

HON'BLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

**WRIT PETITION Nos. 3262, 11412, 11417, 13550, 13581,
5889, 6015, 6029, 8116, 8391 and 9244 of 2019**

COMMON ORDER: *(per Hon'ble the Acting Chief Justice C. Praveen Kumar)*

1) Though the Writ Petitioners in all the above Writ Petitions are different but the issue involved in the petitions being one and the same, they are disposed of by this common order, taking W.P.No.3262 of 2019 as a lead petition.

2) The short question that arises for consideration in all the above Writ Petitions is "Whether the Authorized Officer was justified in initiating confiscation proceedings under A.P.Special Courts Act, 2016 in respect of cases where properties are already attached by the Special Court dealing with offences punishable under the provisions of the Prevention of Corruption Act?"

3) The facts in issue show that a case in Cr.No.03/RCA-KUR/2012 dated 26.07.2012 came to be registered against the writ petitioner under Section 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 i.e., being found in possession of assets disproportionate to his known sources of income. During the course of investigation, the respondent/Deputy Superintendent of Police, A.C.B., issued a show cause notice to the petitioner on 17.12.2013, calling upon him to explain the assets which are disproportionate to his known sources of income, to which the petitioner submitted a detailed explanation. Thereafter, the

Inspector, A.C.B., filed a charge-sheet, which was taken on file as C.C.No.28 of 2017. Pending trial, the respondent/authority filed Crl.M.P.No.41 of 2013 and obtained an order of interim attachment of the movable and immovable properties of the petitioner. While things stood thus, the petitioner received a notice dated 05.12.2018, pursuant to an application made by the Authorized Officer, Kurnool for confiscation of assets vide confiscation Case No.1/2018 under Section 13(1) of the A.P.Special Courts Act, 2016, calling upon the petitioner to submit his sources of income, acquisition of assets, acquired and listed in Annexure I to IV. Challenging the same, the present Writ Petitions came to be filed.

4) Heard the learned counsel for the petitioner and learned Standing Counsel for A.C.B.

5) The main ground urged by the learned counsel for the petitioner is that when once the property is attached by a competent court dealing with the offences punishable under the provisions of the Prevention of Corruption Act, initiation of proceedings under the A.P. Special Courts Act, 2016 is bad in law. In other words, his plea is that in the absence of any provision in the statute, the law has to be prospective in operation and cannot be made applicable to the cases where orders of attachment are already passed. He further submits that since the Act came into force from the date of the notification published in the Gazette, it cannot be made applicable retrospectively.

6) Relying upon the judgment of the Apex Court in **Yogendra Kumar Jaiswal and others v. State of Bihar and others**¹, the learned counsel for A.C.B., pleads that a perusal of the provisions of the Act, more particularly Sections 5 and 6 (2) of the Special Courts Act would reveal that all proceedings before the Court other than Special Court, dealing with the offences under the provisions of Prevention of Corruption Act relating to attachment, gets transferred automatically to the Special Court. He further pleads that even when the properties are attached at the instance of the accused, still the State can move for confiscation before the Special court. Taking into consideration the meaning of the words "attachment" and "confiscation", he pleads that the initiation of proceedings under the said Act is legal and proper.

7) It is to be noted here that the proceedings in these cases came to be initiated and orders of attachment came to be passed much prior to A.P.Special Courts Act, 2016 came into force. The Special Act came into force with effect from 11.05.2017. A reading of the preamble of the Act would show that the Special Act came to be introduced to provide for constitution of Special Courts for speedy trial of certain class of offences and for confiscation of the properties involved and for matters connected therewith or incidental thereto. It states that corruption is perceived to be amongst the persons holding public offices and public servants within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 in the State of Andhra Pradesh and the Government has sufficient reasons to believe that large number of persons, who have held or are holding public offices and are public servants within the meaning of Section 2(c)

¹ (2016)3 Supreme Court Cases 183

of the Prevention of Corruption Act, 1988 have accumulated vast property disproportionate to their known sources of income by resorting to corrupt means. Having regard to the above, it is felt that it was the legal obligation of the State to prosecute persons involved in such corrupt practices and confiscate their ill-gotten assets. It was also observed that the existing Courts of Special Judges cannot reasonably be expected to bring the trials arising out of those prosecutions, to a speedy termination and it is imperative for the efficient functioning of a parliamentary democracy and the institutions created by or under the Constitution of India that the aforesaid offenders should be tried with utmost dispatch.

