

U. SUBHADRAMMA & ORS.

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v.

STATE OF A.P. REP. BY PUB. PROSECUTOR & ANR.

(Criminal Appeal No. 1596 of 2011)

JULY 04, 2016

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[S.A. BOBDE AND AMITAVA ROY, JJ.]

Criminal Law Amendment Ordinance, 1944 – Clause 3 – Application for attachment of property – Misappropriation of funds by accused – Death of accused during the pendency of criminal trial – Attachment of property of dead accused by District Judge – Permissibility of – Held: Prosecution cannot continue against a dead person – Such proceedings and findings are contrary to the very foundation of criminal jurisprudence – In such a case the accused does not exist and cannot be convicted – District Judge committed a gross error of law in acting upon such a finding and treating accused as guilty of such offences while making the order of attachment and confirming the said order of attachment – Orders of the criminal court vis-a-vis the said accused illegal and set aside.

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Allowing the appeal, the Court

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HELD: 1.1 If the law requires that the orders of attachment should be withdrawn upon acquittal it stands to reason that such orders must be withdrawn when the prosecution abates or cannot result in a conviction due to the death of the accused, whose property is attached. Concept of abatement of a trial could be subsumed in the clause where the final judgment and order of the Criminal Court is one of acquittal. The presumption of innocence of an accused till he is convicted must be borne in mind and there is no reason to consider this presumption to have vaporized upon the death of an accused. [Para 6] [475-D-F]

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1.2 A prosecution cannot continue against a dead person. *A fortiori* a criminal court cannot continue proceedings against a dead person and find him guilty. Such proceedings and the findings are contrary to the very foundation of criminal jurisprudence. In such a case the accused does not exist and cannot be convicted. Consequently, the District Judge committed a gross error of law

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A in acting upon such a finding and treating R as guilty of such offences while making the order of attachment and while confirming the said order of attachment of properties. In such circumstance, the courts below erred in recording the finding that appellant No.1 had committed the offence as alleged by the prosecution. Further, finding recorded by the Single Judge of the High Court that appellant No.1 alone had committed the offence and nor appellant No. 2, must be taken to have misappropriated the said amount is perverse. The facts involved did not warrant presumption of commission of offence by appellant No.1 and thus, the findings recorded by the courts below are not tenable. [Paras 7, 8, 9] [476-A-C; E-F]

1.3 The District Judge could not have proceeded with the attachment proceedings at all since the attachment proceedings were initiated by the State against R under clause 3 of the Criminal Law Amendment Ordinance, 1944, who was actually dead. Clause 3 contemplates that such an application must be made to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, in respect of property which the State Government believes the said person to have procured by means of the offences. It is incomprehensible, therefore, that such an application could have been made in regard to a dead person who obviously cannot be said to be ordinarily resident or carrying on business anywhere. There is no legal provision which enables continuance of prosecution upon death of the accused. The proceedings and the decisions of the courts below are disturbing, in the first place, though the accused had died, the trial court proceeded with the trial and recorded a conviction two years after his death, then, this null and void conviction was used as a basis for making an attachment of his properties before the Sessions Court. Astonishingly, all applications succeeded, the attachment was made absolute and over and above all, the High Court upheld the attachment. The orders of the Criminal Court vis-a-vis R are illegal and is set aside. The impugned judgment is unsustainable and is set aside. [Paras 10, 11] [476-F-H; 477-A-C]

Willie (WILLIAM) Slaney v. State of M.P. 1956 AIR 116 : 1955 SCR 1140; *Babu Singh v. State of Punjab* (1963) 3 SCR 749; *Ashish Batham v. State of M.P.* 2002 (2)

Suppl. SCR 146 : 2002 (7) SCC 317; *Ranjitsing Brahmajeetsing Sharma v. State Of Maharashtra & Anr.* 2005 (3) SCR 345 : 2005 (5) SCC 294; *Sher Singh @ Partapa v. State of Haryana* 2015 (1) SCR 29 : 2015 (3) SCC 724; *State of Punjab v. Jagbir Singh, Baljit Singh and Karan Singh* AIR 1973 SC 2407 – referred to. A
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Case Law Reference

1955 SCR 1140	referred to	Para 6	
(1963) 3 SCR 749	referred to	Para 6	C
2002 (2) Suppl. SCR 146	referred to	Para 6	
2005 (3) SCR 345	referred to	Para 6	
2015 (1) SCR 29	referred to	Para 6	D
AIR 1973 SC 2407	referred to	Para 8	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1596 of 2011.

