

**(2019) 08 KAR CK 0022**

**In the Karnataka High Court**

**Case No :** Criminal Revision Petition No. 982 Of 2015

S.T.Goudar S/O Thippanna Hanumappa And Ors

APPELLANT

Vs

State By Police Inspector

RESPONDENT

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**Date of Decision :** 23-08-2019

**Acts Referred:**

Prevention Of Corruption Act, 1988 — Section 3, 3(2), 4, 4(3), 5, 13(2), 13(1)(e), 22  
Code Of Criminal Procedure, 1973 — Section 22, 243(1), 307, 308(1), 308(2), 308(3),  
308(4), 308(5), 309(2), 317(2), 326, 397(1), 397, 452, 453, 454, 455, 456, 457,  
458, 458(1), 475  
Criminal Law Amendment Ordinance 1944 — Section 3, 4, 4(3)  
Indian Penal Code, 1860 — Section 409

**Citation :** (2019) 08 KAR CK 0022

**Hon'ble Judges :** B.A. Patil, J

**Bench :** Single Bench

**Advocate :** B.V.Acharya, Dineshkumar.K.Rao, Pooja Kattimani,  
Venkatesh.S.Arabatti

**Final Decision :** Disposed Off

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## **Judgement**

1. The present Revision Petition has been filed by the legal representatives of deceased S.T.Goudar, who was accused in Special Case (PCA) No.11/2011 before the Principal District and Sessions Judge, Chitradurga for the offences punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act' for short) challenging the order dated 04.12.2014 on an application.

2. The present petitioners filed an application under Section 457 read with Section 458 of Cr.P.C., to release the amount deposited in various banks and also the cash belonging to the deceased which has been seized by the Investigating Officer of Lokayuktha under P.F No.8/2009, P.F No.9/2009 dated 24.10.2009 and P.F No.11/2009 dated 27.10.2009. The Court below after considering the said application on merits and after hearing the arguments of the learned Special Public Prosecutor has dismissed the application. Challenging the same, the

petitioners-applicants are before this Court.

3. I have heard the learned Senior Counsel, Sri.B.V.Acharya. Though he has not been engaged by the counsel on record, since this matter requires some detailed consideration as the question of law is involved and so far no law has been laid down either by this Court or directly on the point in issue by the Hon'ble Apex Court, this Court requested him to assist the Court as he is acquainted with the law on the point. The learned Senior Counsel put forth all the details about the law and the facts of the case including various judgments of the Hon'ble Apex Court.

4. It is the submission of the learned Senior Counsel that the Court below has not properly appreciated the law on the point and has wrongly dismissed the application. It is his further submission that whenever properties have been seized during the course of investigation, under such circumstances the Court can attach the said properties on application by the Investigating Agency before the conclusion of the trial. The said process has to be done under Sections 3 and 4 of the Criminal Law Amendment Ordinance 1944. It is his further submission that there are two aspects which have to be kept in mind. Firstly, if cognizance is taken and a property has been attached, if the case is abated against the sole accused, then under such circumstances, it is nothing but resulting in acquittal of the accused. He further submitted that in such a situation it has to be presumed about innocence of the accused till he is convicted. Secondly, the properties have to be released in favour of the accused, where the final judgment and order of the Criminal Court is one of acquittal. In that situation the property attached or seized has to be released in favour of accused, if there is no appeal or after the disposal of the appeal. He further submitted that no procedure has been stipulated under the PC Act under such circumstances, the trial Court ought to have gone through the general principles of the law as contemplated under Section 452 of Cr.P.C., for disposal of the property. He further submitted that the only point which ought to have been considered by the trial Court is, it ought to have satisfied whether the applicants are the only legal heirs or representatives of the deceased or any other claimants are there. On the basis of the records, with limited inquiry if it is established that the applicants are the only legal representatives, then under such circumstances there is no other option left open to the Court, except to release the properties in favour of the applicants. He further submitted that the order of confiscation can be made when the trial has been held and a finding has been given by the Court while recording conviction. But in the instant case the sole accused has died and the case has been abated before the commencement of the trial. Then under such circumstances, no trial or proceeding can be held. There is no possibility of proceedings as against a dead person. He further submitted that if there are more than one accused involved in a case and a larger conspiracy exists, then under such circumstances, the Court has to consider the participation of the other accused persons and what is their role, thereafter point has to be decided in this regard. In the instant case, there are no such circumstances. He further submitted that if there is