8) Keeping the preamble of the Act in the background, we shall proceed further. At the outset, it would be appropriate to refer to certain provisions of the Special Courts Act, 2016. Section 3 of the Act deals with establishment of special courts for the purpose of speedy trial of offences which shall be presided over by a Judge to be nominated by the Government with the concurrence of the High Court. The Special Court shall take cognizance and try such cases as are instituted before it or transferred to it under Section 10. Section 5 of the Act states that if the State Government is of the opinion that there is prima facie evidence in the commission of an offence by a person, who has held or is holding public office or has been public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 in the State, the Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion. Clause (2) of Section 5 states that such a declaration shall not be called in question in any court. Section 6 of the Act postulates that on such declaration being made under sub-section (1)

of Section 5, notwithstanding anything contained in the code or any other law for the time being in force, any prosecution in respect of the offence shall be instituted only in a "Special Court". The word "offence" is defined in Section 2(f), which means an offence of criminal misconduct which attracts application of Section 13(1)(e) of the Prevention of Corruption Act, 1988 either independently or in combination with any other provision of the Prevention of Corruption Act, 1988 or any of the provision of Indian Penal Code, 1860. Section 7 of the Act deals with jurisdiction of the Special Court. It states that a Special Court shall have jurisdiction to try any person alleged to have committed the offence in respect of which a declaration has been made under Section 5, either as principal, conspirator or abettor and for all the other offences and all of them shall be jointly tried therewith at one trial in accordance with the Code. While Section 8 deals with procedure and powers of Special Courts, Section 9 deals with appeal against orders of special courts. Section 10 of the Act which deals with Transfer of Cases, states that notwithstanding the other provisions of this Act, it shall be open to the High Court to transfer cases from one special court to another. Section 17 of the Act deals with Appeals against the orders passed by the Authorized Officer under this Chapter, to the High Court within 30 days from the date on which the order appealed against was passed. It may not be necessary for us to go into Section 13 of the Act since the procedure that is contemplated for making an application is not challenged in this Writ Petition.

9) In order to appreciate the issue, it would be useful to refer Section 6 of the Act, which is as under:

6. Effect of declaration. –

(1) On such a declaration made under sub-section (1) of Section 5, notwithstanding anything in the Code or any other law for the time being in force, any prosecution in respect of the offence shall be instituted only in a Special Court.

(2) Where any declaration made under Section 5 relates to an offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court established under this Act, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to Special Court for trial of the offence in accordance with the provisions of this Act.

10) A reading of the said provision, more particularly, Section 6(2) of the Act, it makes very clear that where any declaration made under Section 5 relates to an offence in respect of which prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court established under this Act, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to Special Court for trial of the offence in accordance with the provisions of the Act. Therefore, the Legislature itself made it very clear that even in respect of cases which are pending before any court other than the special court established under the Act, 2016 and if any declaration is made under Section 5 of this Act, those cases pending in the said Court shall stand transferred to the Special Court for trial of the offences under the Act, 2016 dealing with the confiscation of the property in view of the declaration under Section 5. Since the Legislature itself made the law applicable even in respect of cases, which are already initiated, the

argument that the Special Courts Act, 2016 has no retrospective effect, cannot be accepted. Things would have been different had the Act was silent on this aspect. In fact, this issue came up for consideration before the Apex Court in **Yogendra Kumar Jaiswal's case (one supra)**. In the said case, the Apex Court dealt with the provisions of Orissa Special Courts Act and Bihar Special Courts Act, the provisions of which are somewhat identical to the A.P. Special Courts Act, 2016. It was also a case where the accused therein were tried for the offences punishable under Section 13(1)(e) of the Prevention of Corruption Act, 1988. Pending the said proceedings, applications came to be made for confiscation of the properties. Dealing with the aspect as to whether the provisions of the Special Courts Act are retrospective in operation, the Apex Court held as under:

