(2023) 05 OHC CK 0308

In the Orissa High Court

Case No : Criminal Appeal No. 100 Of 2016

Smt. Pramodini Sahoo APPELLANT

Vs

State (Vigilance) RESPONDENT

Date of Decision : 30-05-2023

Acts Referred:

Constitution of India, 1950 — Article 14
Orissa Special Courts Act, 2006 — Section 13, 13(1), 17
Prevention of Corruption Act, 1988 — Section 13(2)(a), 13(1)(e), 13(2), 14, 14(1), 14(2), 15
Odisha Special Courts Rules, 2007 — Rule 2(e)

Citation : (2023) 05 OHC CK 0308

Hon'ble Judges : R.K. Pattanaik, J

Bench : Single Bench

Advocate : Asok Mohanty, P.K. Pani, Niranjan Moharana

Final Decision : Dismissed

Judgement

R.K. Pattanaik, J

1. Instant appeal under Section 17 of the Orissa Special Courts Act, 2006 (herein after referred to as the 'the Act') is at the behest of the appellant challenging the impugned order dated 14th January 2016 passed in Confiscation Case No.04 of 2015 by the court of learned Authorized Officer, Special Court, Bhubaneswar in a proceeding initiated pursuant to an application under Section 13 of the Act vis-à-vis confiscation of the schedule properties, whereby, an application to drop it was declined and rejected.

2. In fact, the confiscation proceeding is in terms of section 13(1) of the Act with the notice to the appellant as well as two others including her husband against whom the Vigilance Department submitted a chargesheet under Sections 13(1)(e) read with 13(2) of the Prevention of Corruption Act and he stood convicted by a judgment dated 13th February, 2015 in connection with T.R No.05/40 of 2014/2012 of the court of learned Special Judge, Special Court, Bhubaneswar.

The application under Section 13 of the Act was filed by the Public Prosecutor for confiscation of the immovable and movable properties morefully described under the schedule 'A' and 'B' for having been acquired by means of the offence committed by opposite party No.1. As a result, Confiscation Case No.04 of 2015 was registered and therein, the appellant was summoned to show cause as to why the schedule subjects held in her name shall not be confiscated. In response to the notice received, the appellant moved the application with a request to the learned Authorized Officer, Special Court, Bhubaneswar to drop the proceeding on various grounds, however, it was not entertained rather disposed of by the impugned order dated 14th January 2016. According to the Public Prosecutor, the appellant to be a housewife having no independent source of income during the check period and therefore, the schedule property immovable as well as movable held by her have been acquired by opposite party No.1 and hence, liable for confiscation under law. However, the appellant, besides the grounds stated, also challenged the issuance of impugned notice under Section 13(1) of the Act and pleaded for closure of the proceeding. But then, the learned Authorized Officer, Special Court, Bhubaneswar held that since a notice has been issued to the appellant, as to the veracity of the claim in respect of the schedule properties, which stand in her name and liable for confiscation under the Act is to be taken up during enquiry. The learned court below considered it inappropriate to examine the contention of the appellant as it would depend on a full-fledged enquiry followed by a direction to the Public Prosecutor to furnish the list of witnesses for examination and evidence from the side of the State with the liberty for the appellant to submit her show cause as well before the date fixed. Being aggrieved by the impugned order dated 14th January 2016, the appellant preferred the appeal principally on the ground that the learned Authorized Officer, Special Court, Bhubaneswar could not have initiated any such action, morefully when, she is not a public servant nor held any high public office within the meaning of Rule 2(e) of the Odisha Special Courts Rules, 2007 (in short 'the Rules')and that apart, was not made an accused and subjected to face trial before the Special court and furthermore, when notice under Section 14(1) of the Act contemplates a proceeding against opposite party No. 1 only. Since such a question has been raised by the appellant as to the tenability of issuance of notice and action under the Act, the same is to be examined by the Court.

3. Heard Mr. Asok Mohanty, learned Senior Advocate appearing for the appellant and Mr. P.K Pani and Mr. N. Moharana, learned counsels for the Vigilance Department.