misappropriation of Government funds, then under such circumstances, the said properties belong to the Government and the Government will be having some right over such properties, then the Court has to decide who is entitled to the said properties. But in the instant case, neither the Investigating Agency nor the Government have made any claims for the said properties and even it is not established that the said properties are disproportionate to the known sources of income of the deceased. Under such circumstances, the Court has to exercise its discretion and has to pass an appropriate order. In order to substantiate the said contentions, he relied upon the decision in the case of U.Subhadramma and others vs. State of Andhra Pradesh represented by the Public Prosecutor and another reported in (2016) 7 SCC 797. On these grounds, he prayed to allow the petition and to set aside the impugned order by releasing the property in favour of the petitioners-applicants.

5. Per contra, the learned Special Public Prosecutor Shri.Venkatesh.S.Arabatti, ably assisted this Court by submitting that the decision quoted by the learned Senior Counsel in the case of U.Subhadramma and others (quoted supra) is under Section 409 and other Sections of IPC but the present case initiated is one under the PC Act which stands on a different footing. It is his further submission that in the decision quoted by the learned Senior Counsel in the case of U.Subhadramma and others (quoted supra), the procedure adopted by the trial Court as well as the High Court was found fault with. Under the said facts and circumstances, the Hon'ble Apex Court has passed the said order in the aforesaid decision. But what procedure has to be followed for the purpose of disposal of the properties in case of abatement has not been clearly mentioned in the said decision. In that light, he submitted that the said decision is not applicable to the facts of the case on hand and as such, the application has to be dismissed. He further submitted that the said properties were standing in the name of the deceased, his wife and children. He further submitted that if the properties have been seized by the Investigating Agency, then the State will be having a claim over the said property. He further submitted that as per Section 458 of Cr.P.C., the said property is liable to be escheated to the Government and in this regard, the Court has to consider by holding an inquiry as to legal acquisition of properties and whether the claimants are entitled to possession of the said properties. He further submitted that the said properties are disproportionate properties and as such, the same are liable to be confiscated to the Government as they are Government properties. He further submitted by relying upon the decision of the Co-ordinate bench in Criminal Appeal No.2717/2012 dated 03.09.2012 in the case of Laxman vs The State of Karnataka that following procedure prescribed under Sections 458 and 459 of Cr.P.C is must. He further submitted that the trial Court after considering all the facts and circumstances, has rightly dismissed the claim of the applicants. He further submitted that there are no good grounds to interfere with the same and prayed to dismiss the petition.

6. I have carefully and cautiously gone through the submissions made by both

the parties as well as decisions quoted by the learned counsel for the petitioners, respondent and perused the papers.

7. It is not in dispute that the deceased-accused S.T.Goudar was a Government servant, working as a Deputy Commissioner of Excise. It is also not in dispute that a case has been registered by the Lokayuktha against him for the offences punishable under Section 13(1)(e) read with Section 13(2) of the PC Act and a raid was made and Lokayuktha Police seized the properties as mentioned in P.F.No.8/2009, P.F.No.9/2009 and P.F.No.11/2009. It is also not in dispute that the accused - S.T.Goudar expired on 28.01.2014 before the trial was commenced. It is also not in dispute that the Lokayuktha Police have neither obtained any attachment orders prior to the death of the accused nor subsequently. It is also not in dispute that earlier applications filed by the applicants have been dismissed by the trial Court.

