

**IN THE COURT OF THE SESSIONS JUDGE, KHURDA AT
BHUBANESWAR.**

Crl. Misc. Case No. 09 of 2010.

(Arising out of T.R. Case No.197 of 2007, corresponding to
Cuttack Vigilance P.S. Case No.62, dated 04.11.1997.)

State Vigilance.

...

Petitioner.

-V e r s u s-

1. Sri Bipin Bihari Prusty, S/o. Natabar Prusty,
Ex-Audit Officer, Co-operative Society,
Audit Circle-I, Jhangirimangala, Cuttack.
2. Smt. Menaka Prusty, W/o. Bipin Bihari Prusty.
Both O.P. Nos.1 & 2 are of Village/P.O. - Dhumat,
P.S./District - Kendrapara. At present residing in
Plot No.1624 at Dumduma Colony, Aiginia,
Bhubaneswar.

... **Opposite Parties.**

Counsel :

For petitioner -- Spl. P.P. (Vig.), Cuttack.

For opposite parties-- Shri P.K. Mohapatra & Associates.

Date of hearing : 12.08.2014.

Date of order : 19.08.2014.

O R D E R

This is an application under section 3 of the Criminal Law (Amendment) Ordinance, 1944 (hereinafter referred to as "the Ordinance") to pass an order of attachment

of the property given in the schedule of the application till termination of criminal proceeding in T.R. Case No.197 of 2007, arising out of Cuttack Vigilance P.S. Case No.62, dated 04.11.1997.

2. The factual matrix leading to the case of the petitioner is that opposite party No.1, while working as Audit Officer, Co-operative Society, Audit Circle, Jhanjirimangala, Cuttack, had acquired movable and immovable properties consisting of land, building, Bank and Postal Deposits, gold and silver ornaments, etc. in his name, in the name of his wife (opposite party No.2) and in the name of his family members for which after due investigation charge-sheet was submitted against opposite party No.1 under section 13(2) read with section 13(1)(e) of the Prevention of Corruption Act, 1988 ("the Act", for short). Opposite party No.1 having faced his trial for the said offence in T.R. Case No.197 of 2007 has been convicted on 07.08.2009 by the learned Special Judge (Vigilance), Cuttack for acquisition of assets to the tune of Rs.2,55,634/-, which was disproportionate to his known source of income. Against the said judgment and order of conviction, opposite party No.1 has preferred appeal in the Hon'ble High Court vide Criminal Appeal No.324 of 2009, which is now subjudice. It is stated that the property, as mentioned in

schedule of the application, is purchased by opposite party No.1 in the name of his wife opposite party No.2 out of the ill-gotten money procured by him. It is further stated that inadvertently no order relating to confiscation of the property of opposite party No.1 and recovery of fine amount has been passed by the learned trial Court. After conviction of opposite party No.1, the petitioner now apprehends that the opposite parties may alienate the scheduled property to avoid its forfeiture and recovery of fine amount. For that, the petitioner has prayed for issuing the order of attachment under section 3 of the Ordinance. Pending finalization of the proceeding, it has been prayed to issue ad-interim order of attachment against the opposite parties. This Court being satisfied with the submission has allowed the ad-interim order of attachment of the property against the opposite parties and show-cause was issued to them as per the provisions of the Ordinance.

3. The opposite parties though entered appearance did not file any objection.

4. Learned Special P.P. appearing for the petitioner has filed a memo stating that no confiscation proceeding under the Special Courts Act, 2006 read with rules has been filed against the opposite party before the Authorised Officer, Special Court, Cuttack for which this Court has got

jurisdiction to decide the matter.

5. Learned counsel appearing for the opposite party submitted that this Court lacks jurisdiction to pass order of attachment.

6. On going through the Orissa Special Courts Act, 2006, it appears that Special Courts have been constituted to hold trial of persons holding high political and public offices, who have accumulated properties disproportionate to their known sources of income. Under Section 13 of the said Act, application for confiscation of their properties can be filed before the Authorised Officer by the Public Prosecutor, who will be authorised by the State Government to make such application. This Act came into force on 15.10.2007. Section 21 read with section section 26 of the Orissa Special Courts Act show that between any provision in this Act and in the Ordinance, this Act will prevail. Since no case has been instituted for attachment of the property by confiscation proceeding, the provisions in the above Act and the Ordinance will not apply in the present case. So, the contention of learned counsel for the opposite parties is jettisoned.

7. On perusal of the petition supported by affidavit filed by Smt. Gitanjali Sahu, Inspector of Police, Vigilance, Cuttack; certified true copy of judgment dated 07.08.2009 in

T.R. Case No.197 of 2007 and other materials on record, it appears that opposite party No.1 being a public servant has committed criminal misconduct by possession of pecuniary resources or property disproportionate to his known source of income during the relevant period of his office and by failure on his part to account for the same, he has been convicted by the learned Special Judge (Vigilance), Cuttack in T.R. Case No.197 of 2007 to undergo R.I. for one year and to pay a fine of Rs.2,00,000/-, in default, to undergo R.I. for a further period of two months. No objection is there to the factum of attachment of properties issued by this Court on 21.12.2010, except oral objection on the point of jurisdiction. So, there is prima facie reason to believe that the property, shown in the schedule of the application, is alleged to have been procured by corrupt and illegal means and, therefore, the apprehension of the State appears to be justifiable that the opposite parties may alienate the property to avoid its forfeiture / recovery of the fine amount, pending effective execution of the order of conviction passed by the learned trial Court in T.R. Case No.197 of 2007. Hence ordered :

O R D E R

The application under section 3 of the Ordinance is allowed. The order dated 21.12.2010 issuing ad-interim

order of attachment of the property mentioned in the schedule of the application is made absolute under section 5(1) of the Ordinance. The opposite parties are directed not to alienate the property, as described in the schedule of the application, to any person or authority and not to place the same for any purpose whatsoever till termination of criminal proceeding in T.R. Case No.197 of 2007, and disposal of Criminal Appeal No.324 of 2009 by the Hon'ble High Court.

**Sessions Judge, Khurda
at Bhubaneswar.**

19.08.2014.

Dictated, corrected by me and pronounced in the open Court this day the 19th August, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.**

19.08.2014.