

Ravi Sinha & Ors. Vs State of Jharkhand

Court: SUPREME COURT OF INDIA

Date of Decision: Oct. 5, 2017

Acts Referred: [Indian Penal Code, 1860](#), [Section 120B](#), [Section 420](#), [Section 468](#), [Section 471](#), [Section 467](#), [Section 409](#), [Section 472](#) - Punishment of criminal conspiracy - Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document - Forgery of valuable security, will, etc - Criminal breach of trust by public servant, or by banker, merchant of agent - Making or possessing counterfeit seal, etc. with intent to commit forgery punishable under Sec. 467

[Prevention of Corruption Act, 1988](#), [Section 13\(2\)](#), [Section 13\(1\)\(c\)](#), [Section 13\(1\)\(d\)](#) - Criminal Law Amendment Ordinance, 1944, Section 13, Section 12

Citation: AIR 2017 SC 5443 : 2017 AIR(SCW) 5443 : (2017) 12 SCR 913 : (2018) 11 SCC 242 : (2017) 12 Scale 398 : (2017) 5 RAJ 453 : AIR 2018 SC(CRI) 164

Hon'ble Judges: A.K. Sikri, J; Ashok Bhushan, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. All these appeals arise out of proceedings undertaken under Criminal Law (Amendment) Ordinance, 1944, by which certain properties were

attached on an application filed on behalf of the State, which attachments were subsequently made absolute. Criminal appeals filed before the High

Court by the appellants were dismissed leading to filing of these criminal appeals. Criminal Appeal No. 1561 of 2008 and Criminal Appeal No.

1521 of 2008 have been filed against the common judgment dated 21.06.2007 of Jharkhand High Court dismissing two criminal appeals filed by

the appellants.

2. Criminal Appeal Nos. 1542-1543 of 2008 as well as Criminal Appeal Nos. 1558-1559 of 2008 have been filed against the common judgment

dated 21.06.2007 of Jharkhand High Court by which two criminal appeals filed by appellants were dismissed.

Facts of Criminal Appeal No. 1561 of 2008 and Criminal Appeal No. 1521 of 2008

3. This Court vide its order dated 19.03.1996 in State of Bihar & Anr. v. Ranchi Zila Samta Party & Anr., (1996) 3 SCC 682, entrusted a case

of large-scale defalcation of public funds, fraudulent transactions and falsification of accounts, to the tune of around Rs. 500 crores, which came to

light in the Animal Husbandry Department of the State of Bihar. A similar situation prevailed in the Education, Cooperation and Fisheries

Departments. It was agreed by all the counsel in above case that an in-depth investigation is required to be made. The only controversy between

counsel on either side was whether the High Court, in exercise of its power under Article 226, could take the investigation away from the State

police and entrust it to the Central Bureau of Investigation (CBI).

4. The allegation in brief was that the large number of accused persons in pursuance of a conspiracy defrauded Government of Bihar (now

Jharkhand) to the extent of several hundred crores during the period 1990 to 1994 on the basis of fake allotment letters purported to have been

issued by the Director, A.H. Department, for purchase of medicines. Fake supplies were shown by the suppliers and money was withdrawn on the

basis of fake allotment orders and the same was misappropriated by the accused persons, suppliers, public servants and others. Several criminal

cases under Sections 120B, 409, 420, 467, 468, 471 and 472 with Sections 13(2) and 13(1)(c) & (d) of the Prevention of Corruption Act, 1988

were registered.

5. One Dr. S.B. Sinha, who was a public servant, was found involved in 41 criminal cases registered against various accused. Dr. S.B. Sinha was

father of Ravi Sinha, appellant No.1, appellant No.2 Nephew of Dr. S.B. Sinha, appellant No.3 wife of Dr. S.B. Sinha and appellant No. 4 is wife

of Ravi Sinha, appellant No.1. An application was filed by the State of Bihar before the Court of Judicial Commissioner, Ranchi under Section 3 of

Criminal Law (Amendment) Order, 1944, arraying Dr. S.B. Sinha as respondent No.1, the appellant No.1, Ravi Sinha as respondent No.2, the

appellant No. 2 as respondent No.4, appellant No.3 as respondent No.5 and appellant No.4 as respondent No.6 to the petition by which

properties mentioned in Annexure-II to the petition were to be attached. It was further prayed that the said attachments be made absolute till final

termination of the criminal proceedings after submission of charge-sheet, if any, by the C.B.I. In the application, it was mentioned that in the

investigation by the C.B.I., it has been found that Dr. S.B. Sinha was involved in 41 cases registered and consequent to conspiracy, Government

of Bihar was defrauded to the tune of Rs. 600 crores.

