
(1987) 08 BOM CK 0033
In the Bombay High Court
Case No : Criminal Appeal No. 850 of 1985

State of Maharashtra

APPELLANT

Vs

Trambak Ananda Mahajan and Others

RESPONDENT

Date of Decision : 21-08-1987

Acts Referred:

Citation : (1987) 3 BomCR 360

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : P.M. Vyas, app, for the Appellant; A.S.R. Baxi and P.S. Patankar for respondent Nos. 2 to 12 and R.M. Irani, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Agarwal, J.—This Appeal raises a question in regard to the interpretation of Clause 10 of the Criminal Law (Amendment) Ordinance, 1944 and the same arises on the following facts of the present case. The respondent No. 1 who was serving as a Deputy Engineer, E.G.S. Sub-Division, Dhadgaon, Dist. Dhule, is alleged to have acquired properties and estates disproportionate to his known sources of income. As a prosecution u/s 5(1)(c) read with section 5(2) of the Prevention of Corruption Act was in contemplation, the Appellant the State of Maharashtra on the 10th of September, 1984 obtained an order of authorisation under Clause 3 of the said Ordinance and filed on the 5th November, 1984 Criminal Miscellaneous Application No. 615 of 1984 for an order of attachment of the properties of the respondent No. 1 and obtained on the 7th of November, 1984 an order of ad interim attachment under Clause 4 of that Ordinance. As no cognizance of the offence in question came to be taken and no application for continuing the said order of attachments came to be filed, the trial Court, after hearing the parties, by its order dated the 6th of May, 1985 dismissed the Appellant's Criminal Misc. Application No. 615 of 1984 and vacated the order of interim attachment. On the 5th June, 1985 the Appellant filed its second Application being Criminal Miscellaneous Application No. 220 of 1985 for a fresh

order of attachment. This it did without obtaining a fresh authorisation under Clause 3. In this Application the Respondents Nos. 2 to 12 were impleaded on the allegation that the Respondent No. 1 had transferred his estate to them. By the impugned order dated the 29th October, 1985 that Application came to be rejected on the ground that the same was not maintainable on account of want of a fresh authorisation and also on the ground that the chargesheet had not been filed although a period of 23 months had elapsed since the offence had been registered. Aggrieved by the said order the Appellant-the State has preferred the present Appeal.

2. Shri Vyas, the learned Assistant Public Prosecutor, submitted that the trial Court has misconstrued the provisions of Clause 10 and has thereby erred in dismissing the second application for attachment. According to him there was no need to obtain a fresh authorisation for filing the second Application for attachment as the earlier authorisation obtained on the 10th September, 1984 enured to the benefit of the Appellant even for the purpose of filling the second Application. He further contended that the provisions contained in Clause 10 were not mandatory but merely directory and hence the second Application though not filed within the period of three months from the date of the order of ad interim attachment, the same was still maintainable and hence the trial Court ought to have granted the second Application and ordered the attachment of the properties of the respondent No. 1 as prayed for. In order to appreciate the contentions of Shri Vyas it, may be convenient to reproduce Clause 10 :---

"An order of attachment of property under this Ordinance shall, unless it is withdrawn earlier in accordance with the provisions of this Ordinance, continue in force :

(a) where no Court has taken cognizance of the alleged scheduled offence at the time when the order is applied for, for three months from the date of the order under sub-section (1) of section 4 or sub-section (2) of section 6, as the case may be, unless cognizance of such offence is in the meantime so taken, or unless the District Judge on application by the agent of the Provincial Government thinks it proper and just that the period should be extended and passes and order accordingly; or

(b) 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 proceedings."

In my judgment, the said clause provides that the order of attachment shall continue for a period of three months from its date and the same would thereafter continue only in two contingencies, (1) when cognizance of the offence is in the meantime taken i.e. within the period of three months or (2) where the Court on an Application filed within the said period of three months extends that order of attachment. If neither of the aforesaid two events take place, the order

of attachment must stand vacated at the expiry of the period of three months of the date of the order of attachment. All that sub-clause (b) provides is that in the event of the Court taking cognizance, which cognizance should be taken within the period of three months or within extended period in case the Court extends the order of attachment on an Application filed within three months, that attachment would continue till the termination of the criminal proceedings. The object of the said clause is obvious. It enables the State to attach the properties of an individual against whom a prosecution is intended to be lodged so as to disunited the accused from disposing all the said properties and reaping the fruit thereof which have been acquired by the commission of offences. At the same time it is the further object of the said clause to ensure a speedy investigation and filling of the chargesheet so that the accused does not suffer the order of attachment for an undue long period and that period, in the wisdom of the said statute has been fixed at three months with a rider that it was open in special case to the State to move for extension but that has to be done within the said period of three months.

