

(2011) 10 PAT CK 0033

Patna High Court

Case No: Criminal Appeal (SJ) No. 1039 of 2011

Yogendra Kumar Singh and
Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Oct. 17, 2011**Acts Referred:**

- Bihar Special Courts Act, 2009 - Section 13, 14, 15, 15(1), 17
- Prevention of Corruption Act, 1988 - Section 13(2)

Citation: (2012) 1 PLJR 197**Hon'ble Judges:** Dharnidhar Jha, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Dharnidhar Jha, J.

The present appeal u/s 17 of the Bihar Special Court Act, 2009 ("the Act" in short) has been preferred by the Appellants, who had been asked to explain by an appropriate notice issued u/s 14 of the Act the acquisition of different properties, total value of which stood, as per the petition filed by the State of Bihar, at Rs. 9,71,761. The above corpus of properties was acquired by Appellant Yogendra Kumar Singh, who had joined as a Suit Clerk in Gaya Municipal Corporation on 7.2.1966 and was retired from service as Upper Division Clerk on 31.3.2005. In between, he was acting as the Revenue Officer of the above noted Municipal Corporation and as per the allegation, which emanated from some anonymous petition filed before the District Magistrate, Gaya, the graph of financial progress of Appellant No. 1 had taken a sharp ascent due to his indulgence in realizing bribe and acquisition of properties by commission of offence as defined u/s 2(d) of the Act.

2. What appears further is that the District Magistrate sent the petition to the Vigilance Department and an internal enquiry continued for many more years and lastly, on that petition which was received by the District Magistrate, Gaya some times in 1999, Vigilance P.S. Case No. 82 of 2007 was registered which was pending before the learned Special Court for trial.

3. In view of the provisions of Section 13 of the Act, the State of Bihar may through the Public Prosecutor, file a petition after presenting the prima facie evidence indicating reasons to believe to the State Government that after commission of the offence u/s 2(d) of the Act a public servant either serving or retired, had acquired properties either in his own name or in the name of any other persons which could be disproportionate to the known source of his income. On such petition being filed, it is incumbent that a notice u/s 14 of the Act has to go to the persons in whose name the acquired properties by the public servant, serving or retired, is said to be acquired. In spite of the case having been registered in 2007 and the charge sheet having been submitted long back, the petition u/s 13 of the Act was filed in year 2010 and on that basis the learned Authorized Officer, Special Court - II, Vigilance, Patna registered Special Case No. 6 of 2010 u/s 13 of the Act for adjudication of the petition. On notices being served upon the Appellants and one Mohan Kumar Singh, they appeared and filed a joint statement of defence annexing various documents in support of the same.

4. After hearing both the parties and noticing the evidence, which was produced before the learned Authorized Officer, he directed by his order dated 28.7.2011 to confiscate the properties as per description in Schedule A and B of the petition u/s 13 of the Act. That particular order dated 28.7.2011 is being impugned before this Court.

5. After having heard both the sides and after having perused the evidence, what this Court finds is that the acquisition of property is of two classes; first class of acquisition includes two trucks, one sumo four-wheeler and two Hero Honda motorcycles in the names of two different persons who are, undisputedly, the family members being the wife or the sons or other relatives of Appellant No. 1 Yogendra Kumar Singh. The second class of property is constituted by two residential plots with residential buildings standing over them as also a third plot which appears commercial in nature over which, two shops were constructed by Appellants Kundan Kumar Singh and Kamlesh Kumar Singh. Another property besides the two above classes of properties, was also there and that was in the form of acquiring a rifle purchased by Appellant Yogendra Kumar Singh in the year 1997 under a valid licence for a value of rupees thirty six thousand.