6. Application was filed in RC No.31(A)/96, in which it was stated that money was misappropriated by the accused by causing wrongful gains to

themselves and the substantial portion of the money was procured in obtaining various properties. Details of properties possessed by Dr. S.B.

Sinha through self and other respondents were mentioned in Annexure-II. In that application, it was further stated that it is apprehended that Dr.

S.B. Sinha, his wife, children and other respondents will withdraw the amounts and dispose of the properties during the course of investigation

which is in an advanced stage. On the basis of said application, an order was passed on 30.08.1996 by the Judicial Commissioner, Ranchi, by

which the application was allowed for ad-interim attachment of the properties detailed in Annexure-II. It was further directed that notice be issued

to the opposite parties to show-cause as to why the interim order of attachment be not made absolute. Response to show-cause was shown by

respondent Nos. 1, 3, 4 and 5 to the application on 21.02.1997 and respondent Nos. 2 and 6 to the application on 26.11.1998/08.12.1998. The

respondents also challenged the jurisdiction of Judicial Commissioner, Ranchi. Dr. S.B. Sinha died on 25.10.1999. Opportunity was granted by

Judicial Commissioner to produce evidence in support of show-cause given to the Judicial Commissioner.

7. On 26.03.2001, a petition was filed by C.B.I. praying therein that order of ad-interim attachment be made absolute. The respondent Nos. 2 to

6 to the application did not participate in the proceedings before the Judicial Commissioner, Ranchi. After April, 1999, various dates were fixed by

the Judicial Commissioner whereby several opportunities were given to the respondents for adducing evidence. Since these opportunities were not

availed of by the respondents, Judicial Commissioner by an order dated 03.05.2001 made the ad-interim attachment of properties absolute. On a

petition filed under Clause 9(2) of Ordinance for appointment of a receiver to manage the attached properties, the Judicial Commissioner passed

an order on 12.06.2001 directing the C.B.I. to suggest the names of competent persons for appointment of receiver. Aggrieved by the orders

dated 03.05.2001 and 12.06.2001, Criminal Appeal Nos. 307 and 310 of 2001 was filed by the appellants in the High Court. The Division Bench

of the High Court vide its judgment dated 21.06.2007 dismissed the criminal appeals. Aggrieved by the said judgment, Criminal Appeal Nos.

1561 of 2008 and 1521 of 2008 has been filed.

Criminal Appeal Nos. 1542-1543 of 2008 and Criminal Appeal Nos. 1558-1559 of 2008

8. Several criminal cases were got registered by the C.B.I. against different accused persons including one Vijay Kumar Mallick. Vijay Kumar

Mallick was also an accused in R.C. Case No.28(A)/96, R.C. Case No.32(A)/96 and R.C. Case No.33(A)/96. The alleged amount of fraud in

the said three cases was to the extent of Rs. 24,69,60,090/- as reported in the First Information Reports. An application was filed before the

Judicial Commissioner, Ranchi by State of Bihar against Vijay Kumar Mallick(as O.P. No.1), Smt. Komal Mallick, (as O.P. No.2) and Sandeep

Mallick and three other persons. It was alleged in the application that in the course of investigation, it has transpired that Vijay Kumar Mallick is

involved in three cases being R.C. Case No. 28(A)/96, R.C. Case No. 32(a)/96 and R.C. Case No. 33(A)/96 in which prima facie the amount

defrauded is to the extent of Rs. 24,69,60,090/-. It was further alleged that Vijay Kumar Mallick has acquired huge movable and immovable

assets in his own name and in the name of his wife and children and others at different places. In Annexure-II, the statement and details of the

properties was given. It was further stated that O.P. No.1 and others have not invested in the properties from their own source of income. Request

was made in the application for issuing an ad-interim order for attachment of properties. On 30.08.1996, the Judicial Commissioner passed an ad-

interim order attaching the properties as per details given in Annexure-II. The ad-interim order of attachment was made absolute on 27.04.2001

and further order on 12.07.2001 was passed directing the C.B.I. to suggest names for appointment of receiver.

