

(1973) 04 CAL CK 0018

In the Calcutta High Court

Case No : Criminal Appeal No. 490 of 1966 and Criminal Revision No. 1093 of 1966

S.K. Ghosh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 06-04-1973

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1898 (CrPC) — Section 386
Penal Code, 1860 (IPC) — Section 70

Citation : (1974) 1 ILR (Cal) 327

Hon'ble Judges : R. Bhattacharya, J;A.K. De, J

Bench : Division Bench

Advocate : Sachindra Nath Chakravarti, for the Appellant;J.M. Banerji, for the Respondent

Final Decision : Dismissed

Judgement

A.K. De, J.—Suit No. 53 of 1954 under Ordinance XXXVIII of 1944 was started on November 22, 1944, by the Province of Bengal against Sri S.K. Ghosh. His properties were attached by the District Judge's order dated November 2, 1944. He made that order absolute on December 4, 1944. He appointed a Receiver for the administration of the attached properties by his order dated December 18, 1944. Sri Ghosh filed a petition before the District Judge for release of his properties from attachment. The learned District Judge by his order No. 1094 dated July 9, 1966, has refused the prayer. It is against that order that Sri Ghosh has filed this appeal. He has also, alternatively, moved against that order in an application under Article 227 of the Constitution giving rise to Cr. Rev. Case No. 1093 of 1966. Both the Criminal Appeal and the Criminal Revision Case rest on the same ground.

2. Section 10 of the Ordinance No. XXXVIII of 1944 has prescribed the duration of the attachment made under that Ordinance. An order of attachment of

property under the Ordinance shall, unless it is withdrawn earlier in accordance with the provisions of this Ordinance, continue in force where a Court has taken cognizance of the alleged scheduled offence whether before or after the time when the order was applied for, until orders are passed by the District Judge in accordance with the provisions of this Ordinance after the termination of the criminal proceeding. The criminal proceedings started against Sri S. K. Ghosh, after cognizance was taken, has ended in the Supreme Court on December 12, 1956. Section 13 of the Ordinance lays down the procedure for disposal of attached property upon termination of criminal proceedings. Sub-section (1) is that upon termination of any criminal proceedings for any scheduled offence" in respect of which any order of attachment of property has been made under this Ordinance or security given in lieu thereof, the agent of the Provincial Government shall without delay inform the District Judge and shall, where criminal proceedings have been taken in any Court, furnish the District Judge with a copy of the judgment or order of the trying Court and with copies of the judgments or orders, if any, of the Appellate or Revisional Courts thereon. Sri Ghosh was convicted by Special Tribunal on August 31, 1949, and was sentenced to a period of imprisonment and to pay a fine of Rs. 45,00,000. Appeal against that order of conviction and sentence was dismissed by the Supreme Court on December 12, 1956. The Court has evaluated the property procured by the scheduled offence to be Rs. 30,00,000 by order u/s 12 of the Ordinance. Sub-section (3) of Section 13 of the Ordinance is that where the final judgment or order of the criminal Courts is one of conviction, the District Judge shall order that from the property of the convicted person attached under this Ordinance, or out of the security given in lieu of such attachment, there shall be forfeited to His Majesty such amount or value as is found in the final judgment or order of the criminal Courts in pursuance of Section 12 to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge. It is further stated that where the final judgment or order of the criminal Courts has imposed or upheld a sentence or fine on the said person (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment. Sub-section (5) of the section is that if any property under attachment in respect of any scheduled offence or any security given in lieu of such attachment remains with the District Judge after his orders under Sub-sections (3) and (4) have been carried into effect, the order of attachment in respect of such property remaining shall be forthwith withdrawn, or as the case may be, the remainder of the security returned, under the orders of the District Judge. It is clear that the attachment of property of Sri Ghosh made under this Ordinance shall continue until orders are passed by the District Judge u/s 13. The Appellant contended before the District Judge, and before us, that the District Judge has not made any orders u/s 13 of the Ordinance as the Provincial Government did not inform him as required by Sub-section (1) of Section 13. Upon this contention,

the Appellant cannot ask for release of the attachment or withdrawal of the order of attachment. The learned District Judge was, therefore, right in refusing the prayer for withdrawal of the attachment.

3. The learned District Judge in the end part of his order No. 1084 has held as follows:

I, therefore, hold that the attached properties are liable to be sold for forfeiture and costs of attachment as also for fine.

The Appellant contended before us that the learned District Judge had gone wrong in making that finding. We see nothing wrong in that order. The District Judge is required to make an order u/s 13(3) as the final judgment of the criminal Court is one of conviction. Sub-section (3) of Section 13 enjoins upon the District Judge to make an order forfeiting to His Majesty the amount as is found in the final judgment or order of the criminal Court in pursuance of Section 12. The amount as found in the final judgment of the criminal Court in pursuance of Section 12 is Rs. 30,00,000. The District Judge is, therefore, required to make an order forfeiting that amount to His Majesty from the property of the convicted person attached under this Ordinance". Under Sub-section (3) the District Judge may also order recovery of the fine from the residue of the attached property. The District Judge is, therefore, right in holding that the attached properties are liable to be sold for forfeiture and costs of attachment as also for fine. Such order is in accordance with the provisions of Section 13(3). The contention of the Appellant challenging that part of the order of the District Judge cannot be upheld.

