

The State of Bihar and ors. Vs. Keshab Narayan Banerjee and ors.

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Court : Kolkata

Decided On : Jul-19-1982

Reported in : 1982CriLJ1768

Judge : Sambhu Chandra Ghose, C.J. and ;Rabindra Nath Pyne, J.

Appellant : The State of Bihar and ors.

Respondent : Keshab Narayan Banerjee and ors.

Advocate for Pet/Ap. : Shri. R. C. Prasad

Judgement :

Sambhu Chandra Ghose, C.J.

1. This is an application inter alia for stay of an order passed by T. K. Basu, J. on 5th April, 1982 directing the issue of a rule nisi as prayed for and an ad interim injunction directing the petitioner in the writ application Keshab Narayan Banerjee to withdraw the interest accruing on the properties attached.

2. On 22nd of Jan. 1982 on an application made by the Inspector General (Vigilance) Bihar, the District Judge, Alipore passed an order of ad interim injunction under Section 4(1) of the Criminal Law Amendment Ordinance, 1944. The learned District Judge directed that a copy of the said order be handed over to the Central Manbhum Coal Company Ltd.

3. On 12th Feb. 1982, the Central Manbhum Coal Company Limited and Keshab Narayan Banerjee moved an application under Article 226 of the Constitution of India against the said order of attachment before Sabyasach Mukharji, J. His Lordship issued a rule nisi and stayed further proceedings. On 5th of March, 1982 Sabyasachi Mukharji, J. gave further direction that the order of attachment should be communicated to all the parties who are required to be communicated.

4. The order of attachment was in respect of fixed deposits in various banks. On 13th March, 1982 Devikamal Trust affirmed a petition challenging the proceedings before the learned District Judge resulting in the order of attachment on the ground that although Devikamal Trust was the owner of the fixed deposits in respect of which the order of attachment was made by the learned District Judge it was not made a party in the proceedings before the learned District Judge nor in the proceedings before Sabyasachi Mukharji, J.

5. Without moving the said application Devikamal Trust moved an application before Sabyasachi Mukharji, J. for intervention in the petition pending before His Lordship. His Lordship gave direction for filing affidavits and directed the matter to appear in the list of 16th April, 1982. On 2nd April, 1982 the matter was mentioned by the State of Bihar before Sabyasachi Mukharji J. when His Lordship directed that the writ of attachment might be issued. On the very same day at 2 O'clock counsel for the Central Manbhum Coal Company Limited prayed before His Lordship leave to withdraw the writ petition as it had become infructuous in view of the direction given by His Lordship. His Lordship on such oral prayer allowed the petition to be withdrawn and vacated all interim orders. Devikamal Trust also withdrew with leave of the court its application for intervention in the writ petition.

6. On 3rd April, 1982 Devikamal Trust sent a letter to Shri R.C. Prasad, Advocate for the State of Bihar informing that the application which was affirmed on 13th March, 1982 and a copy of which had already been served on 16th March, 1982 would be moved before T.K. Basu, J. on 5th April, 1982 in view of the fact that certain events had happened since the affirmation of the petition on 13th March, 1982. Subsequently, another affidavit was filed and served upon the learned Advocate for the State of Bihar stating certain subsequent events which had

happened since 13th March, 1982. On 5th April, 1982 T.K. Basu, J. after hearing parties issued a rule nisi and passed an ad interim order to the effect that the impugned order of attachment passed by the learned District Judge would not affect payment of interest on the fixed deposits to the trustees in terms of the order dated 5th Dec. 1981 in C. R. No. 10194 (W) of 1981. His Lordship directed the matter to appear on next Monday i.e. 12th of April, 1982 for orders as the learned Counsel for the State of Bihar wanted to make further submissions,

7. On 5th April, 1982 Shri R.C. Prasad, learned Advocate for the State of Bihar orally prayed before the Appellate Court for stay of the order of T. K. Basu, J. passed on that day. The Appellate Court directed that upon the Advocate for the State of Bihar giving undertaking to file an appeal and the application by 2 P. M. on 6th April, 1982, there would be a stay of the order made by T. K. Basu, J. On 6th April, 1982 when the matter was mentioned before the Appellate Court by the counsel on behalf of Devikamal Trust, the Appellate Court directed that Shri R. C. Prasad, Counsel for the appellant would not take any action in the proceedings pending before the learned District Judge, Alipore until further orders. At 2 P. M, the appeal was filed by R.C. Prasad and direction was given by the Appellate Court for filing affidavits. On 16th April., 1982, the Appellate Court modified the earlier interim order granted by the Appellate Court to the effect that excepting service of the writ of attachment all other proceedings in O. S. No. 14 of 1982 pending before the learned District Judge, Alipore would remain stayed until further orders. We set out below Section 4(1) of the Criminal Law Amendment Ordinance, 1944 hereinafter referred to as the said Ordinance;

Upon receipt of an application under Section 3 the District Judge shall, unless for reasons to be recorded in writing he is of the opinion that there exists no prima facie grounds for believing that the person in respect of whom the application is made has committed any schedule offence or that he has procured thereby any money or other property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available, for attachment of such other property of the said person of equivalent value as the District Judge may think fit.