6. Finding that Mohan Kumar Singh had nothing to do with any of the properties and his acquisition was valid, he was exempted from the ambit of the order impugned herein. The order was only confined to the present set of five Appellants. The Appellants pleaded that the two trucks which are said to be acquired by

commission of the offence defined under the Act, were, in fact, purchased by taking out loan from Bihar State Financial Corporation (hereinafter referred to above as the "Financial Corporation") and those were properly delivered by the suppliers on two different dates, i.e., 21.7.1989 and 1.8.1989 and the whole file in respect of taking out the loan and purchase of two trucks was perused by the learned Authorized Officer but, as per the contention of the Learned Counsel for the Appellants, he was making some wrong records of facts which were against the documents available to him on the relevant loan file of the Financial Corporation. It was further stated that likewise, Sumo vehicle was purchased by taking out a loan from Bank of Baroda by Appellant Kundan Kumar Singh and the total loan amount was Rs. 2.85 lacs and there was a dispute regarding settlement of dues between the Appellant and the bankers and that was settled through Lok Adalat held in the High Court. In fact, the settlement was not for the loan amount. It was only in respect of the fraction of the amount which was due to be paid to the bank with interest thereon.

7. So far as acquisition of two motorcycles is concerned, the contention is that Manoj Kumar Singh, Appellant No. 3, had been given one motorcycle as a gift by his father in law at the time of his marriage and he sold that particular motorcycle and from the sale proceeds of rupees eighteen thousand he purchased a new motorcycle for the same price and, as such, acquisition could not be said to be illegal. So far as acquisition of the land in the name of Ahilya Devi, wife of Appellant No. 1 is concerned, contention is that the land was purchased for Rupees four thousand in 1982 by a registered deed of sale and construction was carried over it from 1983 to 1990 and total cost as per the version of the Vigilance Department itself, was somewhere around two lacs thirty four thousand only. It was submitted that according to the viability report submitted and prepared by the Financial Corporation in respect of financing the purchase of two trucks, on being acquired by the Appellant Ahilya Devi and her two sons, they were to generate Rs. 2.10 lacs per annum and part of that income was utilized in the construction of house besides utilizing some part of income from agriculture which was generated from farming on ancestral properties. So far as second plot and the house standing over it was concerned, it was submitted that the same was undisputedly standing in the joint name of Smt. Neelam Devi who was the wife of Birendra Singh, full brother of Appellant Yogendra Kumar Singh and Appellant No. 3 Manoj Kumar Singh, son of Appellant No. 1 and without impleading the said Smt. Neelam Devi as party, the said property has been directed to be confiscated, which was completely against the spirit of Section 14 of the Act.

8. So far as the acquisition of land and construction of two shops by Appellant Kundan Kumar Singh and Kamlesh Kumar Singh is concerned, the defence is that purchase was made of an area of 825 sq.ft. of land on 26.9.1986 by a registered deed of purchase and shops were constructed in 1998 and the needed money came from the income of running of two trucks and the Sumo vehicle. So far as acquisition of rifle for a value of rupees thirty two thousand is concerned, contention was that

the actual value as per receipts submitted by the Appellants was only Rs. 30400 and not Rs. 32000. Admittedly, the Vigilance itself indicated that the total saving from the salary of Appellant No. 1 Yogendra Kumar Singh alone was Rs. 1,42,239.33, which was more than enough to purchase the rifle.

