

Khetrabasi Das Vs. State

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Court : Orissa

Decided On : Jun-17-1991

Reported in : 1991CriLJ2993; 1991(II)OLR135

Judge : L. Rath, J.

Acts : Criminal Law Amendment Ordinance, 1944 - Sections 3 and 4; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 27, Rule 1

Appeal No. : Crl Rev. No. 94 of 1991

Appellant : Khetrabasi Das

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : G.N. Mohapatra, Adv.

Judgement :

L Rath, J.

1. The short question that arises for consideration in this revision is whether when an application is made under Secs, 3 and 4 of the Criminal Law Amendment Ordinance of 1944 (for brief the Ordinance') for attachment of the property of a person, the person making the application must be specifically authorised by the

competent authority to sign and verify the application. The brief facts are that an application was made before the Sessions Judge, Cuttack for attachment of the properties of the petitioner under the provisions of the Ordinance. An objection having been taken by the wife of the petitioner of inter alia the provisions of Order 27. Rule 1 CPC having not been complied with and that Shri B. B. Mohapatra who had filed the application had not been authorised in terms of Section 3 of the Ordinance by the State Government to file the same, a petition was filed by the public prosecutor to allow Shri B. B. Mohapatra who had been authorised by the State Government to file the application to sign each page of the petition and verify the, same. Another petition was filed by the public prosecutor for amendment by adding a paragraph to the original application that Shri B.B.Mohapatra had been authorised by Government to file the application and that he was acquainted with the facts of the case. Along with the application, a copy of the authorisation letter in favour of Shri B.B. Mohapatra issued by the Commissioner-cum-Secretary, Revenue & Excise Department, in exercise of powers Under Section 3 of the Ordinance was also annexed. I the learned Sessions Judge held the signing and verification of the application to be a procedural matter and allowed the amendment as well as the other petition and directed Shri B. B. Mohapatra to sign the application and verify the same. It is such order which is in challenge here. The petitioner also prays for quashing of the criminal proceeding against him,

2. Mr. Mohapatra, learned counsel appearing for the petitioner, his urged that the authorisation that was produced from the Commissioner- cum-Secretary to Government was not one which authorised the signing and verification of the application as was. required under Order 27, Rule 1 CPC and hence Shri B. B. B. Mohapatra had no authority to either sign or verify the application. In such premises it is contended by him that the learned Sessions Judge fell into error in not appreciating total lack of competence in Shri B. B. Mohapatra to sign and verify the application and that the question was not of a mere amendment but was of a defect which went to the very root of the authority to present the application.

3. For an appreciation of the contentions raised, the provisions of Section 3 (1) and (2) of the Ordinance are necessary to be extracted :

'3. APPLICATION FOR ATTACHMENT OF PROPERTY. -

(1) Where the State Government has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the State Government may, whether or not any Court has taken cognisance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment, under this Ordinance of the money or other property which the State Government believes the said person to have procured by means of the offence, or if such money or property cannot, for any reason, be attached, of other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) The provisions of the Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the Government.XX XX XX

A plain reading of the provisions shows, so far as relevant in the present context, that to proceed under the Section;

(1) The State Government must have reasons to believe that the person concerned has committed a scheduled offence.

(2) If such belief be there, it may authorise the making of an application for attachment of the money or the property believed by the State Government to have been procured by the person by means of the offence.

(3) If for any reason such money or property cannot be attached, the authorisation may be for attachment of other properties of the person concerned of equivalent value as nearly as may be of such money or property which cannot be attached, and to proceedings as above, the provisions of Order 27, CPC would apply as they apply to suits against the Government.

4. It is thus apparent that the authorisation contemplated under Sub-section (3) of the Ordinance is the authorisation of making the application with the rider that such application has to comply with the provisions of Order 27, CPC.

5. Order 27, Rule 1 CPC runs in the following words :

'In any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with) the facts of the case.'

The authorisation that was produced before the learned Sessions Judge may also be usefully extracted :

' Where as the State Government of Orissa has reasons to believe that Shri Khetrabast Das, son of Sri Paramananda Das of Gopepur, P, S. Nayakote, District-Keonjhar, posted as Superintendent of Excise, Cuttack has committed an offence specified Under Section 5(1)(e) of the P. C. Act (Act 11 of 1947) and punishable Under Section 5(2) of the said Act and was found in possession of assets to the tune of Rs. 12,60,733.71 as against his likely savings of Rs. 11,01,31.42 for which Cuttack Vigilance P S. Case No. 22 dated 23-5-1988 has been instituted.

And whereas the State Government has reason to believe that the said Sri Khetrabasi Das procured the properties scheduled below by means of the aforesaid offence.

And whereas the State Government has reason to believe that Shri Khetrabasi Das is attempting to dispose of the properties scheduled below during the pendency of the above-mentioned criminal case.

Now, therefore, the Government of Orissa in exercise of the powers conferred upon them Under Section 3 of the Criminal Law Amendment Ordinance, 1944, do hereby authorise Shri Bipin Bihari Mohapatra, OPS, D. S. P., Vigilance, Cuttack Division, Cuttack, who is the Investigating Officer of the aforesaid case to make an application to the District Judge, Cuttack, having jurisdiction for the attachment under the aforesaid Ordinance of the properties scheduled below. If the properties scheduled below cannot, for any reason, be attached, the State Government do hereby further authorise the said Sri Bipin Bihari Mohapitra to make an application

for the attachment of other properties of the said Shri Khetrabasi Das, of value as nearly as may be equivalent to that of the properties scheduled below.'

