
(1960) 11 CAL CK 0019
In the Calcutta High Court
Case No : Criminal Appeal No. 281 of 1960

S.K. Ghosh

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 15-11-1960

Acts Referred:

Citation : AIR 1967 Cal 615 : (1967) CriLJ 1627 : (1961) 2 ILR (Cal) 456

Hon'ble Judges : S.K. Sen, J;K.C. Sen, J

Bench : Division Bench

Advocate : S.C. Majumdar, for the Appellant;S.M. Bose, General, Anil Ray Chowdhury and Sambhunath Banerjee, for the Respondent

Final Decision : Allowed

Judgement

S.K. Sen, J.—This appeal Is directed against an order of Sri D. N. Chakladar. District Judge, 24 Parganas, dated 15-7-69 dismissing an application made by Shri S. K. Ghosh for payment of arrears of maintenance and current maintenance under the provisions of paragraph 9 of the Criminal Law Amendment Ordinance No. 38 of 1944.

2. The facts of the case are briefly as follows:

Sri S. K. Ghosh along with certain other persons was proceeded against u/s 409/120B of the Indian Penal Code and under the provisions of the Ordinance aforesaid his properties then estimated to be worth about Rs. 18,000,00 were attached. The criminal case ended in conviction of S. K. Ghosh on 31-8-49 The appeal to the High Court was dismiss-ed on 9-9-53 and the appeal to the Supreme Court was dismissed on 12-12-56. Thereafter, on 10-1-57 the Government filed a petition before the District Judge. 24 Parganas, for taking action under paragraph 18 of the Ordinance of 1944 for forfeiture to the Government a portion of the property equal la value to the amount found to have been lost to the Government by the offence committed by Shri S K. Ghosh and also for realisation of the fine imposed on Shri Ghosh out of the residue of the

attached property. It may be mentioned that in the judgment of the High Court which has been affirmed by the Supreme Court, the loss to the Government was found to be about Rs. 30,000,00. A fine of Rupees 45,000,00 was also imposed on Shri Ghosh in respect of the offence committed by him. In the proceeding under paragraph 13 of the Ordinance, the learned District Judge. 24 Parganas, passed an order on 22-3-58 stating that in terms of paragraph 13(3) of the Ordinance the amount of Rs. 30,000,00 together with the cost of attachment had first to be forfeited out of the property attached and thereafter the fine of Rs. 45,000,00 was recoverable from the residue of the property, and that for doing this, it was necessary that the cost of the attachment should be determined and the property should be valued. Accordingly, he directed the Receiver in charge of the attached properties to submit a report as to the cost of attachment including the cost of management, and also directed both the State of West Bengal and Shri S. K Ghosh to submit their estimates as to the value of the different items of properties attached, so that the court could proceed to value the property before passing the final order under paragraph 13(3) of the Ordinance.

3. Against the order of the learned District Judge dated 22-3-58, there was an appeal to this High Court being Criminal appeal No. 176 of 1958. The appeal was allowed by this Court on 20-8-58, and It was held that for certain reasons the order of the learned District Judge was bad An appeal from the order of the High Court has been filed before the Supreme Court by the State Government and that appeal is pending.

4. A maintenance allowance of Rs. 970 per month was allowed by the order of the learned District Judge as modified by the order of this Court under paragraph 9 of the Ordinance. The Government by an order dated 18-12-66 i.e. six days after the order of the Supreme Court finally dismissing the appeal by Shri Ghosh, passed an order dismissing Shri S. K. Ghosh from service, and then the District Judge stopped the allowance. After the disposal of criminal Appeal No 176 of 1958, Shri Ghosh filed an application before the learned District Judge, 24 Parganas for arrears of maintenance and for current maintenance, contending that so long as the attachment subsisted he was entitled to the allowance under the provisions of paragraph 9 of the Ordinance The learned District Judge held that in view of the fact that an appeal to the Supreme Court was pending against the order of the High Court holding that the order of the District Judge under paragraph 13(3) was bad it would not be safe to pass any order as to the payment of arrears or current maintenance to Shri S. K. Ghosh. Accordingly, he directed that the matter should stand over until the decision of the appeal in the Supreme Court. It is against that order that this appeal has been filed.

5. Shri S. C. Majumdar appearing for the appellant has urged that there has been no final order for forfeiture of the attached property and therefore the attachment is subsisting under the provisions of paragraph 10 of the Ordinance of 1944; and that being so, the appellant is entitled to maintenance allowance which was ordered under paragraph 9(1)(a) of the Ordinance for the

maintenance of himself and his family.

6. The learned Advocate General has urged that after the conviction of a person whose property was attached, the person in Question no longer is entitled to maintenance allowance under paragraph 9 of the Ordinance.