From the Judgment and Order dated 28.06.2006 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No. 5922 of 2002. E

J. M. Sharma, Sr. Adv., R. S. Krishnan, Ms. Suruchi, Syed Ahmad Naqvi, Ms. Sweta Jain, D. Mahesh Babu, Advs. for the Appellants.

Guntur Prabhakar, Ms. Prerna Singh, G. N. Reddy, Advs. for the Respondents. F

The Judgment of the Court was delivered by

S. A. BOBDE, J. 1. The appellants being legal representatives of one Ramachandraiah who was accused of offences under Sections 409, 468 read with Section 471 of the Indian Penal Code, have filed this appeal against the Judgment and order dated 28-6-2006 of the High Court of Andhra Pradesh at Hyderabad dismissing their petition under Section 482 of the Criminal Procedure Code. Ramachandraiah, since deceased, who was the husband of Appellant No.1 and father of H

- A Appellant Nos. 2 and 3, was prosecuted under the aforesaid sections in respect of misappropriation of funds. He was charged with misappropriation of an amount of Rs. 6,57,355.90 during the period 31-7-1987 to 29-6-1988 along with him one Subbarayudu was charged as Accused No.2. In October, 1991, U. Ramachandraiah expired during the trial. The trial court acquitted the Accused No.2 Subbarayudu by
- B Judgment dated 25.10.1993. However, the trial court observed on the basis of oral and documentary evidence that Ramachandraiah alone committed the offence as alleged by the prosecution. Further, that there was no oral or documentary evidence placed before the Court to show that Subbarayudu the surviving accused assisted Ramachandraiah in
- C committing the alleged offence. In effect, the trial court found Ramachandraiah responsible for the offences though he could not be adjudged guilty since he had expired.

Proceedings under the Criminal Law Amendment Ordinance against the property of the deceased

- D 2. In 1997, the State moved an application under the Criminal Law Amendment Ordinance, 1944 (Ordinance No. XXXVIII of 1944) for attachment of property of the appellant under the criminal law. Thereon, the District Judge passed an order of interim attachment under
- E Clause 4 of the ordinance on the basis that Ramachandraiah has committed the scheduled offences or that he has procured money or the property in question from the proceeds of such offence. The District Judge issued notice calling upon the appellants to show cause why the order of attachment should not be made absolute. In this order, the District Judge observed that according to the state as many as 30 items mentioned
- F in the schedule were acquired by the said Ramachandraiah either in his own name or his wife's name or in the names of his sons due to illegal amounts drawn by him and a case was filed against Ramachandraiah as accused No.1 and Subbarayudu as accused no.2. The District Judge further observed that the trial court i.e. first Additional District Munsif, Cuddapah found Ramachandraiah had committed the offence as alleged
- G by the prosecution and, therefore, the said Ramachandraiah committed the offence. It was observed by the learned District Judge that Ramachandraiah had been found to have prepared bills in the fictitious names of 21 lecturers during the relevant period and had drawn cash on the basis of the pay bills including the bogus bills since May 1991 and drawn about Rs.38,00,000/- to Rs.40,00,000/-.
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3. Thereafter on 1-10-2002; the learned District Judge heard both sides and made the order of interim conditional attachment absolute. He observed that the High Court has refused to interfere with the order of interim conditional attachment and though no counter affidavit had been filed by the appellants, the learned District Judge observed that the appellants have failed to prove that the properties as mentioned in the schedule are the self-acquired properties of U. Ramachandraiah and, therefore, the order is being made absolute.

