

RAVI SINHA & ORS.

A

v.

THE STATE OF JHARKHAND
(Criminal Appeal No. 1561 of 2008)

OCTOBER 05, 2017

B

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Criminal Law Amendment Ordinance, 1944:

ss. 12 and 13 – Appellant's father-public servant involved in criminal cases registered against various accused – Appellant himself involved in large number of cases – Accused persons in pursuance of conspiracy had defrauded State Government to the tune of several hundred crores – Proceedings undertaken under the 1944 Ordinance – Application by State – Attachment of certain properties – Subsequently attachments made absolute – Appeal thereagainst by appellants, dismissed by the High Court – On appeal, held: Prosecution against appellant's father could not have been continued after his death and no guilt can be pronounced on him, he being dead – However, the properties which were already under attachment, having come in the hands of appellant as one of the legal representatives, who has been convicted in a fodder scam case and is facing trial in another case, making attachment order absolute, cannot be faulted with – Furthermore, against an order of conviction, appeal is already pending in the High Court and in one criminal case, trial is already pending against the accused in which provisions of ss. 12 and 13 can still be resorted to – Thus, it cannot be said that once a judgment is pronounced in a criminal case by the Court and if no findings have been recorded with regard to attached properties, no order can be passed with regard to attached properties – It is not necessary to consider the extent of amount found to be misappropriated by the appellant and computing the value of properties attached – These questions can be raised by appellant in s. 13 proceedings or at the time of judgment in pending trial by invoking s. 12 – In view thereof, interference by this Court in exercise of its jurisdiction u/Art. 136 with the order of the High Court and of the Judicial Commissioner in making the order of attachment absolute, not called for – Constitution of India – Art. 136.

C

D

E

F

G

H

A *s.4 – Several criminal cases registered by CBI against various*
accused – Alleged fraud to the tune of several crores – Allegation
that one of the accused acquired movable and immovable assets in
his own name and in the name of family and investment in the property
not from their own source of income – Proceedings undertaken under
 B *the 1944 Ordinance – Application by State – Attachment of certain*
properties – Subsequently attachments made absolute – Appeal
thereagainst, dismissed by the High Court – Held: Perusal of s. 4
indicate that power to attach the money or other property alleged
 C *to have been so procured is very much there – Section 4 provides*
that “if it transpires that such money or other property is not
available for attachment, such other property of the said person of
equivalent value as the District Judge may think fit – Thus, the
power can be exercised for attaching several properties to take
care of the amount which alleged to be defaulted – Thus, the property
 D *which was acquired in the year 1955 could have been attached –*
Appellants’ plea to reappraise the evidence and record a finding
that the properties attached were purchased by them of their own
finances need not be gone into u/Art. 136 – Constitution of India –
Art. 136.

Dismissing the appeals, the Court

E **HELD: 1.1** No proceedings under Criminal Law
 Amendment Ordinance, 1944 can be undertaken against the
 accused after his death and the prosecution cannot continue after
 the death of an accused. There cannot be any dispute that after
 death of appellant’s father-SB, no prosecution could have been
 continued against him, in fact after noticing his death, the charge
 F sheet was not submitted by C.B.I. against SB. [Para 21] [925-A-B]

1.2 It is an admitted position that appellant-RS had been
 convicted in the fodder scam case and in one case trial is already
 going on. There being an order of conviction of RS and in other
 case trial being underway making attachment order absolute
 G cannot be faulted with. It is true that prosecution against SB could
 not have been continued after his death and no guilt can be
 pronounced on SB, he being dead. However, the properties which
 were already under attachment, having come in the hands of
 accused RS as one of the legal representatives, who has been
 H convicted in a fodder scam case and is facing trial in another case,

instant case is not a case where this Court can exercise its jurisdiction under Article 136 to interfere with the order of the High Court and of the Judicial Commissioner in making the order of attachment absolute. [Para 23] [926-A-D] A

1.3 A perusal of Section 12(1) indicates that when the Court in any criminal trial is represented that an order of attachment of property has already been passed, the Court shall, if it is convicting the accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence. Thus, s.12(1) is to be invoked before the judgment is pronounced and the Court is obliged to record a finding when it is represented to the Court that an order of attachment of property has been passed. [Para 25] [929-B-C] B C

1.4 In the instant case against the order of conviction dated 12.06.2008, appeal is already pending in the High Court. Thus, criminal proceedings have not yet been terminated. Further, in one criminal case, trial is already pending against the accused in which provisions of Sections 12 and 13 can still be resorted to. Thus, it cannot be said that once a judgment is pronounced in a criminal case by the Court and if no findings have been recorded with regard to attached properties, no order can be passed with regard to attached properties. Section 13 gives ample power to deal with attached properties after termination of criminal proceedings. Appellants submitted that even accepting the allegations against RS, the allegations centre around only to Rs. 9.75 lakhs and Rs. 2.95 lakhs in R.C. No. 39/1996; and that there can be no justification for keeping the properties under attachment when the allegations are only upto the amount given above and further in the order granting bail, the appellant has already secured the aforesaid amount. It is noticed that one more trial is still pending against RS. It is not necessary to consider the extent of amount which has been found to be misappropriated by RS and computing the value of properties attached. These are the questions which can very well be raised by the appellant RS in Section 13 proceedings or at the time of judgment in pending trial by invoking Section 12 of the Ordinance, 1944. Since this Court is confined to the only question that whether the attachment order ought not to have been made absolute, and thus need not D E F G H

