
(1961) 01 PAT CK 0009
In the Patna High Court
Case No : A.F.O.O. No. 178 of 1959

N.K. Banerji

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 11-01-1961

Acts Referred:

Criminal Law (Amendment) Ordinance, 1944 — Section 3, 4, 5
Provident Funds Act, 1925 — Section 3

Citation : AIR 1961 Patna 384 : (1961) CriLJ 522 : (1961) 2 FLR 377 : (1961) 2 LLJ 587

Hon'ble Judges : Ramaswami, C.J.;Kanhaiya Singh, J

Bench : Division Bench

Advocate : K.B.N. Singh, Janardan Sinha and Upendra Prasad Varma, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ramaswami, C.J.—In this case an application was made on be-half of the State Government u/s 3 of the Criminal Law Amendment Ordinance (Ordinance No. XXXVIII of 1944) Praying for attachment of certain properties of Sri N. K. Banerji. The money standing in the Provident Fund Account No. G. A. O-54 of Sri N. K. Banerji was also proceeded against and a prayer was made for attachment of this amount. The Judicial Commissioner of Chota Nagpur granted the application for an interim attachment.

The Accountant-General of Bihar filed an objection stating that the provident fund money of Sri N. K, Banerjee was not liable to be attached in view of Section 3 of the Provident Funds Act of 1925 (Act No. XIX of 1925). A similar objection was also filed by Sri N. K. Banerjee objecting to the attachment, The Judicial Commissioner of Chota Nagpur investigated into the matter and, after rejecting the objections of Sri N. K. Banerjee and the Accountant-General of Bihar, made the ad interim order of attachment absolute u/s 5, Sub-section (3), or Ordinance No. XXXVIII of 1944.

2. This appeal is presented on behalf of Sri N. K. Banerjee against the order of the Judicial Commissioner of Chota Nagpur u/s 11 of Ordinance No. XXXVIII of 1944.

3. The question for determination in this appeal is whether the provident fund money of Sri N. K. Banerjee can be lawfully attached under Sections 3, 4, and 5 of Ordinance No. XXXVIII of 1944. It was submitted on behalf of the appellant that the Judicial Commissioner of Chota Nagpur had no authority to attach the Provident fund amount in view of the absolute prohibition contained in Section 3 of the Provident Funds Act of 1925 (Act No. XIX of 1925) which is in the following terms :-

"3.(1) A compulsory deposit in any Govern- merit or Railway Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on any such compulsory deposit.

(2) Any sum standing to the credit of any subscriber to, or depositor, in any such Fund at the time of his decease and payable under the rules of the Fund to any dependent of the subscriber or depositor, or to such Person as may be authorised by law to receive payment on his behalf, shall, subject to any deduction authorised by this Act and, save where the dependent is the widow or child of the subscriber or depositor, subject also to the rights of an assignee under an assignment made before the commencement of this Act, vest in the dependant, and shall, subject as aforesaid, be free from any debt or other liability incurred by the deceased or incurred by the dependant before the death of the subscriber or depositor,"

In my opinion the argument put forward On behalf of the appellant is well founded and must be accepted as correct. Section 3 of Ordinance No. XXXVIII of 1944 states as follows:--

"3. Application for attachment of property.

(1) Where the Provincial Government has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the Provincial Government may, whether or not any Court has taken cognizance o? the offence authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on his business, for the attachment under this Ordinance of the money or other property which the Provincial Government believes the said person to have procured by means of the offence, or if such money cr other property cannot for any reason be attached, of other property of the said person of value nearly as may be equivalent to that of the aforesaid money or other Property.

(2) The provisions of Order XXXII of the first Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the Crown.

(3) 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 any scheduled offence is founded, and the amount of money or the value of other property believed to have been procured by means of the offence; the application shall also furnish --

(a) 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.

(b) the names and addresses of any other persons believed to have, or to be likely to claim, any interest or title in the property of the said person".

Section 4(1) states :-

4. Ad interim attachment. (1) Upon receipt of an application u/s 3, the District Judge shall, unless for reasons to be recorded in writing he is of opinion that there exist no Prima facie grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other Property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpired that such money or other property is not available for attachment, such other property of the said person of equivalent value as the District Judge may think fit:-

Provided that the District Judge may if he thinks fit before Passing such order, and shall before refusing to pass such order examine the person or persons making the affidavit accompanying the application."

Section 5 deals with investigation of objections to attachment, and is in the following terms:-

"5. Investigation of objections to attachment.