9. Respondent NOs. 2, 3 and 4 to the application had filed criminal appeals in the High Court of Jharkhand. The High Court of Jharkhand vide its

order dated 26.03.2003 set aside the orders passed by the Judicial Commissioner and further directed the Judicial Commissioner to pass a fresh

order after hearing the parties. Show-cause was shown before the Judicial Commissioner. The Judicial Commissioner after noticing the show-

cause passed a detailed order dated 13.10.2004 making the ad-interim order as an absolute. Vide order dated 18.10.2004, direction was given

for appointment of receiver to manage the attached properties. By subsequent order dated 14.12.2004, Deputy Commissioner, Ranchi was

appointed as receiver.

10. Criminal appeals were filed against order dated 13.10.2004, 18.10.2004 and 14.12.2004 being Criminal Appeal Nos. 1931 of 2004 and 694

of 2005 before the Jharkhand High Court. The Division Bench of the Jharkhand High Court dismissed both the appeals vide its judgment dated

21.06.2007. Aggrieved by the said judgment Sandeep Malik has filed Criminal Appeal NOs. 1542-1543 of 2008 and Kamal Malik has filed

Criminal Appeal Nos. 1558-1559 of 2008.

11. We have heard learned counsel for the appellants appearing in these criminal appeals as well as learned counsel appearing for the State of

Jharkhand.

12. We first take up the Criminal Appeal Nos. 1561 of 2008 and 1521 of 2008 filed by Ravi Sinha & Ors. Shri K.V. Viswanathan, learned senior

counsel appearing for the appellants have raised various submissions in support of the appeals. The foremost submission raised by Shri K.V.

Viswanathan is that Dr. S.B. Sinha, who was allegedly the brain behind conspiracy having died on 25.10.1999, which fact having brought to the

notice of the Judicial Commissioner, there was no reason to continue the attachment and to make the attachment order absolute on 03.05.2001. It

is submitted that due to death of Dr. S.B. Sinha, criminal proceedings against him has abated. Dr. S.B. Sinha no longer could have been convicted

due to abatement of proceedings and the order of attachment ought to have been withdrawn.

13. Learned senior counsel has relied on judgment of this Court in U. Subhadramma & Ors. v. State of Andhra Pradesh, 2016(3) R.C.R.

(Criminal) 548 : 2016(2) Recent Apex Judgments (R.A.J.) 206 : (2016) 7 SCC 797. He submits that due to death of an accused neither any guilt

can be pronounced nor any conviction can be ordered and the order of attachment of properties ought to have been withdrawn and the Judicial

Commissioner committed error in making the order absolute. It is further submitted that appellants were alleged to be only name lenders and

except Ravi Sinha, other three appellants are not involved in fodder scam case. In any case, the attachment could have been with regard to the

properties of Dr. S.B. Sinha and the properties of the present appellants were not liable to be attached. Ravi Sinha has been accused in four cases

out of which in one case, he has been acquitted and in another case, he was not sent up for trial. In one case, i.e. RC No. 39/1996, appeal has

already been filed in the High Court and the case i.e. R.C. No. 68/1996 is pending in the trial court. He further submits that amount alleged to be

misappropriated in R.C. No. 39/1996 and R.C. No. 68/1996 stands secured as the same was deposited before the trial court pursuant to orders

of the Hon"ble High Court granting him bail.

14. It has been further contended that C.B.I. had not sought orders under Section 12 of the 1944 Ordinance at the stage of conviction in R.C. No.

39/1996, it cannot now do so. The stage of Section 12 having come and gone, no orders can be passed with regard to properties attached.

15. Shri K.K. Venugopal, learned Attorney General refuting the submission of learned senior counsel for the appellants contends that the order of

attachment as well as order making the attachment absolute are in accordance with law. He submits that in a fodder scam, which relates to non-

supply of medicines and in which money more than Rs. 600 crores has been defrauded, the accused are part of a larger conspiracy. Ravi Sinha

has already been convicted by judgment and order dated 12.06.2008 in R.C. No. 39(A) of 1996 (Spl. No. 41 of 1996), it has been proved that

he has committed offence. Sentence of Rigorous Imprisonment for various offences including fine has been awarded against him. The properties at

this state where a larger conspiracy was hatched and large number of accused having been convicted and/or are still facing trial, the attachment of

the properties could not have been withdrawn. Even though Dr. S.B. Sinha had died in the year 1999, the properties attached could not have been

released. One of his legal heirs was also facing criminal proceedings in the same larger conspiracy to misappropriate the Government fund.