6. It is the submission of Mr. Mohapatra that apart from the authorisation Under Section 3 of the Ordinance to make the application, it is necessary that the authorisation to sign the application which must be treated as a plaint for the purpose, and the authorisation to verify such application, must be made by general or specific orders for that purpose, but since the authorisation as produced does not disclose any such order to have been passed, Shri B. B. Mohapatra cannot be taken to be competent to sign and verify the application. It is on the other hand the contention of the learned Addl. Govt. Advocate that the authorisation of the Government to make the application would implicitly include within itself the authorisation to both sign and verify the application.

7. The authorisation as is required Under Section 3(1) of the Ordinance is to make the application. By such authorisation the Government allows the application to be filed on it being satisfied that the person whose property has to be attached is guilty of the offence. Hence, before such authorisation is made, the Government is required to make up its mind of two things, that the offence has been committed by the person concerned and that it is necessary to file an application for attachment of his property. The word 'may' in Section 3(1) would indicate a discretion in the Government to either make a move for attachment or not even if it has reasons to believe that the person is guilty of the offence. Section 3(1) does not contemplate authorisation in favour of a specific person. It is only an authorisation for the step to be taken, i. e. the making of the application. The next step is under Sub-section (2) that such application is to conform to the provisions of Order 27, CPC of which the question that falls for consideration at present is compliance with Order 27, Rule 1 CPC. That provision requires that the plaint or written statement on behalf of the Government has to be signed by such person as may be appointed by the Government by general or special order in that behalf and shall be verified by such person, whom the Government may so appoint, who is acquainted with the facts of the case. In other words, there must be general or special order by the Government appointing a person to sign the plaint or the written statement and out of such persons a person who is acquainted with the facts of the case may verify

the plaint or the written statement. The word 'so' in Order 27, Rule 1 CPC would show that the general or special order has to be made in that behalf, i. e. specifically for the purpose of appointing the person to sign the plaint or the written statement on behalf of the Government in suits by or against it and that from the persons so appointed, those who are acquainted with the facts of the case may verify the plaint or the written statement. It is thus apparent that all persons who are authorised to sign the pleadings are not ipso facto competent to verify the pleadings though the persons who verify the pleadings must belong to the category of person authorised to sign the pleadings. They must be, in addition to that, acquainted with the facts of the case. The words 'in this behalf' in Order 27, Rule 1 CPC also have the specific meaning that the authorisation by the Government either by general or special order must be for that purpose only, i. e., to sign the pleadings. The words, as they occurred in Section 198-B of the old Code of Criminal Procedure, came for interpretation by the Supreme Court in AIR 1963 SC 1198 (*Gour Chandra Rout and Anr. v. The Public Prosecutor, Cuttuck*). That provision required that when an offence under Chapter XXI of the Indian Penal Code was alleged to have been committed (except by way of defamation by spoken words) against the President, or Vice-President, or the Governor or the Rajpramukh of a State, etc., no complaint in the matter shall be made by the public prosecutor except with the previous sanction when the defamation relates to the Governor of a State, or, any Secretary to the Government authorised by the Governor in that behalf. In the case, the sanction had been made by the Home Secretary but the Supreme Court found there not to have been any specific authorisation by the Governor authorising him to sanction the prosecution. The Court held the provision to mean that the Governor had to first consider for himself whether the alleged defamatory statement was of a kind of which he should take notice and sought to vindicate himself or whether the defamatory statement being of a trivial nature of having been made by an irresponsible person or for some other reason, should be ignored. That decision has to be taken by the Governor himself and cannot be left to some other person or authority. It would hence mean that where a general or special order is required to be made in that behalf, it would mean such a general or special order to be specifically made for the purpose in question which in this case is signing of the pleadings. So far as the Government

of India is concerned, such a notification was made in SRO 251 dated 25th January, 1958 giving a list of persons appointed to sign complaints and written statements on behalf of the Central Government and such pleadings to be verified by those of them who are acquainted with the facts of the case,

8. No such authorisation is forthcoming so far as the present application for attachment is concerned. No doubt the application has to be treated as a complaint. The authorisation as produced does not show any authorisation to have been made in favour of Shri Mohapatra authorising him specifically, to sign the application. The authorisation to make the application does not necessarily mean authorisation to sign the application. The making of an application is an administrative act and hence when authorisation is made to make the application, it would mean a permission granted that the application is to be made. When authorisation is made in favour of a person to make the application, ordinarily he is the person to file the same, but however since Section 3(2) imposes a further, rider that such provision must comply with the provisions of Order 27, it would be necessary, in addition to the authorisation, that there must be specific authorisation to sign the application in that behalf. Admittedly, the authorisation of 28-2-1989 did not make any such authorisation in favour of Shri Mohapatra, If such authorisation was made, he could have doubtless not only signed but also verified the application claiming himself to be acquainted with the facts of the case, but until such authorisation was given it must be held that the application was incompetent and that neither the petition filed in Court to allow him to sign and verify the application nor the amendment sought for to state that such fact, was permissible. The order of the learned Sessions Judge to that effect has become vitiated and hence must be quashed. As a logical consequence, the application having not been presented by the proper person, the entire proceeding initiated against the petitioner is also quashed but nothing stated therein would debar a fresh application to be presented in accordance With law.