8. The applicants have filed the application under Section 457 read with Section 458 of Cr.P.C to release the seized properties in their favour being the wife and children of the deceased - S.T.Goudar. It is contended that they are the legal representatives and they are the successors in respect of the said seized properties. They have further contended that some of the properties which have been seized are standing in their name. On these grounds, they prayed to allow the application and to release the properties in their favour.

9. The said application has been contested by the learned Special Public Prosecutor by contending that a criminal case has been registered against the deceased - S.T.Goudar for having amassed the wealth which is disproportionate to the known sources of his income. The total assets do not tally and no explanation has been offered with regard to the disproportionate assets of the properties of the deceased. He further contended that already the charge sheet has been filed and the said properties have been seized and they are the Government properties. In that light, he prays to dismiss the application. After considering the said submissions, the trial Court has dismissed the application. Aggrieved by the same, the applicants are before this Court.

10. I have carefully and cautiously gone through the law laid down by the Hon'ble Apex Court. The point involved in the case is quite different. The learned Senior Counsel submits that, there is no direct law laid down either by the Hon'ble Apex Court or by this Court on the point as to what has to be done in case where the property has been seized belonging to the accused during investigation and the sole-accused dies, case has been abated. However the learned Senior Counsel Sri.B.V.Acharya by citing the decision in the case of U.Subhadramma and others (quoted supra) submitted that some guidelines have been given to decide points involved in the case on hand.

11. Though the said decision is not directly on the point in issue, what will be the effect in a case where sole accused died and abatement has taken place after filing of the charge sheet. But in the said decision guidelines have been given

about the legal effect, after the death of sole accused and what is the effect of the attachment of the property by orders of the Court. In this behalf it helps to decide the case on hand. For the purpose of brevity, I quote paragraph Nos.6 to 9 and 12 of the decision in the case of U.Subhadramma and others (quoted supra) which read as under:

"6. The learned Senior Counsel for the appellants submitted that the scheme of the Criminal Law Amendment Ordinance, 1944 does not permit the District Judge to confirm any attachment of the property though the criminal court has not validly convicted and found the accused or the person whose property is sought to be attached as guilty. The learned counsel submitted that in this case, it was not possible for the criminal court to have convicted or found Ramachandraiah guilty since he expired in 1991 during the trial. In fact, according to the appellants, no application for attachment could have been made under these circumstances. The learned counsel for the respondents strongly opposed the prayer and submitted that the appellants may not be allowed to retain property obtained by ill-gotten means and it was legal for the learned District Judge to have passed the order of attachment in respect of such property which was admittedly the subject matter of the charge-sheet. It has, therefore, become necessary for us to examine whether the property of a person which was merely case of an offence of misappropriation but who died during the pendency of the criminal trial can be attached in the hands of his legal representatives under the provisions of Criminal Law Amendment Ordinance, 1944.

7. As far as making the application for attachment is concerned, we find that the law authorises the State Government to make such an application even though proceedings against the person may not yet have resulted in a conviction. This is by virtue of Section 3 which empowers the Government to authorise making of such an application to the District Judge where it has reason to believe that any person has committed any scheduled offence. But however clause 3 requires the Government to make such an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business; thus clearly requiring the existence of such a person. It excludes the possibility of proceedings against a dead person. Section 4 of the Ordinance empowers the District Judge to pass an order of ad interim attachment on prima facie grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or has procured any money or property thereby. Sub- Section (2) requires the District Judge to issue a notice, presumably at the address where the person ordinarily resides or carries on business (vide Section 3) along with copies of the order and the application etc. Section 5 provides for an investigation of objections to the attachment who have been served with notices under Section 4. Sub-section (3) empowers the District Judge to pass an order making the ad interim order of attachment absolute or varying it by releasing a portion of the property or withdrawing the order.