3. Shri Vyas, however, relied upon a decision of the Patna High Court in the case of N.K. Banerji Vs. State of Bihar, and contended that the period of three months provided in the said Clause 10 was not a mandatory requirement and an order of attachment could well be passed even on an application filed beyond the period of three months. It has been held in the said case per B.D. Singh, J. :---

"The main purpose of the ordinance was to provide for preventing the disposal of concealment of money or other property procured by means of certain offences punishable under the India Penal Code. Further, the provisions contained in sections 10(a) and 10(b) of the Ordinance, if read together, clearly indicate that the intention of the legislature while laying down the requirement for the extension of the period till cognizance is taken, was only for the purpose of speedy disposal of the case so that the decisions regarding the attachment of the property shall not be protracted. Therefore, the said requirement for extension of time, in my opinion, is not of the essence of the thing required by the statute and the intention of the legislature in complying within the required period is for convenience rather than substance. It is only with a view to proper, orderly and prompt conduct of the public business. Therefore, in my opinion, it is only directory. It cannot be said to be mandatory. In the said section no prohibitive or negative words are used relating to the time within which the act is to be performed nor there is any indication as to what will happen if the provision is not complied. Therefore, it can safely be inferred that the provision contained under Clause (a) of the said section is directory and not mandatory."

4. It must be noted that the aforesaid observations were made in relation to the facts of that case wherein not only had the chargesheet been filed and cognizance taken but the accused had been convicted and sentenced. The Court in that case was called upon to consider whether the property of the accused continued to be under attachment despite three months having expired and no

fresh application was filed for continuing the same. In the concurring judgment delivered by the Acting Chief Justice Misra it has been held that an order of attachment of property shall be effective for three months from the date of the order where no cognizance of the offence is taken. If cognizance is taken during the aforesaid period of attachment, that attachment would continue beyond the period of three months. Where, however, neither of the two alternatives contemplated in the said Clause (a) is resorted to, the attachment will come to an end. If neither cognizance is taken during the period of three months from the date of attachment nor is the period extended, the order of attachment comes to an end and this was supported on the ground that if any transfer of such property was made by the accused after the period of three months and third party interests were created, any contrary construction would adversely affect the bona fide transferees which provisions. In this view of the matter, the submission of Shri Vyas that the provisions of clause 10 in regard to the period of three months being directory and not mandatory must be negated.

5. The impugned order of the trial Court is also justified on the ground that no fresh authorisation had been obtained before filing the present fresh application for attachment. The order of authorisation dated the 10th September, 1984 authorises the appellant to make an application which Application had been filed being Criminal Misc. Application No. 615 of 1984. It is not as if no further orders were passed after the passing of the order of ad interim attachment but after the period of three months had elapsed the parties were heard and a speaking order was passed holding that the order of attachment could not continue after the period of three months. Consequently that Application came to be specifically dismissed. Though that order was appealable under Clause 11, no appeal was filed but the present second Application was filed and that too without obtaining a fresh authorisation. In my judgment, the earlier authorisation dated the 10th September, 1984 had exhausted itself and no resort could be had thereto to support the filing of the second application. On this ground also the Appellant's would not be entitled to an order of continuance of attachment of the properties of the Respondent No. 1. It must be noted that even as of date the first information Report has not been filed and cognizance in respect of the offences alleged against the Respondent No. 1 has not been taken despite the initial order of ad interim attachment having been passed on the 7th November, 1984. In this view of the matter, the claim of Shri Vyas to have the attachment continued would make a mockery of the provisions of the said Clause 10 of the said Ordinance.

6. In the result, the Appeal fails and the same is dismissed.

7. Shri Vyas prays for a certificate of fitness to appeal to the Supreme Court and for continuance of the order of attachment. Having regard to the facts and circumstances enumerated above, the said prayer is rejected.