16. Shri K.K. Venugopal further submits that the mere fact that allegations against Shri Ravi Sinha in the charge sheet, which was filed against him

were of specific amount cannot be said to mean that once the aforesaid amount is mentioned, the properties already attached should be withdrawn

since properties were acquired under larger conspiracy and the smaller conspiracy was part of a larger conspiracy. Shri Venugopal has also

referred to judgment of this Court in State of Jharkhand v. Laloo Prasad Yadav, 2017(2) R.C.R.(Criminal) 901 : 2017(3) Recent Apex

Judgments (R.A.J.) 247 : (2017) 8 SCC 1. Shri K.K. Venugopal answering the submissions with regard to Sections 12 and 13 of Ordinance

contends that proceedings under Sections 12 and 13 are independent proceedings and merely because at the time of conviction order passed

against Ravi Sinha, no mention was made of properties, which were attached shall not come in the way in passing an order under Section 13 of the

Ordinance, 1944. After completion of the criminal proceedings, order can be passed under Section 13.

Submissions in Criminal Appeal Nos. 1542-1543 of 2008 and 1558-1559 of 2008

17. Learned counsel appearing for the appellant in aforesaid criminal appeals contends that the above appeals involved totally different issues from

the Ravi Sinha's case. The trial court and the High Court have not considered the various materials like Income Tax Returns, Wealth Tax Returns,

Electricity Receipts, House Tax Receipts, Bank Drafts etc., which clearly established the independent status/sources of income of the Appellants.

The High Court has merely confirmed the order of trial court without consideration of the material. There was no justification for attachment of

property at Sl. No.3 i.e. Kashmere Gate property since the said property was acquired in the year 1955 in the name of Sandeep Malik. The

Property No. 158, Gali Bagichewali, Kashmere Gate, Delhi was purchased in the year 1955 in the public auction. The property of Engineer's

Enclave, New Delhi in which Sandeep Malik is a co-owner was purchased in the year 1991 i.e. much before the alleged scam.

18. Learned counsel appearing for the State of Jharkhand has refuted the above submission and submitted that application which was filed by the

State clearly alleged that properties were purchased out of ill-gotten money by Vijay Kumar Mallick in his name and in names of his relatives. It is

further stated that the value of properties was only about Rs. 25 lakhs whereas the defalcation alleged was more than a crore, hence attachment of

other properties of accused are also permissible under the provisions of Ordinance, 1944.

19. We have considered the submissions of learned counsel for the parties and have perused the records.

20. We first proceed to the submissions raised by Mr. K.V. Viswanathan. The principal submission of Shri K.V. Viswanathan is that after death of

Dr. S.B. Sinha on 25.10.1999, the attachment of properties ought to have been withdrawn since after the death of the accused neither any order

of conviction can be passed nor even guilt can be pronounced. He has placed reliance on judgment of this Court in U. Subhadramma & Ors. v.

State of Andhra Pradesh, (supra). This Court in the said case was considering the provisions of Ordinance, 1944. The properties were attached

after the death of accused and further conviction was pronounced several years after his death. This Court held that no application for attachment

could have been made after the death of the accused and the conviction pronounced after death of the accused was null and void. In Paragraph 12

of the judgment, following has been held:-

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.

21. There cannot be any dispute to the proposition that no proceedings under Ordinance, 1944 can be undertaken against the accused after his

death and the prosecution cannot continue after the death of an accused. There cannot be any dispute that after death of Dr. S.B. Sinha, no

prosecution could have been continued against him, in fact after noticing his death, the charge sheet was not submitted by C.B.I. against Dr. S.B.

Sinha.