7. The question however is to be decided with reference to the terms of the various paragraphs of the Ordinance. Under paragraph 3 of the Ordinance, when the Government has reason to believe that any person has committed any scheduled offence the Government may authorise the making of an application to the District Judge for the attachment under the Ordinance of the money or other property which the said person has procured by means of the offence or which the Government believes the said person to have procured by means of the offence. An interim order of attachment is passed (vide paragraph 4) and after consideration of objections if any, the interim order of attachment is made absolute under paragraph 5. Paragraph 9(1) of the Ordinance, the terms of which are relevant for the purpose of this appeal, is as follows:

"The District Judge may, on the application of any person interested in any property attached under this Ordinance and after giving the agent of the Provincial Government an opportunity of being heard, make such orders as the District Judge considers just and reasonable for--

(a) providing from such of the attached property as the applicant claims an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for the expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in any court for a scheduled offence;

(b) safeguarding so far as may be practicable the interests of any business affected by the attachment, and in particular, the interests of any partners in such business." Paragraph 10(b) provides that the order of attachment continues in force until orders are passed by the District Judge in accordance with the provisions of this Ordinance after the termination of the criminal proceedings. "Orders relating to the attached property are passed by the District Judge under the provisions of paragraph 13 if the Criminal case ends in acquittal, naturally the attached property is to be released from attachment. If, however, the final order is one of conviction, Clause (3) of paragraph 13 applies, and the District Judge has to order that from the property of the convicted person attached under this Ordinance, 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: and where the final judgment or order of the criminal courts has imposed or upheld a sentence of fine, 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. The District Judge, on the

application of the State Government, purported to pass a preliminary order under paragraph 13(3) (vide order dated 22-3-58 previously referred to, which order was set aside by a Bench of this Court), but until the final order has been passed by the District Judge relating to the attached property, the attachment subsists; it would therefore appear that the provisions of paragraph 9 of the Ordinance would apply. There is no doubt a reference in Clause (a) of paragraph 9(1) to the expenses connected with the defence of the applicant where criminal proceedings have been instituted, and necessarily there would be no scope for allowing any amount for expenses connected with the defence of the applicant after criminal proceedings has been finally disposed of as pointed out by the learned Advocate-General; this however does not mean that the allowance for the other purpose, namely, allowance of such amount as may be reasonably necessary for the maintenance of the applicant and his family, must also be limited to the period ending with the conviction of the applicant, There is nothing in the terms of paragraph 9(1) quoted above or in any other paragraph of the Ordinance to show that the making of the allowance for the maintenance of the applicant and his family is limited to the period before the conviction of the applicant for a scheduled offence. The paragraph says that the District Judge may on the application of any person interested in any property attached under the Ordinance make the allowances for maintenance. Therefore, it would be reasonable to hold that the paragraph applies so long as there is property under attachment made under this Ordinance, even though the applicant has already been convicted for a scheduled offence in course of the criminal trial.

8. It is no doubt true that if the finding of the Supreme Court is favourable to the contention of the State Government, a sum of Rs. 75,00,000 would be recoverable from the property attached. It is highly doubtful in that case whether any residue will be left to the appellant. On the other hand, it is possible that some residue would be left. It is also possible that only Rs. 46,00,000 would ultimately have to be realised from the property attached. In the meantime, before the appellant can obtain possession of the residue, it is not intended that he will be left without any means of subsistence. Apart from such consideration, the terms of paragraph 9 together with the terms of other relevant paragraphs of that Ordinance have to be interpreted as they are and it would appear from the terms of paragraph 9 that a maintenance allowance under paragraph 9 can be made so long as the attachment subsists.

9. The learned Advocate General has mentioned that the appellant was allowed to occupy a flat out of the attached property with the stipulation that he would pay a monthly rent of Rs. 150 per month to the Receiver, and that the appellant has not done so ever since the maintenance allowance was stopped. Naturally the rent together with the arrears thereof would be recoverable from the allowance, and the arrears and current allowance would be paid to the appellant less the rent which has become due or which may become due from him.

10. Further, whatever may be the decision of the Supreme Court, there is no

doubt that at least a sum of Rs. 45,00,000 imposed OR the appellant as fine would be recoverable from the attached property. Accordingly the valuation of the property is certainly necessary. Proceedings for valuation of the several items of the property should therefore be taken up in the meantime, by the learned District Judge, 24 Parganas.

11. Accordingly, this appeal is allowed and in modification of the order of the learned District Judge dated 17-7-59 it is ordered that the arrears of maintenance from 18-12-66 (or other date from which payment of the maintenance may have been discontinued) at the rate of Rs. 970 per month be paid to the appellant Shri S. K. Ghosh and that henceforth the maintenance allowance be paid to the appellant at the same rate during the subsistence of the attachment, and that out of the amount payable, both the current and arrears of rent due from the appellant be deducted. It is also ordered that the District Judge do proceed forthwith with the determination of the valuation of the several items of the property under attachment.

Parties will bear their own costs in this proceeding.

K.C. Sen, J.

12. I agree.