4. It is an admitted fact that the appellant was not an accused before the Special court, inasmuch as, opposite party No.1, who is her husband made to face the trial and finally found guilty and sentenced vide judgment dated 13th February 2015 in T.R No.05/40 of 2014/2012. Mr. Mohanty, learned Senior Advocate for the appellant submitted that the appellant cannot be held to be a 'person affected' as specified in Section 14(1) of the Act as she falls in the category of 'such other person' appearing in sub-section (2) thereof and hence, the

confiscation proceeding initiated against her with the impugned notice cannot be sustained in law. It is contended that the learned Authorized Officer, Special Court, Bhubaneswar reached at a conclusion that the appellant to be a ‘person affected’ within the purview of Section 14(1) of the Act even though the application dated 7th February, 2015 from the side of the Vigilance Department admits the State Governments’ authorization to prosecute opposite party No.1 and hence, the action is in excess of the sanction and incongruous to the facts and law. Apart from above, the action for confiscation is also challenged on the ground that the affidavit did not comply the requirement of Section 13(2)(a) of the Act. In essence, the very initiation of the proceeding against the appellant is challenged as bad in law and furthermore, notice under Section 14(2) was to be complied with instead of process under sub-section (1) of the Act as revealed from Annexure-7.

5. According to Mr. Mohanty, learned Senior Advocate appearing for the petitioner would submit that the learned court below utterly failed to intervene with the summoning of the appellant despite robust grounds existed. In fact, the contention is that the procedure prescribed under law has been grossly overlooked while issuing notice to the appellant vide Annexure-7 which renders the entire proceeding vitiated. Referring to the judgment of the Apex Court in Official Liquidator Vrs. Dharti Dhan (P) Ltd. 1977 SCR (2) 964, Mr.Mohnaty, learned Senior Advocate further submits that procedure which is laid down under the Act was required to be strictly followed which in the present case has been given a go bye. While contending so, another decision of the Apex Court in N.D. Jayal and Another Vrs. Union of India and Others AIR 2004 SC 867 has been placed reliance on. It is submitted that the directions put forward by the Act need to be scrupulously complied with and such exercise of power is coupled with duty of the State to ensure the conditions duly fulfilled which is what has been held by the Supreme Court in N.D. Jayal (supra) and hence, according to Mr.Mohanty, learned Senior Advocate, since the learned Authorized Officer, Special Court, Bhubaneswar did not follow the established procedure of law, issuance of notice with initiation of action against the appellant is untenable in law. The decision of the Apex Court in Yogendra Kumar Jaiswal Vrs. State of Bihar & Others AIR 2016 SC 1474 has also been referred to by Mr. Mohanty to contend that in the above decision, it has been held and observed that any such application to be filed by the Public Prosecutor, the essential conditions of Section 13(1) of the Act are required to be satisfied before initiating any such action. It has been highlighted upon about the legal position that the Public Prosecutor has been conferred with a solemn responsibility guided by the law in place. It was finally concluded that the action vis-à-vis the appellant clearly offends Article 14 of the Constitution of India. Mr. Mohanty, learned Senior Advocate by referring the decisions as above contends that apart from the grounds raised, notice under Section 14(2) was not issued but one under Section 14(1) was received by the appellant which is meant for a ‘person affected’ not ‘such other person’. Apart from above, the maintainability of the proceeding, especially, after the trial against opposite party

No.1 was concluded has been a ground of challenge with respect to the initiation of the confiscation proceeding under Chapter-III of the Act.