9. If one considers the provision of Section 15 of the Act, what may appear is that after the evidence is produced by the State and a notice is issued and the public servant or other persons who are said to be holding the properties on behalf of the public servant on account of the properties standing in their respective names, appear and file their written statement along with supporting evidence, then the Authorized Officer shall have to offer a reasonable opportunity of being heard to the parties and thereafter record a finding as to whether all or any of the properties in question had been acquired by commission of the offence u/s 13(2)(d) of the Prevention of Corruption Act. While recording the finding, the Authorized Officer is further required to identify the properties which in his opinion, might have been acquired by commission of the offence as defined by Section 2(b) of the Act. For that purpose, the Authorized Officer is required as per the provisions of the Act, to consider the allegations, the evidence furnished by the State in support thereof and also the defence statement of delinquent public servant or other persons who have been noticed to appear and show cause as also the evidence produced in support of their defence statement and then to record the finding. It is true that rules of evidence are never applicable to the proceedings of hearing a petition u/s 13 of the Act, nonetheless, it cannot be said that the principles of judging the facts on the balance of probabilities have to be resigned and divorced. Judging a fact after considering the stances of the parties is the only standard of judging and that standard is always based on reasonable probability, which might be appearing from the statements made by the person who had set up indictment as also the person who had been called upon to answer that particular indictment. It could never be a fair judging if a court fails to consider the statements which could be supposed to be brought before him u/s 13 of the Act and directs to confiscate all the properties. If that could be so, then the particular language of Section 15(1) of the Act that a reasonable opportunity of being heard be given, shall be defeated and it shall lose all its importance. Those particular words which appear in Section 15(1) of the Act clearly enshrine the principles of natural justice that no person could be condemned without being heard. This is the reason that the process of judging has to be, in my opinion, on the balance of probability especially, when the prima facie evidence does not mean the evidence needed to establish the acquisition or indictment to the hilt. It is only required to raise a presumption that the probability of such accusation or indictment existed.

10. The learned Authorized Officer has indicated in his order that he was requested to seek the production of loan records from the Financial Corporation as regards claim of the Appellants of acquiring the truck on obtaining a loan from that institution. That record is available to this Court also on account of being part of the

lower court records. The learned trial judge has made some incorrect records of facts. He has recorded that the two trucks were actually purchased by making direct payment of cash and two drafts were shown issued and received by the supplier in order to justify or in order to covering up the shabby deal of sale and purchase of two trucks. I find that the document which has been held by the learned Authorized Officer on a cash receipt is rather a proforma invoice dated 26.5.1989 which was issued by M/s Chandra Brothers, 67, A.P. Colony, Gaya, Bihar to the intending parties to purchase the two trucks. It has clearly been stated in the footnote of the proforma invoice dated 26.5.1989 that price has been quoted for LPT "B" 42 with GBS and the total price of the two trucks was Rs. 5,38,282.60 only and further that Rs. 55,000 only had been deducted from the total price to be paid, which had been deposited with the suppliers as the margin money by the intending purchasers of the vehicles as per money receipt no. 147 dated 26.5.1989 in respect of payment of margin money of rupees fifty five thousand only. The learned Authorized Officer appears being misled further from one document which appears at page 67 of the record of Financial Corporation showing the forwarding of the draft bearing No. 769720 dated 6.7.1989 issued from the State Bank of India towards the payment of price of two trucks with a request to the dealer to deliver the vehicles at the earliest. The learned trial judge, who was probably being misled by the fact as to when the draft was being forwarded on 11.7.1989, then how cash was being paid on 26.5.1989. It may be pointed out that corpus of cash which was paid on 26.5.1989 was only to the tune of Rs. 55000 which was margin money which was never the full price as may appear from document dated 26.5.1989. The draft was issued actually on 11.7.1989 and as may appear from the entire document, i.e., the delivery receipt of the vehicles and the documents showing the delivery of the vehicle with two trucks were to the Appellant Ahilya Devi and her sons on 27.1.1989 and 1.8.1989. These are the documents which are available on the records which were produced by the Financial Corporation at the direction of the learned Authorized Officer and those documents validly explained the acquisition of the two trucks for Rs. 7.85 lacs.

11. From the perusal of the records produced by the Financial Corporation, it appears that the total income to be generated per annum by two trucks was Rs. 2.10 lacs. If this could be the generated income then it could very well be said that acquisition of house standing in the name of Appellant Ahilya Devi was not the asset disproportionate to the income of Yogendra Kumar Singh.

12. It was contended by Shri Sharma, learned senior counsel appearing on behalf of the Vigilance Department that the total statement of income has not been furnished. Might be, it is correct and might be that Appellants were avoiding payment of tax but for that reason the properties acquired validly through loans or income generated from transport business could not be said to be illegal or disproportionate to the known sources of income. When it comes to consider the disproportionate asset of a public servant, it is always to be relatable to the salary of the public servant but if public servant succeeds in explaining the acquisition

through valid and legal source, then that has to be considered in that particular context and not in context to his monthly salary receipts.

