

Sujit Kumar and anr Vs. Directorate of Enforcement Patna Sub Zonal Office and anr

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Court : Jharkhand

Decided On : Jul-31-2013

Appellant : Sujit Kumar and anr

Respondent : Directorate of Enforcement Patna Sub Zonal Office and anr

Judgement :

In the High court of Jharkhand at Ranchi Cr.M.P.No.1298 o

1. Sujit Kumar 2.Subodh Kumar @ Subodh Kumar Singh.Petitioners VERSUS Directorate of Enforcement and another.. Opposite Parties CORAM:HONBLE MR. JUSTICE R.R.PRASAD For the Petitioner :Mr.Anil Kumar Sinha, Sr. Advocate For the Opp.Parties: Mr.A.K.Das, Advocate 8/ 31.7.13. This application has been filed for quashing of the entire criminal proceeding of ECIR No. ECIR/02/PAT/11/AD including the order dated 11.4.2013 whereby and whereunder cognizance of the offence punishable under Section 4 of the Prevention of Money Laundering Act has been taken against the petitioners. Before advertng to the submission advanced on behalf of the petitioners, case of the prosecution needs to be taken notice of. The case of the prosecution is that on search being made by the Income Tax Authorities in the houses situated at Ranchi and in the village of Manoj Kumar @ Manoj Kumar Singh, who happened to be the Private Secretary of the then Vidhan Sabha Speaker and the then Minister, Water Supply & Sanitation, Science & Technology Department, several fixed deposit receipts worth crores of rupees

and also cash deposited in the Bank were found. On the basis of which, Vigilance registered Vigilance P.S. case no.23 of 2009 for commission of offences under Sections 467, 468, 469, 471, 420 of the Indian Penal Code and also under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act. On completion of investigation, charge sheet was submitted on the allegation that Manoj Kumar during his tenure as Private Secretary to the then Minister acquired disproportionate assets to the extent of Rs.12,54,23,337/- as fixed deposit receipt and further Rs.23,77,977/- deposited in the Bank in different savings account. The disproportionate assets so acquired were invested in the form of moveable assets in his name and in the name of his family members including petitioners, who happen to be brother of Manoj Kumar. On the basis of the charge sheet submitted by the Vigilance, Directorate of Enforcement, Patna registered ECIR case bearing no. ECIR/02/PAT/11/AD on 22.7.2011 against the accused persons including the petitioners for commission of offence for dealing with proceeds of crime generated by the commission of offence under Sections 467, 471, 420 of the Indian Penal Code and also under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act punishable under Section 3 of the Prevention of Money Laundering Act. During investigation, it was found that said Manoj Kumar with the assistance of several accused persons including these two petitioners had invested the money generated from schedule offence by way of fixed deposit to the extent of Rs.12,54,23,337/- in the name of his wife, daughter, father; another fixed deposit worth Rs.12.75,500/- were found in the name of the said Manoj Kumar and his wife Renu Singh. Further a sum of Rs.23,77,977/- was found deposited in the savings account of Uttar Bihar Kshetriya Gramin Bank, Magarpal Murtuza Branch, Chapra in the name of Manoj Kumar and the petitioner no.2 whereas a sum of Rs.4,49,000/- was found deposited in savings account of U.B.I, Murabadi Branch, Ranchi in the name of petitioner no.1 and Manoj Kumar. On completion of investigation, a complaint was filed by the Enforcement Directorate, upon which cognizance of offence was taken which is under challenge. Mr. Anil Kumar Sinha, learned Sr. counsel appearing for the petitioners submitted that simply for the reason that money was found deposited in the joint account of petitioner no.1 and Manoj Kumar and also petitioner no.2 and Manoj Kumar, petitioners have been booked in this case without there being any material to show that these petitioners

did assist in any manner his brother Manoj Kumar towards deposit of the money in the Bank and as such, any prosecution of the petitioners would be bad even if that amounts were found deposited in the joint account as there has been reason to believe that elder brother without the knowledge of the petitioners opened the joint account and invested the money. This fact gets strengthened for the reason that the petitioner no.1, happens to be a contractor having a firm in the name of M/s. Avani Enterprises, is an income tax assessee, who used to file income tax return regularly. On the other hand, petitioner no.2 initially started working on the post of apprentice in Tata Steel, Jamshedpur since 2006, subsequently, he was confirmed and thereby he does have independent income for which, he has been paying income tax. Thus, it was submitted that in absence of any material showing active or passive role in the transaction of money which has been alleged to be the proceeds of crime, prosecution of the petitioners would be quit illegal. As against this, Mr.Das, learned counsel appearing for the Enforcement Directorate submitted that during investigation, it transpired that these two petitioners being the members of undivided Hindu Family projected the tainted money as the income through agriculture of the joint family and have even misled the investigating agency on this point and not only that they also claimed that out of the agriculture income, gold and diamond were purchased which were sold and then proceeds of it were invested in fixed deposit but the claims were found to be false and thereby the petitioners can certainly be said to have committed offence under Section 3 of the Prevention of Money Laundering Act. In the context of the submission, one needs to have notice of the provision as contained in Section 3 of the Prevention of Money Laundering Act which reads as follows: Section 3. Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money laundering. From its perusal it does appear that even a person, who falsely lay claim over the tainted money as untainted, he would come within the mischief of the provision of Section 3. Here in the instant case, as it appears from the counter affidavit filed on behalf of the Enforcement Directorate that these two petitioners had laid a claim over the money to be untainted as according to them, money had been invested in the

Bank out of the income of agriculture, from which gold and diamond were purchased and then it were sold but this claim was found to be false. In such situation, the court does not seems to have committed any illegality in taking cognizance and hence, this application stands dismissed. However, it be recorded that any observation made for the purpose of disposal of this case shall not be prejudicial to the case of the parties during trial. (R. R. Prasad, J.) ND/

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