6. On the contrary, learned counsels for the Vigilance Department submits that the Public Prosecutor rightly moved the application for confiscation of the immovable and movable properties held by the appellant purchased in her name and opposite party No.3 as both of them did not have any independent source of income during the check period. According to Mr. Pani, learned counsel for the State Vigilance, opposite party No.1 illegally carried on transport business in the name of the appellant without taking permission or information supplied to the employer and he alone was having the earning capacity for family and acquired all the assets during the check period and hence, committed an offence of criminal misconduct for which he was ultimately convicted for the alleged offences under Sections 13(1)(e) read with 13 (2) of the Prevention of the Corruption Act. It is further submitted that list of properties which stand in the name of the appellant stand described in the application under Section 13(1) of the Act which have been acquired by opposite party No.1 by means of the offence, the fact which was revealed during investigation and hence, the action for its confiscation. Referring to the decision of this Court in Republic of India Vrs. Raman Singh 1994 CriL.J 1513, it is submitted by Mr. Pani that the appellant was rightly proceeded with a notice under Section 14 of the Act and there has been due compliance of the procedure established under law. In response to the contention that the appellant was not an accused nor a public servant and hence, was not to be subject to the confiscation proceeding, Mr. Pani, learned counsel for the Vigilance Department further submits that irrespective of the above, the appellant can still be made to face the proceeding as opposite party No.1 allegedly acquired the assets which are held by her. It is contented that this Court in Manjulata Panigrahi Vrs. State of Odisha, 2017 CriL.J 2944 has concluded that non-submission of chargesheet against a person or discharge of any such person from the charge of abetment or criminal conspiracy for commission of an offence under Sections 13(1)(e) read with 13(2) of the Prevention of Corruption Act by the Special Court cannot be a determinative factor for issuance of notice or otherwise against him for confiscation by the Authorized Officer. It is claimed by Mr. Pani that the Court further observed that any such person holding property of another person without knowing that it had been acquired by an offence being committed punishable under the Prevention of Corruption Act may hold it so and such a possibility cannot be ruled. In other words, according to Mr. Pani, notwithstanding the fact that the appellant is not an accused or was not criminally prosecuted for the alleged offence under the Prevention of Corruption Act but then having regard to the intent and purport of Section 13(1) of the Act and scheme of the law, the confiscation proceeding as against her is well maintainable and in so far as the impugned order dated 14th January, 2016 is concerned, it is absolutely justified and in accordance with law and thus, calls for no inference.

7. As per the Act, in case the State Government have reasons to believe that any

person, who holds high political or public office, have accumulated vast property disproportionate to his known source of income by resorting to corrupt means, action for confiscation may follow suit. Such is the legislative intention as made to appear from the Preamble of the Act. More precisely, Section 13(1) of the Act stipulates that the State Government, on the basis of prima facie evidence if reasons to belief that such person of high public or political office has committed the offence under the Prevention of Corruption Act, whether or not, the Special court has taken cognizance of it, may authorize the Public Prosecutor for making an application to the Authorized officer for confiscation of the money and other property which is believed to be or having been acquired by means of the offence committed. An application under sub-section (1) of Section 13 of the Act shall have to be accompanied by one or more affidavits stating the grounds on which the belief is founded and the amount of money and estimated value of other property said to have been procured and also to contain necessary information about its location and such other particulars considered relevant to the context. It does mean the Public Prosecutor is provided with a duty and responsibility to move the Authorized Officer for confiscation after a satisfaction reached at by the State Government with the reason to believe that the person who held public or political office has committed the offence and in the process acquired disproportionate assets. In fact, notice under Section 14(1) of the Act is issued to the person, who said to have procured the assets by means of the offence. In the event any such application so received from the Public Prosecutor, according to Section 14(1) of the Act, the Authorized Officer shall serve a notice upon the person affected in respect of whom the application is made calling upon him to indicate the source of his income, earning or assets by means of which he has acquired such money or property, the evidence on which he relies on and other relevant information particulars and to show cause as to why the properties should not be declared to have been acquired by means of the offence and be confiscated to the State Government. Section 15 of the Act stipulates that the Authorized Officer after considering the explanation if any to the show cause notice issued under section 14 and the materials available before him and after giving to the person affected (and in case where the person affected holds any money or property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard and thereafter, to record a finding whether all or any of the money or property in question have been acquired illegally. On a proper and sincere reading of the above provisions, the Court finds that a notice under Section 14(1) of the Act is issued to the person, who said to have committed the offence while holding a public or political office and for having acquired the disproportionate assets. While considering confiscation of any such property, notice under Section 14(2) of the Act is issued to 'such other person' who said to have held any money or property or both on behalf of 'person affected'. The Authorized Officer while considering the explanations offered by the person, who allegedly committed the offence and also such other person holding any money or property on behalf of such person, a reasonable opportunity of hearing before recording any finding whether the assets in question have been acquired illegally. Essentially the action under the Act is against the delinquent, a person who holds a high public or political office and while seeking confiscation of any such assets disproportionate to his known source income, not only a notice under Section 14(1) of the Act is issued to him but also to such other person, who possesses any such property on his behalf is required to be summoned in view of sub-section(2) thereof and on receiving explanations from all such persons, the Authorized Officer is to proceed and to pass a final order on confiscation or otherwise.