4. Mr. Sachindra Nath Chakravarti, learned Advocate appearing [or the Appellant, however, submitted that recovery of "forfeiture" as also of "fine" had become time-barred and it was, therefore, not possible for the District Judge to make an order u/s 13(3). His second branch of argument was that the District Judge, was not entitled to make an order u/s 13(3), even if recovery had not become time-barred because he had not been informed by the agent of the Provincial Government in accordance with the provision of Sub-section. (1) of Section 13. Forfeiture is not a form of punishment as prescribed by the Indian Penal Code. No procedure for recovery of forfeiture is prescribed. Nor it is necessary to be prescribed. Forfeiture means taking possession of. With the order of forfeiture the amount forfeited goes to the person in whose favour the order of forfeiture is made. No proceedings are necessary to recover forfeiture. As for recovery of fine, the procedure is laid down u/s 386 of the Code of Criminal Procedure. The period of limitation for the purpose is prescribed in Section 70 of the Indian Penal Code. These provisions will be attracted only if the mode of recovery under these statutes is taken recourse to. It is clearly laid down in Sub-section (3) of Section 13 that the District Judge may order recovery of fine from the "residue of the attached property without prejudice to any other mode of recovery. By Sub-section (3) of Section 13 another mode of recovery of fine has been prescribed. So the time-limit, as u/s 70 of the Indian Penal Code, or the procedure u/s 386

of the Code of Criminal Procedure has no application when the District Judge makes an order u/s 13(3) of the Ordinance. This branch of the, contention, therefore, cannot succeed.

5. Sub-section (1) to Section 13 lays down that an agent of the Provincial Government shall without delay inform the District Judge and shall furnish him with a copy of the judgment if any criminal proceeding has been taken in any Court. Sub-section. (2) recites, when such report is made to the District Judge he shall, in case of acquittal, forthwith withdraw his order of attachment. Sub-section (3) deals with the case when the criminal proceedings have ended in conviction. Significantly, there is no reference to Sub-section (1) or the report under that Sub-section, in Sub-section (3). This to our mind indicates that the District Judge may make an order under subs. (3) even if no report as required by Sub-section (1)" to Section 13 is made to him. This also is of no importance in this case. If no report has been made under Sub-section (1) and if such report be a prerequisite for an order under subs. (3), the District Judge will be entitled to make an order under that Sub-section if and when such report will be made. It cannot, therefore, be said that the District Judge has lost his powers u/s 13(3) to make appropriate orders there under. It appears from order No. 201 dated January 8, 1957, that the Province of Bengal filed an application u/s 13 of the Ordinance No. XXXVIII of 1944 before the District Judge praying for confiscation of the attached properties and all the assets and credit balance then in the hands of the Receiver and filed along with that a copy of the judgment of the Supreme Court. The learned District Judge heard the parties and by his Order No. 202 dated January 10, 1957, directed confiscation of some of the attached properties to the Ministry of External Affairs to the Government of India. It thus appears that a report u/s 13(1) has, in fact, been made to him. It was argued at one time that this report, required to be u/s 13(1), had not been made with sufficient despatch. The language of Section 13(1) is that information has to be given to the District Judge without delay. No time limit has been fixed there. The criminal proceeding terminated in the Supreme Court on December 12, 1956. A petition was made on January 8, 1957. It cannot be said that it was not made without delay. The District Judge has now to make an order u/s 13(3) of the Ordinance. His orders shall be for forfeiture of the amount of Rs. 30,00,000 from the properties of the Appellant attached under the Ordinance. He shall also have to make an order, if\ he so decides, for recovery of the fine of Rs. 45,00,000 imposed on the Appellant by the criminal Court from the residue of the said attached property. Forfeiture will be of the amount from the attached property and those should be converted into cash for giving effect to the order of forfeiture. The learned District Judge shall make appropriate orders in conformance with the language of Sub-section (3) to Section 13 of the Ordinance on receipt of the records in his Court.

6. Mr. Chakravarti finally argued that the District Judge misdirected himself in ordering issue of notice upon the Government. It appears, however, from the records that the learned District Judge directed issue of notices on the

Government before making his orders on the petition of the Appellant for release of the attachment of his properties. It was proper on the part of the District Judge to have issued notices on the Government before making orders on the petition for withdrawal of attachment as the attachment was effected on the prayer of the Government. There is no force in this contention.

7. It was also argued that the District Judge would not now be able to make an order u/s 13(3) of the Ordinance as a long time, as long as four years, had passed even after the second judgment of the Supreme Court. His contention was that the District Judge was required to make his order u/s 13(3) within the period of limitation prescribed for recovery of fine u/s 70 of the Indian Penal Code. We have already pointed out that Section 70 of the Indian Penal Code has no manner of application in an order of recovery made u/s 13(3) of the Ordinance. The order of conviction was confirmed by the Supreme Court on December 12, 1956. Subsequent order of the District Judge was confirmed by the Supreme Court on April 16, 1962. Whatever period may have elapsed from the dates of those judgments, the District Judge is competent to make order u/s 13(3). There is no limit of time mentioned in Section 13(3) within which the District Judge has to make his order under that Sub-section. By that Sub-section he has been empowered to make certain orders. When the statute requires the Court to make an order and does not limit any time for that purpose, the District Judge may make appropriate orders under that statute within reasonable time.. It is also seen from the records that the learned District Judge "could not make any order u/s 13(3) earlier because of various proceedings going on before him and in the superior Courts. We do not see any substance in this contention of the Appellant.

8. These are all the contentions urged before us on behalf of the Appellant.

9. In the result, this appeal fails and it is dismissed. The Criminal Revision Case No. 1093 of 1966 also fails for the above reasons and the Rule is, accordingly, discharged. Let the records be sent down to the learned District Judge as early as possible.

R. Bhattacharya, J.

10. I agree.