Mr. D.K. Das, learned Standing Counsel, C.B.J., appearing on behalf of the opposite party.

2. With the help of this criminal revision, the accused-petitioner has put to challenge the order, dated 29-11-2006, passed by the learned Special Judge, CBI, Guwahati, Assam, in Misc. Case 33/2006, which arose out of Special Case No. 63/2004. The ground of challenge is that the impugned order is not supported by any provisions of law contained in that behalf and also that in the facts and circumstances of the present case, a direction to the effect that if the accused-petitioner were held guilty of the offences, which form the subject-matter of trial, then, the entire re-invested money, with all benefits accruing thereto, would stand confiscated to the State. It is also contended by Mr. Agarwal that since the Prevention of Corruption Act, 1988, makes no provisions for confiscation following trial of a person under the Prevention of Corruption Act, 1988, Court cannot direct confiscation of property of persons tried under the Prevention of Corruption Act, 1988.

3. In order to correctly appreciate the circumstances, which have led to the passing of the impugned order, the impugned order is reproduced hereinbelow:

This order disposes off the matter, relating to release of some documents as mentioned in petition D/-26-6-06. By the aforesaid petition, it has been stated

that on 3-6-97, house of the petitioner/accused was searched and various documents including NSCs, KVPs. STDRs, Cash Certificates etc., were seized. Cash Certificates and STDRs have, by now, attained maturity and as such, petitioner urges this Court to release those documents for presenting those documents to the concerned authorities to get back the maturity value, payable on such certificates. He also submits the Court that he would reinvest the amount, paid against such certificate in some new and profitable schemes and if he is not allowed to hand over those documents, he would suffer a irreparable financial loss. He, therefore, urges this Court to release those documents on any condition that Court may deem fit to impose upon the petitioner/accused.

CBI was asked to file objection against such prayer. Accordingly, CBI has submitted objection, vide objection D/-15-9-06, wherein it has been stated that documents, sought for by the petitioner, are the documents, which are relied upon, here-in-this case and release of those documents, may be prejudicial to the prosecution and as such, he urges not to release all those documents at this stage of the proceeding.

I have heard both the parties and have found that prayer, made by petitioner, in the application, referred to above, has sufficient force and as such, same needs to be accepted, of course on certain conditions. Accordingly accused/petitioner is allowed to take back documents, so mentioned in the Annexures, attached to the petition on condition (1) that he would give certified true copies of same to this Court before withdrawing the same, (2) that he would not dispute in any manner, whatsoever, the above certificates, which are allowed to be withdrawn and (3) that he would re-invest the money, paid against such certificates in some new bond/schemes etc., and would submit such new bonds/schemes to be purchased with the money, paid against cash certificates, now under seize, to this Court soon after their purchase from concerned Department

He would further undertake the condition that in the event of his being found guilty of the offences, alleged, entire money, so invested in the new bond would stand confiscated to the State. A bond with the above condition is to be filed before releasing the documents from the custody of this Court.

4. While considering the present revision, it needs to be noted that Sections 4 and 5 prescribe the provisions of the trial of offences under the IPC and other laws. Sections 4 and 5 read as follows:

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

(2) All offences under any other law shall be investigated, inquired 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, inquiring into, trying or otherwise dealing with such offences.

5. Saving.--Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

5. From a combined reading of the provisions of the Sections 4 and 5, what becomes clear is that, ordinarily, provisions of the Code of Criminal Procedure are to be applied where an offence under the Indian Penal Code or any other law, which may be the "special law", has to be investigated, enquired into, tried or otherwise dealt with. A conjoint reading of Sections 4 and 5 clearly shows that all offences, whether under the Indian Penal Code or under any other law, have to be investigated, enquired into, tried or otherwise dealt with in terms of the provisions of the Code of Criminal Procedure unless there be an enactment regulating the investigation, inquiry or trial. In other words, if there is. special law, which makes a provision for investigation, enquiry or trial, such provisions would prevail over the law as contained in the Code of Criminal Procedure; but, in a given case, when a "special law", penal in nature, does not make any particular provision for a situation to be dealt with, and the Code of Criminal Procedure makes provisions for dealing with such a matter or situation, the provisions contained in the Code of Criminal Procedure, shall have to be resorted to.

6. It is true that the Prevention of Corruption Act, 1988, does not make provisions for confiscation of property or, for that matter, for disposal of property. Hence, the question of disposal of property, which may arise during enquiry or trial and/or on conclusion of trial, has to be dealt with in terms of the provisions of the Code of Criminal Procedure. It is in this context that one has to turn to the Code of Criminal Procedure and, particularly, Section 452 contain therein. The relevant provisions of Section 452 read as under:

Section 452. Order for disposal of property at conclusion of trial--(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed,, or which has been used for the commission of any offence.

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(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted

or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

7. A combined reading of the provisions of Sub-sections (1) and (5) of Section 452 shows that on the conclusion of an enquiry or trial by a Criminal Court, confiscation of the property, which forms the subject-matter of such an enquiry or trial, is permissible. However, such confiscation is not automatic. There is, I find, no reason not to apply the provisions of Section 452(1) to a criminal prosecution launched under the provisions of Prevention of Corruption Act, 1988, for, Sections 3 and 5, Cr.P.C. vests in the criminal Courts the power to apply the provisions, contained in the Code of Criminal Procedure, to special laws, such as, the Prevention of Corruption Act, 1988, unless its application, expressly or otherwise, is barred.

8. What is, however, of utmost importance to bear in mind is, as rightly contended by Mr. Agarwal, that the confiscation, as envisaged in Section 452(1), is not automatic; rather, an order of confiscation can be passed, u/s 452(1), only upon proper application of mind to the facts and circumstances of a given case. Though the power of confiscation has been made available to a criminal Court, it is in an appropriate case and not in every case that the power of confiscation can be resorted to, though, ordinarily, in a case arising out of the Prevention of Corruption Act, 1988, cogent reasons must exist for not confiscating any such property, which may have been obtained by an accused by means, other than permissible in law, leading to the commission of an offence under the Prevention of Corruption Act, 1988. This apart, the term "property", as conceived u/s 452(5), includes not only such a property, which has originally been in the possession or under the control of any party, "but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise". Thus, any acquisition made to the property, which may have been acquired by means other than lawful within the meaning of the Prevention of Corruption Act, 1988, is also liable for confiscation.

9. Logically, therefore, the direction given by the impugned order to the effect that in the event of having been found guilty of the offences alleged, the entire money, in the present case, which may be invested by the accused, would also form part of the confiscation proceeding, cannot be said to be entirely illegal. What is, however, imperative to note is that the penultimate direction given by the learned trial Court shows as if the confiscation is automatic following the conviction of the accused-petitioner. To the extent, therefore, that the impugned order makes the confiscation automatic following the conviction of the accused-petitioner, the impugned order needs to be interfered with and modified.

10. Because of what have been discussed and pointed out above, it is hereby directed that the accused-petitioner may be allowed to reinvest the certificates/bonds/investment in terms of the directions given by the learned trial Court subject to the condition that if the accused-petitioner is found guilty of the

offences alleged to have committed by him or of any other offences, which he may have committed under the law, the reinvested amounts, in the form of any bond, certificate or otherwise, would also form part of the confiscation proceeding, which may be initiated against him. It is further made clear that in the event the Court orders confiscation of the property, which forms the subject matter of the present trial, such property would also include any such amount or amounts, which may have been acquired by the accused-petitioner by way of acquisition following reinvestment of the bonds, certificates, etc., as has been directed by the Court. With the above modifications in the impugned order, this revision petition shall stand disposed of.