22. In the present case, there is one fact, which makes the present case different from the case of U. Subhadramma & Ors. v. State of Andhra

Pradesh, (supra), i.e. in the present case, Ravi Sinha, the son of Dr. S.B. Sinha was himself accused in large number of cases. In one case, he had

already been convicted and fined. In another case relating to the similar fodder scam, i.e., R.C. No. 36/1996, the trial is going on. There is a

specific allegation that he had received payment but did not supply medicine worth Rs. 9.75 lakhs in R.C. Case No. 39/1996, in which he has

been convicted. Allegation was against him that the company was paid a sum of Rs. 5.90 lakhs and there was non-supply of medicine. The

appellant himself in his appeal No. 1561 of 2008 has filed a rejoinder affidavit and in Paragraph 16, following has been stated:-

That what emerges from the aforesaid facts is that out of four cases against him Ravi Sinha has been acquitted in one and not sent up for

trial in another. Even in the other two, in one the trial is underway and in the other he has been convicted but his appeal is pending before the

Hon"ble High Court. While nothing needs to be said about the first two cases, even with respect to the latter two cases, the amount

allegedly misappropriated by Ravi Sinha, assuming whilst denying that ultimately the charges are found true, stands secured as he has

already deposited the amount with the trial court. Therefore there can be absolutely no rationale for initiating separate attachment

proceedings against him as the very object of the attachment proceedings, under the Ordinance is to secure the amount allegedly

misappropriated so that in case of conviction, the attached assets could be forfeited and liquidated to make good the amount

misappropriated. Being conscious of this legal position, the CBI has not initiated and cannot initiate any attachment proceedings against Ravi

Sinha but is rising this issue of cases against Ravi Sinha just to prejudice this Hon"ble Court. True copy of a chart dated Nil giving the status

of the cases against Ravi Sinha is appended hereto marked ANNEXURE -R/11

23. It is thus an admitted position that Ravi Sinha had been convicted in the fodder scam case and in one case trial is already going on. There being

an order of conviction of Ravi Sinha and in other case trial being underway making attachment order absolute cannot be faulted with. It is true that

prosecution against Dr. S.B. Sinha could not have been continued after his death and no guilt can be pronounced of Dr. S.B. Sinha, he being dead.

However, the properties which were already under attachment, having come in the hands of accused Ravi Sinha as one of the legal representatives,

who has been convicted in a fodder scam case and is facing trial in another case, present is not a case where this Court can exercise its jurisdiction

under Article 136 to interfere with the order of the High Court and of the Judicial Commissioner in making the order of attachment absolute. We

thus do not find the present case fit to exercise our jurisdiction under Article 136 on the above submission of learned counsel for the appellants.

24. The submission raised by Mr. Viswanathan in regard to Sections 12 and 13 of the Ordinance needs now to be considered. Sections 12 and

13 of the Ordinance are as under:-

12. Criminal Courts to evaluate property procured by scheduled offences.

(1) Where before judgment is pronounced in any criminal trial for a scheduled offence it is represented to the Court that an order of

attachment of property has been passed under this Ordinance in connection with such offence, the Court shall, if it is Convicting the

accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence.

(2) In any appeal or revisional proceedings against such conviction, the appellate or revisional Court shall unless it sets aside the conviction,

either confirm such finding or modify it in such manner as it thinks proper.

(3) In any appeal or revisional proceedings against an order of acquittal passed in a trial such as is referred to in sub-section (1), the

appellate or revisional Court, if it convicts the accused, shall record a finding such as is referred to in that sub-section.

(4) Where the accused is convicted of a scheduled offence other than one specified in item I of the Schedule to this Ordinance and where it

appears that the offence has caused loss to more than one Government referred to in the said schedule or local authority the finding referred

to in this section shall indicate the amount of loss sustained by each such Government or local authority.

(5) Where the accused is convicted at the same trial of one or more offences specified in item I of the Schedule to this Ordinance and of one

or more offences specified in any of the other items of the said Schedule, the finding referred to in this section shall indicate separately the

amounts procured by means of the two classes of offences.

13. Disposal of attached property upon termination of criminal proceedings.

(1) Upon the termination of any criminal proceedings for any scheduled offence in respect of which any order of attachment of property has

been made under this Ordinance or security given in lieu thereof, the agent of the [State Government or, as the case may be, the Central

Government] shall, without delay inform the District Judge, and shall where criminal proceedings have been taken in any Court, furnish the

District Judge with a copy of the judgment or order of the trying Court and with copies of the judgments or orders, if any, of the appellate or

revisional Courts thereon.