4. The appellants then challenged the order of the learned District Judge making an interim attachment absolute by way of a petition under Section 482 of the Criminal Procedure Code. The learned Single Judge held that the amount misappropriated is 6,57,355.90; strangely, on the basis of the charge sheet. The learned Single Judge also observed that Ramachandraiah who alone had committed the offence and not Subbarayudu, must be taken to have misappropriated the said amount since the Trial Court held the latter to be innocent. Against the aforesaid order, the appellants have preferred this appeal.

5. Learned Senior counsel for the appellants submitted that the scheme of the Criminal Law Amendment Ordinance, 1944 does not permit the District Judge to confirm any attachment of the property though the criminal court has not validly convicted and found the accused or the person whose property is sought to be attached as guilty. Learned counsel submitted that in this case, it was not possible for the criminal court to have convicted or found Ramachandraiah guilty since he expired in 1991 during the trial. In fact, according to the appellants, no application for attachment could have been made under these circumstances. Learned counsel for the respondents strongly opposed the prayer and submitted that the appellants may not to be allowed to retain property obtained by ill-gotten means and it was legal for the learned District Judge to have passed the order of attachment in respect of such property which was admittedly the subject matter of the charge-sheet. It has, therefore, become necessary for us to examine whether the property of a person which was merely case of an offence of misappropriation but who died during the pendency of the criminal trial can be attached in the hands of his legal representatives under the provisions of Criminal Law Amendment Ordinance, 1944.

6. As far as making the application for attachment, we find that the law authorises the State Government to make such an application

A even though proceedings against the person may not yet have resulted
 in a conviction. This is by virtue of clause 3¹ which empowers the
 Government to authorise making of such an application to the District
 Judge where it has reason to believe that any person has committed any
 scheduled offence. But however clause 3 requires the Government to
 B make such an application to the District Judge within the local limits of
 whose jurisdiction the said person ordinarily resides or carries on business;
 thus clearly requiring the existence of such a person. It excludes the
 possibility of proceedings against a dead person. Clause 4 of the act
 empowers the District Judge to pass an order of ad interim attachment
 on prima facie grounds for believing that the person in respect of whom
 C the application is made has committed any scheduled offence or has
 procured any money or property thereby. Sub-clause 2 requires the
 District Judge to issue a notice, presumably at the address where the
 person ordinarily resides or carries on business (vide clause 3) along
 with copies of the order and the application etc. Clause 5 provides for an

D ¹ **3. Application for attachment of property:-**

(1) Where the [State Government or as the case may be, the Central 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 cognizance of the offence, authorise the making of an
 application to the District Judge within the local limits of whose jurisdiction the said
 E person ordinarily resides or carries on business, for attachment, under this Ordinance,
 of the money or other property which the [State Government, or as the case may be,
 the Central 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.

[Amended by A.O.1950 & again by Prevention of Corruption Act. 1988]

F (2) The provisions of 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].

(3) An application under sub-section (1) shall be accompanied by one or more
 affidavits, stating the grounds on which the belief that the said person has committed
 any scheduled offence is founded, and the amount of money or value of other property
 G believed to have been procured by means of the offence. The application shall also
 furnish-

[Added by Prevention of Corruption Act. 1988]

(a) any information available as to the location for the time being of any such money or
 other property and shall, if necessary, give particulars, including the estimated value, of
 other property of the said person;

H (b) the names and addresses of any other person believed to have or to be likely to
 claim, any interest or title in the property of the said person.