(1) If no cause is shown and no objections are made u/s 4 on or before the specified date, the District Judge shall forthwith pass an order making the ad interim order of attachment absolute.

(2) If cause is shown or any objections are made as aforesaid, the District Judge shall proceed to investigate the same, and in so doing, as regards the examination of the parties and in all other respect; he shall, subject to the Provisions of this ordinance, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908 (Act V of 1908); and any person making an objection u/s 4 shall be required to adduce evidence to show that at the date of the attachment he had some interest in the property attached.

(3) After investigation under Sub-section (2). the District Judge shall pass an order either making the and interim order of attachment absolute or varying it by releasing a portion of the Property from attachment or withdrawing the order:

Provided that the District Judge shall not --

(a) release from attachment any interest which he is satisfied that the person believed to have committed a scheduled offence has in the property unless he is also satisfied that there will remain under attachment an amount of the said Person's property of value not less than that of the Property believed to have been procured by the said person by means of the offence, or

(b) withdraw the order of attachment unless he is satisfied that the said person has not by means of the "said offence procured any money or other property."

4. In my opinion the power of attachment of property under Sections 3, 4 and 5 of Ordinance No. XXXVIII of 1944 must be construed subject to the provisions of Section 3 of Act No. XIX of 1925, because there is nothing in the provisions of Ordinance No. XXXVIII of 1944, which suggests that there is an express or implied repeal of the prohibition contained in Section 3 of the Act No. XIX of 1925. The principle is *generalalia specialibus non derogant*. "Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application with out extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so". (Lord Selborne in *Seward v. The Vera Cruz* (1884) 10 AC 59 .

In the present case the language of Section 3 of Act No. XIX of 1925 clearly indicates that there is an absolute interdiction to the attachment of a compulsory deposit in any Government or Railway Provident Fund account. The interdiction against the attachment of such compulsory deposit is based upon grounds of public policy and the interdiction imposed by the statute is an absolute interdiction.

This view is supported by a decision of the Supreme Court in *The Union of India (UOI) Vs. Hira Devi and Another*, , where it was pointed out! that the deposit in the provident fund account cannot be assigned or charged and is not liable to attachment u/s 3 of the Provident Funds Act. The Supreme Court reversed the decision of the Calcutta High Court which held that a Receiver should be appointed for collecting the provident fund money.

It was pointed out by the Supreme Court that the prohibition imposed by the statute was absolute, and to allow the judgment-creditor to get at the fund indirectly by means of the appointment of a Receiver would be to circumvent the statute and to frustrate the very object of the legislation. Applying the principle to the Present case, I am of opinion that the Judicial Commissioner, of Chota Nagpur had no authority to attach the Provident fund money of the appellant

under the provisions of Sections 3, 4 and 5 of Ordinance No. XXXVIII of 1944.

5. It was submitted by the learned Government Advocate on behalf of the respondent that the expression "attachment" under Sections 3, 4 and 5 of the Ordinance has not the same meaning as the expression "attachment" in Section 3(1) of Act No. XIX of 1925. It was pointed out that under the Ordinance the property is either forfeited or released after the determination of criminal proceedings against the accused person, and the effect of the attachment was merely to keep the attached Property in custodia legis for the satisfaction of the Criminal liability.

I do not however think that there is any difference as to the legal effect of attachment under the two statutes. In my view the expression "attachment" has the same meaning in Section 3(1) of Act No. XIX of 1925 as in the ordinance. Section 64 of the CPC states that where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

It is manifest therefore that attachment creates no charge or lien upon the attached Property but only prevents and avoids private alienations and that is the meaning and the effect of an attachment both u/s 3(1) of the Provident Funds Act and Sections 3, 4 and 5 of Ordinance No. XXXVIII of 1944. Section 7 of the Ordinance also provides that "an order of attachment of Property under this Ordinance shall be carried into effect so far as may be practicable in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908), for the attachment of property in execution of a decree". In my opinion the learned Government Advocate has not been able to make good his submission on this aspect of the case,

6. For these reasons I hold that the Judicial Commissioner of Chota Nagpur had no legal authority to attach the money in the Provident Fund Account No. G. A. 0-54 of Sri N. K. Banerjee and the order of attachment made by the Judicial Commissioner so far as this Provident Fund money is concerned should be set aside.

7. I would, accordingly, allow this appeal, but in the circumstances of the case there will be no order as to costs.

Kanhaiya Singh, J.

8. I agree.