
(2021) 03 PAT CK 0160
In the Patna High Court
Case No : Criminal Revision No. 14 Of 2019

Ramchandra Mandal And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 22-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 401
Indian Penal Code, 1860 — Section 414
Unlawful Activities (Prevention) Act, 1967 — Section 3, 10, 13, 15, 25, 25(6)
Arms Act, 1959 — Section 25(1AA), 25(1AAA), 26(2), 35

Citation : (2021) 03 PAT CK 0160

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Sandeep Kumar, Arvind Kumar, Anil Kumar Roy, Umanath Mishra

Final Decision : Allowed

Judgement

1. A brief backdrop of the case, leading to this application under Section 397 read with Section 401 of the Code of Criminal Procedure, is that the Station House Officer of Naya Ram Nagar Police Station, on the basis of his self statement, registered Naya Ram Nagar P.S. Case No. 93 of 2012 on 26.07.2012 for offences under Section 414 of the Indian Penal Code, Sections 10/13 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the "UAP Act") and Sections 25(1-AA)/(1-AAA), 26(2) and 35 of the Arms Act, 1959.

2. According to the prosecution case, accused Kundan Mandal and other named persons were reported to be moving in the area to supply arms and explosives to the Nuxals. After making an entry in the station diary, the informant along with the police team proceeded towards NH-80. Near Sweta Bengal Sweets, the police put an ambush and noticed that a vehicle was entering in the lane by the side of the aforesaid Sweets shop. Looking at the police party, three persons from the vehicle started fleeing and managed their escape. One of them was identified as Kundan Mandal. One Dilip Kumar Sah and Vishal Kumar were arrested by the

police and they disclosed that Kundan Mandal, Kundan Jha and another Vikash Kumar, son of Kailash Tanti were the persons, who fled away. Nothing was recovered from the physical possession of the arrested persons. However, from the vehicle, a pistol along with other accessories were recovered for which the arrested accused could not show any paper. Besides that some Nuxal literature were also seized from the vehicle and the arrested persons disclosed that they used to supply arms to the Nuxals.

3. A seizure of the seized vehicle on which the accused persons were travelling, the firearm and its accessories and Nuxal literature was made. On the same day i.e. 26.07.2012, the house of Kundan Mandal was searched from where laptop, cash, ATM cards, Pan cards, 34 deposit bonds in Sahara India Family, Pass Book of bank accounts in Punjab National Bank and other banks including Gramin Bank were seized. On 26.08.2012, a third seizure was made in respect of the tractor from the house of Kundan Mandal.

4. By letter dated 21.08.2012, the Investigating Officer sought for approval of the seizure from the Designated Authority under Section 25 of the UAP Act, 1967. On the same day i.e. 21.08.2012, the Superintendent of Police, Munger wrote a letter to the Director General of Police, Bihar, Patna for ex post facto approval of the seizure made above, though, Section 25 of the UAP Act requires prior approval of the Director General of Police by the Investigating Officer making seizure. The seizure was confirmed by order dated 17.10.2012 in Case No. 05 of 2012 by the Designated Authority-cum-Principal Secretary, Government of Bihar vide order at Annexure P/6.

5. The petitioners challenged the aforesaid order dated 17.10.2012 in Cr. Appeal No. 130 of 2012 filed under Section 25(6) of the UAP Act before the learned Sessions Judge, Munger. The Appellate Court vide order dated 10.01.2013 dismissed the appeal on the ground that it has no jurisdiction to entertain the appeal against the order of the Designated Authority. Then the petitioners challenged the appellate court's order before this Court in Cr.W.J.C. No. 1197 of 2012. In the writ application, vide order dated 24.09.2013, this Court directed the learned Sessions Judge to re-hear and decide Cr. Appeal No. 130 of 2012 on merit. Thereafter, the aforesaid criminal appeal was re-registered as Cr. Appeal No. 130A of 2012 and the appeal was dismissed on merit by the impugned order dated 03.11.2018. Hence, this criminal revision application.

6. Mr. Sandeep Kumar, learned counsel for the petitioners contends that the entire exercise of action of seizure from the house of accused Kundan Mandal and its confirmation by the Designated Authority suffers from arbitrariness and illegality. Section 25 of the UAP Act does not apply to offences committed under Chapter III, rather it is specifically applicable to offences committed under Chapter IV and Chapter VI of the UAP Act. Chapter IV begins with Section 15 of the UAP Act which defines Terrorist act and Chapter VI relates to Terrorist Organizations. The learned Lower Appellate Court did not consider the legal issue correctly while dismissing the appeal of the petitioners.