8. Section 13 requires the Government to inform the District Judge about the

status of the criminal proceedings. It requires the Government to furnish the District Judge with a copy of the judgment or order of the trial court and with copies of the judgment or orders, if any of the appellate or revisional court thereon. Sub-section (2) mandates that the District Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence if (a) cognizance of alleged scheduled offence has not been taken, or (b) where the final judgment and orders of the criminal court is one of acquittal. While this section is clear that the orders of attachment must be withdrawn if cognizance of the offence has not been taken or there has been an acquittal; the section is silent as to the effect of abatement of prosecution. It is due to this silence that it is contended by the State Government in this case that the orders of attachment could not only have been continued but could also have been confirmed. It is not possible for us to accept the submission. If the law requires that the orders of attachment should be withdrawn upon acquittal it stands to reason that such orders must be withdrawn when the prosecution abates or cannot result in a conviction due to the death of the accused, whose property is attached. Concept of abatement of a trial could be subsumed in the section where the final judgment and order of the Criminal Court is one of acquittal. In this context, the presumption of innocence of an accused till he is convicted must be borne in mind and there is no reason to consider this presumption to have vaporized upon the death of an accused. It may be noted that this Court has time and again reiterated the presumption of innocence of an accused till he is convicted.

9. As far as the circumstances of this case are concerned, we find that there has been a gross mis-carriage of justice at several steps. In the first place, the finding of the trial court that Ramachandraiah was alone responsible for the offences is completely vitiated as null and void since Ramachandraiah had admittedly died on the date this finding was rendered. It is too well settled that a prosecution cannot continue against a dead person. A fortiori a criminal court cannot continue proceedings against a dead person and find him guilty. Such proceedings and the findings are contrary to the very foundation of criminal jurisprudence. In such a case the accused does not exist and cannot be convicted. Consequently, the learned District Judge committed a gross error of law in acting upon such a finding and treating Ramachandraiah as guilty of such offences while making the order of attachment and while confirming the said order of attachment of properties.

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12. In fact, we find that the learned District Judge could not have proceeded with the attachment proceedings at all since the attachment proceedings were initiated by the State against Ramachandraiah under section 3 of the Criminal Law Amendment Ordinance, 1944, who was actually dead. Section 3 contemplates that such an application must be made to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries

on business, in respect of property which the State Government believes the said person to have procured by means of the offences. It is incomprehensible, therefore, that such an application could have been made in regard to a dead person who obviously cannot be said to be ordinarily resident or carrying on business anywhere. There is no legal provision which enables continuance of prosecution upon death of the accused. We must record that the proceedings and the decisions of the courts below are disturbing, to say the least. In the first place, though the accused had died, the trial court proceeded with the trial and recorded a conviction two years after his death. Then, this null and void conviction was used as a basis for making an attachment of his properties before the Sessions Court.

Astonishingly, all applications succeeded, the attachment was made absolute and over and above all, the High Court upheld the attachment."

12. It is well settled proposition of law that whenever a criminal proceeding has been initiated and the property has to be attached by the criminal Court it has to be done as contemplated under Sections 3 and 4 of the Criminal Law Amendment Ordinance, 1944. It is also clear from the said provisions that the Court can attach the property during the course of trial or after conclusion of the trial, if any such application has been filed by the State. Admittedly, in the present case no such application has been filed. In that light, the confirmation or otherwise of the order of attachment does not arise in this case. It is further observed in the said decision quoted supra that when once the accused dies, then under such circumstances, the case abates and there will be termination of the proceedings and the case against the accused cannot result in conviction due to his death. When the conviction has not been made and the trial has not been held, then under such circumstances, it can be held as held in the above decision that it is confirmation of the presumption of innocence of accused. It is well settled proposition of law that if a person is dead, no proceedings or inquiry can be held as against him, if at all, any inquiry or proceedings are held and a finding is given on any of the issues then the said finding is considered to be a nullity in law. As rightly pointed out by the learned Special Public Prosecutor the said decision only refers to the fault or the procedure followed by the Courts at the time of passing the orders and no law has been laid down or procedure or guidelines have been laid down as to what has to happen to the properties which have been seized by the Investigating Agency during the course of investigation, in case of death of the accused before the trial is concluded. I am of the considered opinion that the said decision though directly does not lay down the law, it can be inferred from the language of the said decision that when once the case is abated, it is nothing but termination of proceedings amounting to an acquittal of the accused and confirmation of the innocence of him. In that light in the present case on death of accused, accused is acquitted of the offences. Under such circumstances, the procedure to be followed is as contemplated under the general provisions of Sections 452 to 457 of Cr.P.C for the purpose of disposal of the properties in accordance with law. Though the learned Special