(2) Where it is reported to the District Judge under sub-section (1) that cognizance of the alleged scheduled offence has not been taken or

where the final judgment or order of the Criminal Court is one of acquittal, the District Judge shall forthwith withdraw any orders of

attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security

to be returned.

(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 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.

(4) Where the amounts ordered to be forfeited or recovered under sub-section (3) exceed the value of the property of the convicted person

attached, and where the property of any transferee of the convicted person has been attached under Section 6, the District Judge shall order

that the balance of the amount ordered to be forfeited under sub-section (3) together with the costs of attachment of the transferee"s

property as determined by the District Judge shall be forfeited to Government from the attached property of the transferee or out of the

security given in lieu of such attachment; and the District Judge may order, without prejudice to any other mode of recovery that any fine

referred to in sub-section (3) or any portion thereof not recovered under that sub-section shall be recovered from the attached property of

the transferee or out of security given in lieu of such attachment.

(5) If any property remains under attachment in respect of any scheduled offence of any security given in lieu of such attachment remains

with the District Judge after his orders under sub-section (3) and (4) have been carried into effect, the order of attachment in respect of such

property remaining shall be forthwith withdrawn or as the case may be, the remainder of the security returned, under the orders of the

District Judge.

(6) Every sum ordered to be forfeited under this section in connection with any scheduled offence other than one specified in item I of the

Schedule to this Ordinance shall, after deduction of the costs of attachment as determined by the District Judge, be credited to the

Government {being a Government referred to in the said Schedule} or local authority to which the offence has caused loss, or where there

is more than one such Government or local authority, the sum shall, after such deduction as aforesaid, be distributed among them in

proportion to the loss sustained by each.

25. A perusal of Section 12(1) indicates that when the Court in any criminal trial is represented that an order of attachment of property has already

been passed, the Court shall, if it is convicting the accused, record a finding as to the amount of money or value of other property procured by the

accused by means of the offence. Thus, Section 12(1) is to be invoked before the judgment is pronounced and the Court is obliged to record a

finding when it is represented to the Court that an order of attachment of property has been passed.

26. Learned Attorney General has placed before us a copy of the judgment dated 12.06.2008 of trial court in R.C. No. 39(A) of 1996 convicting

Ravi Sinha. A perusal of which does not indicate that Court was represented by C.B.I. that any property has already been attached. Thus, the

present is not a case where any order was to be passed by the Court under Section 12(1). In the submission, it has been pressed by Mr.

Viswanathan that once stage under Section 12(1) has passed, on it cannot be done later. According to him, now no order can be passed with

regard to attached properties, hence there is no justification for continuation of attachment. Whether any order can still be passed with regard to

attached property is a question to be answered. Section 13 of the Ordinance, 1944 as stated above provides for disposal of attached property

upon termination of criminal proceedings. Termination of criminal proceedings are defined in Section 2(2) of the Ordinance, 1944, which provides

as follows:-

2(2). For the purpose of this Ordinance, the date of the termination of criminal proceeding shall be deemed to be

(a) where such proceedings are taken to the Supreme Court in appeal, whether on the certificate of a High Court or otherwise, the date on

which the Supreme Court passes its final order in such appeal; or

(b) where such proceedings are taken to the High Court and orders are passed thereon and

(i) no application for a certificate for leave to appeal to the Supreme Court is made to the High Court, the day immediately following the

expiry of ninety days from the date on which the High Court passes its final orders;

(ii) an application for a certificate for leave to appeal to the Supreme Court has been refused by the High Court, the day immediately

following the expiry of sixty days from the date of the refusal of the certificate;

(iii) a certificate for leave to appeal to the Supreme Court has been granted by the High Court, but no appeal is lodged in the Supreme

Court, the day immediately following the expiry of thirty days from the date of the order granting the certificate; or

(c) where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last

judgment or order of a Criminal Court in the Proceedings.