8. In the instant case, opposite party No.1 is the husband of the appellant and he was criminally prosecuted before the Special court. In respect of opposite party No.1, the notification was issued on 3rd December 2013 with the State Government's decision for his trial before the Special court with the opinion that there is a prima facie case of commission of the offence by him for having accumulated properties disproportionate to his known source of income by resorting to corrupt means. A copy of the notification dated 3rd December 2013 is at Annexure-1. Besides the above, the authorization of the Government of Odisha in Home Department dated 7th February 2015 at Annexure-2 is in respect of opposite party No.1. As to the application under Section 13(1) of the Act is concerned, a copy thereof at Annexure-3 reveals that the proceeding has been initiated not only against the delinquent opposite party No.1 but also the appellant and their daughter, namely, opposite party No.3 with the claim that some of the properties acquired by the former stand in the names of the latter. The details of the immovable and movable properties have been described in schedule 'A' & 'B' of Annexure-3. Considering such an application, the learned Authorized Officer, Special Court, Bhubaneswar issued summons to all including the appellant. By contending that notice under Section 14(1) of the Act is meant for opposite party No.1 and in that connection, appellant was required to be summoned as such other person, notice under Annexure-7 for confiscation is not maintainable. It has been the ground of challenge that the appellant was to be summoned under Section 14(2) of the Act, whereas, she has been served with a notice under section 14(1) as a person affected. The proceeding under the Act is an action meant for confiscation of the assets acquired by the person illegally with a notice to him and a copy thereof served upon others, who holds any such assets on his behalf. The notice is issued to the person affected in Form No. II as per Rule 13 (2) of the Rules. No separate form is prescribed for 'such other person' under the Rules since a copy of the notice issued to the 'person affected' is only served upon in accordance with Section 14(2) of the Act. So, therefore, Annexure-7 though a form meant for opposite party No.1 but for all intents and purpose is essentially a compliance of Section 14(2) of the Act. That apart, the confiscation proceeding initiated shortly before the judgment against opposite party No.1 is inconsequential, as such action, does not depend on or influenced by the fact whether or not, the Special court has taken cognizance of the offence against the person, who committed the offence with or without anyone as an abettor which is loud and clear from the language of Section 13(1) of the Act.

Since the judgment is delivered against opposite party No.1, the confiscation of the assets may have to be in tandem with the findings rendered over and in respect of the assets excluding the ones held not to be disproportionate and exclusively belonging to the appellant. As far as the proceeding is concerned, nothing is shown to suggest that the same is no longer maintainable after the trial against opposite party No.1 was concluded. Furthermore, it is to be held that the appellant may be proceeded with even though she is not a public servant or criminally prosecuted under the Prevention of Corruption Act considering the very purpose and scheme of the Act which is primarily directed against the confiscation of the assets acquired illegally by means of the offence. So the contention of the appellant on any such grounds cannot be accepted to scuttle the proceeding. Of course, it was not right on the part of the learned court below to treat the appellant as a person affected as made to appear from the impugned order dated 14th January, 2016. Nonetheless, the action is fundamentally for confiscation of the proceeds of the crime, hence, the issuance of notice to the appellant is to be read as and with reference to compliance of Section 14(2) of the Act simpliciter. Thus, the conclusion is that the appellant is to be treated as 'such other person' and not a 'person affected' for the purpose of the action under the Act. With regard to other grounds raised, the Court is of the view that the appellant shall have the opportunity to explain by filling a show cause in response to the notice for a decision by the learned court below according to law.

9. Hence, it is ordered.

10. In the result, the CRLMC stands dismissed.

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