7. Learned counsel for the petitioners further submits that the petitioners herein are parents, brother and wife of accused Kundan Mandal of the aforesaid case. The personal property of these petitioners have been seized from their house and the petitioners had disclosed the source of purchase of the seized properties in their show cause filed before the Designated Authority.

8. Mr. Umanath Mishra, learned counsel for the respondents contends that the order of the Designated Authority would reveal that he was satisfied on the basis of material available on the record that seizure was fit to be confirmed. Hence, the Revisional Court cannot look into the sufficiency of material for such satisfaction. Therefore, this revision application has got no merit.

9. For better appreciation of the rival contention of the parties, it would be apt to reproduce Section 25 of the UAP Act:-

"25. Powers of investigating officer and Designated Authority and appeal against order of Designated Authority. - (1) If an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned.

(2) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(3) The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production:

Provided that an opportunity of making a representation by the person whose property is being seized or attached shall be given.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that-

(a) it is intended to be used for the purposes of terrorism; or

(b) it forms the whole or part of the resources of a terrorist organisation:

Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.-For the purposes of this sub-section, "cash" means-

(a) coins or notes in any currency;

(b) postal orders;

(c) traveller's cheques;

1[(ca) credit or debit cards or cards that serve a similar purpose;]

(d) banker's drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(6) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property."

10. It is evident that the Investigating Officer of the case could exercise the power of seizure only if the offence appears to have been committed as mentioned in Chapter IV or Chapter VI of the UAP Act. In this case, no offence under Chapter IV or Chapter VI of the UAP Act is alleged against the accused persons. Hence, the exercise entered into by the Investigating Officer in making seizure of property from the house of accused Kundan Mandal is wholly illegal and without jurisdiction.

11. Furthermore, Section 25 of the UAP Act requires that the Investigating Officer must have "reason to believe" that any property in relation to which an investigation is being conducted represents "proceeds of terrorism". "The reason to believe" must be on the basis of specific, reliable and relevant information. The police report submitted in the case does not show, specially, the evidence collected till the date of making of the prayer for confirmation of seizure that any specific reliable or relevant information was there to form a believe that the property seized from the house of the accused were proceeds of terrorism. In absence of any connection between the act alleged and the property recovered, it cannot be assumed that those properties were acquired by the terrorist act. Moreover, the Investigating Officer has not assigned any reason to believe the aforesaid fact nor the authority who confirmed the seizure applied its mind that there was no material to substantiate that the seizure was consistent with the law contained in Section 25 of the UAP Act.

12. Therefore, the impugned order, evidently, suffers from arbitrariness and

illegality, hence, it cannot be sustained.

13. To attract the mischief of penalty for being member of an unlawful association under Section 10 of the UAP Act, it must be established that the association was declared unlawful by a notification issued under Section 3 of the UAP Act. In the case on hand, there is no evidence that to which of the unlawful association the accused were supplying the arms. Hence, it cannot be ascertained whether that association was declared unlawful association or not. Likewise, Section 13 of the UAP Act which provides punishment for unlawful activities is, prima facie, not attracted in absence of identity of the unlawful association.

14. The Investigating Officer has referred in the request letter for confirmation of seizure that petitioner-Chandan Kumar @ Chandan Mandal, who is full-brother of accused Kundan Mandal, is an accused in connection with Sultanganj P.S. Case No. 45 of 2011 registered under different sections of the Indian Penal Code and the Arms Act as well as Sections 10/13 of the UAP Act. Even if it is assumed that Chandan Kumar was accused in that case, the provisions of Section 25 of the UAP Act is still not attracted in the facts and circumstances of this case.

15. Since the Investigating Officer exceeded the jurisdiction of search under Section 25 of the UAP Act and the Designated Authority without applying its mind confirmed the said seizure against the law, their action is arbitrary and illegal one. The learned Lower Appellate Court did not consider the aforesaid legal issue in correct perspective. Therefore, impugned order is not sustainable in law.

16. In the result, entire seizure of property made from the house of the petitioners on 26.07.2012 and 26.08.2012 was illegally made, hence, the entire seizure exercise and its confirmation as well as the order of the learned Lower Appellate Court stands hereby set aside and this revision application is allowed.

17. Let the seized property be released in favour of the petitioners at the earliest preferably within ten days, failing which rupees ten thousand compensation would be paid to the petitioners for each day delay. Petitioners would be at liberty to initiate proceeding for damages against the erring opposite parties for putting illegal seize over the property of the petitioners which might have caused mental, physical and economic agony/loss to the petitioners.