27. In the present case against the order of conviction dated 12.06.2008, appeal is already pending in the High Court as has been pleaded by the

appellant. Thus, criminal proceedings have not yet been terminated. Further, in one criminal case, trial is already pending against the accused in

which provisions of Sections 12 and 13 can still be resorted to. Thus, this submission cannot be accepted that once a judgment is pronounced in a

criminal case by the Court and if no findings have been recorded with regard to attached properties, no order can be passed with regard to

attached properties. Section 13 gives ample power to deal with attached properties after termination of criminal proceedings. Mr. Viswanathan has

also submitted that even accepting the allegations against Ravi Sinha, the allegations centre around only to Rs. 9.75 lakhs and Rs. 2.95 lakhs in

R.C. No. 39/1996. He submits that there can be no justification for keeping the properties under attachment when the allegations are only upto the

amount given above and further in the order granting bail, the appellant has already secured the aforesaid amount. We have already noticed that

one more trial is still pending against Ravi Sinha. It is not necessary for us to consider the extent of amount which has been found to be

misappropriated by Ravi Sinha and computing the value of properties attached. These are the questions which can very well be raised by the

appellant Ravi Sinha in Section 13 proceedings or at the time of judgment in pending trial by invoking Section 12 of the Ordinance, 1944. We are

since confined to the only question in the present case; i.e. whether the attachment order ought not to have been made absolute, and thus need not

go into this submission in detail or express any opinion? We thus are of the view that order passed by the Jharkhand High Court dismissing the

criminal appeals filed by the appellant against order of Judicial Commissioner making the attachment order absolute need no interference in

exercise of our jurisdiction under Article 136.

28. Now, we come to the criminal appeals of Sandeep Malik and Kamal Malik. The High Court while dismissing the criminal appeals filed by the

appellant has made following observations in Paragraph 8 :-

Perusal of the impugned order dated 13.10.2004 clearly indicates that the court below had considered each and every aspect of the matter

and gave reasoning as to how the opp. party-appellants have failed to prove that those properties were purchased out of their own source

of income. The court below, on the other hand, would refer to various materials collected by the prosecuting agency to show that those

properties must have been purchased by the appellant no.1, Vijay Kumar Mallik, through ill-gotten money. There is no dispute in the fact

that other appellants are closely related with appellant no.1, Vijay Kumar Mallik, who has been convicted ultimately by the court below.

29. As noted above, earlier the interim attachment orders were made absolute by Judicial Commissioner, which orders were set aside by the High

Court and the matter was remanded. After remand, show-cause was given by the appellants which we have considered in detail as given by the

Judicial Commissioner. Judicial Commissioner vide order dated 13.10.2004 has referred to the various evidences brought on the record including

oral evidence with regard to properties i.e. Engineers Enclave, as well as 158, Bageechewali, Kashmere Gate, New Delhi. There is a detailed

consideration from Page 76 to Page 81 of the paper book of Criminal Appeal Nos. 1558-1559 of 2008. After consideration of facts and

evidences, the Judicial Commissioner was found it a fit case to make an attachment absolute. The High Court has confirmed the aforesaid order

vide its judgment dated 21.06.2007. In so far as submissions of learned counsel for the appellants regarding Kashmere Gate property, which was

purchased in 1955, learned counsel for the State has submitted that power to attach the property does not confine only to the properties acquired

by ill-gotten money but to secure the property misappropriated, any property of the accused can be attached. A perusal of Section 4 of

Ordinance, 1944 indicate that power to attach the money or other property alleged to have been so procured is very much there. Further, section

provides that "if it transpires that such money or other property is not available for attachment, such other property of the said person of equivalent

value as the District Judge may think fit..." Thus, the power is not confined and the power can be exercised for attaching several properties to take

care of the amount which alleged to be defaulted. In the present case, in the order making the attachment absolute, following observations have

been made:-

In the present case annexure-I to the main application shows that the amount allegedly received by O.P. No.1 from A.S.D. Chaibasa is Rs.

1,49,41,000/- Annexure-II to the main application shows the valuation of the attached properties to be Rs. 25 lacs which is much less than

the amount said to have been procured by means of scheduled offences....

Thus, the submission that the property which was acquired in the year 1955 could not have been attached cannot be accepted.

30. The appellants in the present case virtually are asking us to reappraise the evidence and record a finding that the properties attached were

purchased by them of their own finances; which exercise need not be gone into for exercise of jurisdiction under Article 136 in facts and

circumstances of the present case.

31. In result, all the appeals are dismissed.