Public Prosecutor contended that the procedure laid down in the PC Act is quite different and the procedure in Cr.P.C is not applicable, the said Section only guides as to where the properties have been seized under the IPC and other provisions. But as could be seen from Sections 3, 4, 5 and 22 of the PC Act, in the absence of any procedure laid down in the said Act, the Court has to follow the general provisions of Cr.P.C. For the purpose of brevity I quote Sections 3(2 ), 4(3), 5 and

22 of PC Act which read as under:

Section 3 - Power to appoint special

Judges -

(1) xxx xxx xxx

(a) xxx

(b) xxx

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

Section 4 - Cases triable by special

Judges -

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) xxx xxx xxx

Section 5 - Procedure and powers of special Judge - (1)A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2

of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-sections (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ord.38 of 1944).

Section 22 - The Code of Criminal Procedure, 1973 to apply subject to certain modifications - The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,-

(a) in sub-section (1) of section 243, for the words "The accused shall then be called upon", the words "The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;

(b) in sub-section (2) of section 309, after the 'third proviso, the following proviso had been inserted, namely:-

"Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 has been made by a party to the proceeding.";

(c) after sub-section (2) of section 317, the following sub-section had been inserted, namely:-

"(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.";

(d) in sub-section (1) of section 397, before the Explanation, the following proviso had been inserted, namely:-

"Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings:-

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies."

13. On going through the above Sections some guidelines are there as to how the provisions of Cr.P.C have to be made applicable to PC Act. It is also general law that in the absence of any specific provisions in special law, for the purpose of procedure, Cr.P.C has to be followed. When the general provisions of Cr.P.C are made applicable then the Court has to see the provisions of Sections 452 to 457 of Cr.P.C. For the purpose of brevity, I quote Section 452 of Cr.P.C which reads as under:

"When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence".

14. On close reading of the said Section, it enumerates that when an inquiry or trial in a Criminal Court is concluded, the Court may pass such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof and the properties have to be disposed as contemplated therein. In the said Section the words used are 'make such order as it thinks fit for the disposal', which means this Section gives the Court a discretion for disposal of the property either by destruction or confiscation or delivery to any person entitled to possession thereof. But while exercising the power or discretion, it must be done judiciously not arbitrarily, with sound principles founded on reason and justice. It has to be exercised by keeping in view the class and nature of property and material before it. Normally after discharge or acquittal of the accused, the Court should restore the property to the person from whose custody it has been seized. Departure from this salutary rule of practice is not to be lightly made when there is no dispute or doubt. This proposition of law has been laid down by the Hon'ble Apex Court in the case of N.Madhavan v/s State of Kerala reported in (1979) 4 SCC 1 wherein at paragraph 10 it has been observed as under

"10. The words "may make such order as it thinks fit" in the Section, vest the Court with a discretion to dispose of the property in any of the three modes

specified in the Section. But the exercise of such discretion is inherently a judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such well-recognised principles is that when after an inquiry or trial the accused is discharged or acquitted, the Court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from this salutary Rule of practice is not to be lightly made, when there is no dispute or doubt-as in the instant case-that the property in question was seized from the custody of such accused and belonged to him."