Under the above quoted Section 4(1), the learned Judge passed the order of attachment of the Bank Deposits. Section 10 of the said Ordinance lays down the period or duration of the said attachment. Section 10 is set out hereunder:

10. Duration of attachment An order of attachment of property under this Ordinance shall, unless it is withdrawn earlier in accordance with the provisions of this Ordinance, continue in force:

(a) Where no Court has taken cognizance of the alleged scheduled offence at the time when the order is applied for, for three months from the date of the order under Sub-section (1) of Section 4 or Sub-section (2) of Section 6 as the case may be, unless cognizance of such offence is in the meantime so taken or unless the District Judge on application by the agent of the (State) Government thinks it proper and just that the period should be extended and passes an order accordingly; or

(b) Where a Court has taken cognizance of the alleged scheduled offence whether before or after the time when the order was applied for until orders are passed by the District Judge in accordance with the provisions of this Ordinance after the termination of the criminal proceedings.

It was urged by the respondents that the appeal has become infructuous in view of the fact that the order of ad interim attachment made by the District Judge under Section 4(1) of the said Ordinance passed on 22nd Jan. 1982 i.e. 3 months after the date of the said order because of Section 10 of the said Ordinance quoted above. In the present case no court has up to date taken cognizance of the alleged scheduled offence. No application has been made in terms of Section 10 before the expiry of the order of attachment made on 22nd Jan, 1982 for the extension of the said order. An application for the extension of the order can be made only before the order has expired or ceased to have any force. No application has been made before 21st April, 1982 for the extension of the said order. On an interpretation of the different sections of the Ordinance it will be clear that an order of attachment is distinct ad separate from actual levy of attachment which is executed by issuing a writ of attachment in accordance with the provisions of the O, 21 of the Civil P.C. Section 7 of the Ordinance starts with the

marginal note of execution of orders of attachment. Under Section 7 of the Ordinance an order of attachment of property under the Ordinance shall be carried into effect so far as may be in the manner laid down in the Civil Procedure Code for attachment of property in execution of a decree, It is clear therefore according to the respondent's counsel that the order of attachment is one thing and the execution of the order of attachment in the manner laid down in the Civil Procedure Code is another distinct and separate matter. The distinction between the order of attachment and an actual attachment has been clearly pointed out by the Privy Council in 55 Ind App. 256 at pp. 261 and 262 : AIR 1928 PC 139. Their Lordships pointed out that the order of attachment is one thing and the attachment is another.

8. Attachment under the Ordinance has to be made under the Ordinance in the manner laid down in Order 21 of the Civil P, C. According to Mr. Prasad order of attachment is the actual levy of attachment that is to say when the attachment is in fact made. Mr. Prasad referred to the Supreme Court decision reported in AIR 1965 SC 450 at p. 465, wherein the Supreme Court has said that from the date of the order means the date when the order becomes notified and effective. According to Mr. Prasad, the learned advocate on behalf of the State of Bihar, the writs of attachment have been prevented from being served by the respondents. The order of ad interim attachment cannot be said to have ceased to continue in force and lapsed. Further, according to Mr. Prasad, the expression 'continue in force for 3 months' does not in the context of the order mean that after 3 months the order becomes dead as the extension can be granted even retrospectively on application made after 3 months of the order. The interim order of T- K, Basu, J. for payment of interest to the respondents has in fact vacated the order of ad interim attachment which could not be passed without service of notice and without hearing the appellant by the Court. Mr. Prasad, further, pointed that the issue of rule is an abuse of power. The respondents who at best claim all interest in some of the attached properties could move a petition under Sub-section 4 of Section 4 of the Ordinance and if the District Judge's order went against him he could have appealed under Section 11 of the said Ordinance. Thus the Writ Petition is not maintainable and the interim order for payment of all interest is erroneous in law. The reason for the impugned interim order is bad as the interim

order in C.R. No. 10194 (W) of 1981 was passed in a writ proceeding arising out of an Income-tax proceeding of search, seizure and attachment of properties of the respondent K.N. Banerjee. The Hon'ble Court did not release the interim order on the ground of equity as pleaded here. The District Judge need not have expressed the reason for his satisfaction; moreover the charge of cheating the state government in conspiracy with the officers of the government and abetting the officers to commit the various offences is there,

9. In our view the order of attachment cannot be equated with actual levy of attachment. For in that case what will be the date of an order of attachment under which 10 different attachments are made on 10 different dates. From records it is clear that the cognizance of scheduled offence has not been taken before 22nd April, 1982. In the premises, the order of attachment ceased to be in existence with effect from 22nd April, 1982 and now cannot be a bar to the order passed by T.K. Basu, J. In the that view of the matter the application made by the appellants can no longer be sustained and must fail. In the premises, the application is dismissed. Interim order will stand vacated.

10. There will be stay of operation of this order for two weeks from date.

Rabindra Nath Pyne, J.

11. I agree.

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