13. So far as acquisition of Sumo vehicle is concerned, the same again was purchased after obtaining a loan of Rs. 2.85 lacs from Bank of Baroda by Appellant Kundan Kumar Singh. This is also undisputed that the bank had paid the price of the vehicle after due deposit of margin money which was to be deposited by loanee and that vehicle was being run for commercial purposes so as to generate income.

14. Thus, what appears from the above discussion is that the acquisition of two trucks and one Sumo vehicle could be sufficient to generate sufficient income by virtue of which the two Appellants Kundan Kumar Singh and Kamlesh Kumar Singh could have purchased a plot of land measuring 825 sq.ft. to construct two shops for augmenting their income further. There does not appear any disproportionateness in the source of income of the Appellants and the learned Authorized Officer was not considering these aspects of the matter on the balance of probabilities so as to judge the acquisition of properties.

15. The plot and house standing in Mohalla - Maranpur, Civil Lines, Gaya, undisputedly, was an acquisition also in the names of Smt. Neelam Devi who was the wife of Birendra Singh. There is no dispute that Birendra Singh was at the relevant time working in Canara Bank and he had his own source of income. The property was admittedly in the joint acquisition and Smt. Neelam Devi and Manoj Kumar Singh. Smt. Neelam Devi was not impleaded as party and as such, no notice was issued to her as required u/s 14 of the Act and, as such, the very direction for confiscation of the property along with the house appears not sustainable. The same is to be set aside.

16. So far as the allegation of acquiring two Hero Honda Motorcycles by Manoj Kumar Singh is concerned, he has given valid explanation that one motorcycle was given to him by his father-in-law and purchase receipts were also filed and it does not appear unreasonable that the vehicle was sold and the new vehicle was purchased by Manoj Kumar Singh. If the sale proceeds were coming from the valid source of income, then purchase of second motorcycle cannot be said to be disproportionate to the source of income of the Appellants.

17. The Vigilance itself admitted that total saving of Appellant Yogendra Kumar Singh from his valid source of income could be somewhere around Rs. 1,42,229.33. The vigilance alleged that rifle was purchased by Appellant No. 1 for Rs. 36000 but, the receipt in that behalf shows that the purchase of rifle was made from M/s Jai Jawan Arms Company, Kanpur for Rs. 32,400. That corpus of money could be available to the Appellant No. 1 from the admitted source of his income and that again makes the order of confiscation of that particular property, i.e., rifle belonging to Appellant Yogendra kumar Singh also unsustainable.

18. Thus, on consideration of the evidence produced by the state as also on consideration of the defence statement as also the supporting document filed by the Appellants, what this Court finds is that there could not be any improbability that the acquisition could have been made through known sources of income which were mostly either from the financial institution or which were generated by the income of carrying out the transport business. The acquisition of the house in the name of Ahilya Dei, wife of Appellant No. 1 may also reasonably be said to have been made out of the income which could have been generated from transport business by herself and her sons. The two shops purchased could again be said to be explained properly on probability by generation of sufficient fund for purchasing the house and building.

19. Thus, I find sufficient evidence indicating that the order of confiscation which was passed by the learned Authorized Officer in Special Case No. 6 of 2010 on 28.7.2011 could not be sustainable and, as such, I set aside the impugned order and direct that the properties should not be confiscated. If any step has been initiated for confiscation of the properties in any manner by the court below or by any of the agencies of the State Government, they shall immediately be stopped from doing so and shall leave the properties in possession of their lawful proprietors. It is made clear that any finding made by this Court shall not be taken prejudicially by the trial court and it shall proceed with the trial in its own manner as per law.

20. As a result of the above finding, the appeal succeeds and the same is allowed.