15. In the case on hand the above ratio is aptly applicable. Admittedly, there is no dispute or doubt that property was seized from the deceased-accused. There is no question of confiscation because the said properties have neither been attached nor any application has been filed by Lokayuktha for the purpose of confiscation. It is contended by the learned Special Public Prosecutor that before release of property an inquiry has to be held. I will make it clear here itself that there is no rival claim by anybody. As could be seen from the letter and spirit of Section 452 of Cr.P.C the word "inquiry" means after inquiry or the trial in a criminal case, such inquiry procedure can be adopted for limited purpose as stated above for disposal of the property only to ascertain as to whether they are the legal representatives to such property or not. But in the instant case admittedly, no such trial or proceedings have been held by the Criminal Court. Under such circumstances, the only alternative which is left open to the Court is to adopt the procedure in case of acquittal for disposal of the properties to such person who claims it, and is entitled to it. In the instant case as stated above no other 3rd claimants have made any claims with respect to the said properties before the Court. In that light, the only option left open to the Court is to hold inquiry for a limited purpose i.e., only to ascertain as to whether the applicants are the only legal representatives of the deceased S.T.Goudar or not. Except that it cannot go and come to any other conclusion, as rightly pointed out by the learned Senior Counsel there is no general conspiracy or no other accused is involved in the present case. Under the said facts and circumstances, I feel that the only procedure which has to be followed is that the properties seized during investigation after abatement of the case, have to be released in favour of the applicants/claimants in accordance with law.

16. However, the learned Special Public Prosecutor contended that as per Section 458 of Cr.P.C the properties are liable to be escheated to the Government. He relied upon the decision in the case of Laxman vs State of Karnataka (quoted supra). For the purpose of brevity, I quote Section 458(1) of Cr.P.C which reads as under:

"If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such

property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as may be prescribed".

17. On going through the said Section, it starts with the word if no person within such period establishes his claims to such property then the Government is having the right to escheat the property and the Court can dispose of the property in accordance with Section 458 of Cr.P.C. If the Court comes to the conclusion that no person comes and claims the property, it can be escheated, if the property is about misappropriation of Government funds, if any person claims such properties, Court can hold an inquiry for a limited purpose about legality of such acquisition. As already observed above, the law laid down by the Hon'ble Apex Court in the case of U.Subhadramma (quoted supra) no proceedings can be held against a dead person about acquisition of property by deceased when once the case is abated, since there is a presumption of innocence of the accused till he is convicted. Admittedly, in the instant case the applicants are the legal representatives of the deceased S.T.Goudar and they have claimed the said properties. Under such circumstances, the provisions of Section 458 of Cr.P.C are not applicable to the facts of the present case. I have carefully gone through the decision in the case of Laxman vs The State of Karnataka (quoted supra). In that case laptop has been seized as it having been used in the counterfeiting the notes. After acquittal, the learned Sessions Judge without conducting any inquiry proceeded to confiscate the said laptop. In that light, the said order was set aside and laptop was returned to claimant as there were no other rival claimants. In that light, it helps the case of claimants rather than respondents. In that light, the contention taken up by the learned Special Public Prosecutor is liable to be rejected.

18. Before concluding, I want to place on record that the learned Sessions Judge rejected the application, only on the ground that already earlier applications have been rejected. Rejection of earlier application is neither res-judicata nor there is any bar under the law. In that light, the said order is liable to be set aside. The trial Court without properly looking into the said provisions and assigning reasons has passed impugned order. In that light impugned order dated 04.12.2014 is held to be not in accordance with law. Whenever the case has been abated irrespective of the offences either under PC Act or under any other criminal law, except specifically provided above guidelines have to be followed in any such application being filed and to dispose the properties

19. Keeping in view the above said facts and circumstances and the discussion held by me above, the petition is allowed. The order of the Principal District and Sessions Judge, Chitradurga in Special Case (PCA) No.11/2011 dated 04.12.2014 is set aside and the trial Court is hereby directed to release the properties seized under P.F.No.8/2009, P.F.No.9/2009 and P.F.No.11/2009 dated 24.10.2009 and 27.10.2009, in accordance with law on proper identification and acknowledgment to the applicant i.e., the legal representatives of the deceased Sri.S.T.Goudar.

Accordingly, petition is disposed.

20. At this juncture, I place on record the able and valuable assistance rendered by the learned Senior Counsel Sri.B.V.Acharya to come to a right conclusion of the matter in issue in the case on hand.