investigation of objections to the attachment who have been served with notices under clause 4. Sub-clause 3 empowers the District Judge to pass an order making the ad interim order of attachment absolute or varying it by releasing a portion of the property or withdrawing the order. Clause 13 requires the Government to inform the District Judge about the status of the criminal proceedings. It requires the Government to furnish the District Judge with a copy of the judgment or order of the trial court and with copies of the judgment or orders, if any of the appellate or revisional court thereon. Sub-clause 2 mandates that the District Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence if (a) cognizance of alleged scheduled offence has not been taken or (b) where the final judgment and orders of the criminal court is one of acquittal. While, this clause is clear that the orders of attachment must be withdrawn if cognizance of the offence has not been taken or there has been an acquittal; the clause is silent as to the effect of abatement of prosecution. It is due to this silence that it is contended by the State Government in this case that the orders of attachment could not only have been continued but could also have been confirmed. It is not possible for us to accept the submission. If the law requires that the orders of attachment should be withdrawn upon acquittal it stands to reason that such orders must be withdrawn when the prosecution abates or cannot result in a conviction due to the death of the accused, whose property is attached. Concept of abatement of a trial could be subsumed in the clause where the final judgment and order of the Criminal Court is one of acquittal. In this context, the presumption of innocence of an accused till he is convicted must be borne in mind and there is no reason to consider this presumption to have vaporized upon the death of an accused. It may be noted that this Court has time and again reiterated the presumption of innocence of an accused till he is convicted.²

7. As far as the circumstances of this case are concerned, we find that there has been a gross mis-carriage of justice at several steps. In the first place, the finding of the trial court that Ramachandraiah was alone responsible for the offences is completely vitiated as null and void since Ramachandraiah had admittedly died on the date this finding was

² (1955) 2 SCR 1140 at page 1195

(1963) 3 SCR 749 at page 766

(2002) 7 SCC 317 at para 8

(2005) 5 SCC 294 at para 35

(2015) 3 SCC 724 at paras 12 and 17

A rendered. It is too well settled that a prosecution cannot continue against a dead person. *A fortiori* a criminal court cannot continue proceedings against a dead person and find him guilty. Such proceedings and the findings are contrary to the very foundation of criminal jurisprudence. In such a case the accused does not exist and cannot be convicted. Consequently, the learned District Judge committed a gross error of law in acting upon such a finding and treating Ramachandraiah as guilty of such offences while making the order of attachment and while confirming the said order of attachment of properties.

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C 8. In such circumstance, the courts below erred in recording the finding that Appellant No.1 had committed the offence as alleged by the prosecution. Further, finding recorded by the learned Single Judge of the High Court that Appellant No.1 alone had committed the offence and nor Appellant No.2, must be taken to have misappropriated the said amount is perverse.

D “A criminal trial is not like a fairy tale wherein one is free to give flight to one’s imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worthy and the animus of witness³.

E 9. The facts involved herein did not warrant presumption of commission of offence by Appellant No.1 and thus the findings recorded by the courts below are not tenable.

F 10. In fact, we find that the learned District Judge could not have proceeded with the attachment proceedings at all since the attachment proceedings were initiated by the State against Ramachandraiah under clause 3 of the Criminal Law Amendment Ordinance, 1944, who was actually dead. Clause 3 contemplates that such an application must be made to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, in respect of property which the State Government believes the said person to have procured by means of the offences. It is incomprehensible, therefore, that such an application could have been made in regard to a dead person who obviously cannot be said to be ordinarily resident or carrying on

H ³ State of Punjab v. Jagbir Singh, Baljit Singh and Karan Singh. AIR 1973 SC 2407

business anywhere. There is no legal provision which enables continuance of prosecution upon death of the accused. We must record that the proceedings and the decisions of the courts below are disturbing, to say the least. In the first place, though the accused had died, the trial court proceeded with the trial and recorded a conviction two years after his death. Then, this null and void conviction was used as a basis for making an attachment of his properties before the Sessions Court. Astonishingly, all applications succeeded, the attachment was made absolute and over and above all, the High Court upheld the attachment. A B

11. The orders of the Criminal Court vis-a-vis Ramachandraiah are illegal and liable to be set aside. We also find that the impugned judgment in appeal is unsustainable and is liable to be set aside. The orders of the Courts below are accordingly set aside. The appeal succeeds. C

Nidhi Jain

Appeal allowed.