"The next facet of the said submission pertains to retrospective applicability. The submission has been put forth on the ground that by transfer of cases to the Special Courts under the Orissa Act in respect of the accused persons who are arrayed as accused under the 1988 Act, have been compelled to face harsher punishment which is constitutionally not permissible. It is contended that there was no interim confiscation under the 1988 Act but under the Orissa Act they have to face confiscation. We have already opined that confiscation is not a punishment and, therefore, Article 20(1) is not attracted. Thus, the real grievance pertains to going through the process of confiscation and suffering the same after the ultimate adjudication of the said proceeding which is subject to appeal. In this context we are required to see the earlier provision. The 1988 Act provides for applicability of Criminal Law Amendment Ordinance, 1944. Section 2 refers to "interpretation" and in Sub-section (1) it is stipulated that "Schedule offence" in the Ordinance means an offence

specified in the Schedule to the Ordinance; Section 3 deals with the application for attachment of property; Section 4 provides for ad interim attachment; Section 5 deals with investigation of objections to attachment; Section 6 provides for attachment of property of mala fide transferees; Section 7 stipulates how execution of orders of attachment shall take place; Section 8 provides for security in lieu of attachment and Section 9 deals with administration of attached property. Section 10 deals with duration of attachment and Section 11 provides for appeals. Section 13 deals with disposal of attached property upon termination of criminal proceedings. Section 13(3) reads as follows:

“13.(3)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 Government 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 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 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.”

11) Referring to judgments in **State of Andhra Pradesh v. Gandhi²**, **K.Satwant Singh v. State of Punjab³** and **Maya Rani Punj v. CIT⁴**, the Apex Court observed that confiscation being not a punishment does not come in either of the categories. Thus viewed, the property of an accused facing trial under the 1988 Act could be attached and there can be administration by a third party of the said property and eventual forfeiture after conviction.

12) Differentiating between the words “confiscation and “attachment”, the Apex Court in **Kerala State Financial Enterprises Ltd., v. Official**

² (2013)5 SCC 111

³ AIR 1960 SC 266

⁴ (1986) 1 SCC 445

Liquidator⁵ held that the word "attachment" would only mean "taking into custody of the law person or property of one already before the court, or of one whom it is sought to be brought before it. It is used for two purposes: (i) to compel the appearance of a Defendant; and (ii) to seize and hold his property for the payment of the debt. It may also mean prohibition of transfer, conversion, disposition or movement of property by an order issued by the court.

13) Having regard to the above, the Legislature thought it proper to change nature and character as a interim measure. The Apex Court in **Yogendra Kumar Jaiswal's case** further held that property obtained by ill-gotten gains, if prima facie found to be such by the authorized officer, has to be confiscated. The accused has no vested right as regards the interim measure. He is not protected by any constitutional right to advance the plea that he cannot be made liable to face confiscation proceedings of the property which has been accumulated by illegal means. That being the litmus test, the court held that filament of reasoning has to rest in favour of confiscation and not against it. Having regard to the above, the Apex Court held that the provision does not violate any constitutional assurance.

14) Ergo, the argument advanced by the counsel that the Special Courts Act has no retrospective operation cannot be accepted, more particularly, in view of Section 6(2) of the Act. Hence, the argument that since the property is already attached, confiscation proceedings cannot be initiated falls to ground.

⁵ (2006) 10 SCC 709

15) Accordingly, all the Writ Petitions No.3262, 11412, 11417, 13550, 13581, 5889, 6015, 6029, 8116, 8391 and 9244 of 2019 are dismissed. There shall be no order as to costs. Consequently, the Miscellaneous Petitions pending if any, in these writ petitions, shall stand closed.

ACTING CHIEF JUSTICE C. PRAVEEN KUMAR

JUSTICE M. SATYANARAYANA MURTHY

Dated:30.09.2019
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