A go into this submission in detail or express any opinion, thus, the
order passed by the Jharkhand High Court dismissing the
criminal appeals filed by the appellant against order of Judicial
Commissioner making the attachment order absolute need no
interference in exercise of the jurisdiction under Article 136. [Para
B 27] [930-D-H; 931-A-B]

1.5 Earlier the interim attachment orders were made
absolute by Judicial Commissioner, which orders were set aside
by the High Court and the matter was remanded. After remand,
show-cause was given by the appellants which have been
considered in detail as given by the Judicial Commissioner.
C Judicial Commissioner vide order dated 13.10.2004 has referred
to the various evidences brought on the record including oral
evidence with regard to properties. After consideration of facts
and evidences, the Judicial Commissioner found it a fit case to
make an attachment absolute. The High Court confirmed the said
D order. In so far as submissions of counsel for the appellants
regarding the property, which was purchased in 1955, counsel
for the State submitted that power to attach the property does
not confine only to the properties acquired by ill-gotten money
but to secure the property misappropriated, any property of the
accused can be attached. A perusal of Section 4 indicate that
E power to attach the money or other property alleged to have been
so procured is very much there. Further, section provides that
“if it transpires that such money or other property is not available
for attachment, such other property of the said person of
equivalent value as the District Judge may think fit...” Thus, the
F power is not confined and the power can be exercised for attaching
several properties to take care of the amount which alleged to
be defaulted. Thus, the submission that the property which was
acquired in the year 1955 could not have been attached, cannot
be accepted. The appellants in the instant case virtually are
asking to reappraise the evidence and record a finding that the
G properties attached were purchased by them of their own
finances; which exercise need not be gone into for exercise of
jurisdiction under Article 136 in facts and circumstances of the
instant case. [Para 29, 30] [931-E-H; 932-A-E]

H

State of Bihar & Anr. v. Ranchi Zila Samta Party & Anr., (1996) 3 SCC 682 : [1996] 3 SCR 663; *U. Subhadramma & Ors. v. State of Andhra Pradesh*, (2016) 7 SCC 797 : [2016] 3 SCR 469; *State of Jharkhand v. Laloo Prasad Yadav* (2017) 8 SCC 1 : [2017] 3 SCR 630 – referred to.

A

B

Case Law Reference

[1996] 3 SCR 663	referred to	Para 3	
[2016] 3 SCR 469	referred to	Para 13	
[2017] 3 SCR 630	referred to	Para 16	C

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1561 of 2008.

From the Judgment and Order dated 21.06.2007 of the High Court of Jharkhand at Ranchi in Cr. Appeal No. 307 of 2001

WITH

D

CrI. A. Nos. 1521, 1542-1543 and 1558-1559 of 2008.

K. V. Viswanathan, Guru Krishna Kumar, Sr. Advs. Amit Pawan, Abhishek Amritanshu, Hassan Zubair Waris, Akshay Sinha, Akshat Srivastava, Mukunda Rao Angara, Ms. Vrinda Bhandari, Anand Nandan, Ujjwal Jain, Pranay Jain, D. N. Goburdhan, Advs. for the Appellants.

E

K. K. Venugopal, AG, Vibha Datta Makhija, Sr. Adv., Ms. Ranjana Narayan, R. Balasubramanian, Prabhas Bajaj, Akshay Amritanshu, Ms. Aarti Sharma, Mukesh Kumar Maroria, Ms. Disha Vaish, Ankur Talwar, Harish Vaidyanathan Shankar, Ms. Nisha Mohandas, B. Krishna Prasad, Anil K. Jha, Advs. for the Respondent.

F

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. I. All these appeals arise out of proceedings undertaken under Criminal Law (Amendment) Ordinance, 1944, by which certain properties were attached on an application filed on behalf of the State, which attachments were subsequently made absolute. Criminal appeals filed before the High Court by the appellants were dismissed leading to filing of these criminal appeals. Criminal Appeal No. 1561 of 2008 and Criminal Appeal No. 1521 of 2008 have

G

H

A been filed against the common judgment dated 21.06.2007 of Jharkhand High Court dismissing two criminal appeals filed by the appellants.

2. Criminal Appeal Nos. 1542-1543 of 2008 as well as Criminal Appeal Nos. 1558-1559 of 2008 have been filed against the common judgment dated 21.06.2007 of Jharkhand High Court by which two criminal appeals filed by appellants were dismissed.

Facts of Criminal Appeal No. 1561 of 2008 and Criminal Appeal No. 1521 of 2008

3. This Court vide its order dated 19.03.1996 in *State of Bihar & Anr. Vs. Ranchi Zila Samta Party & Anr., (1996) 3 SCC 682*, entrusted a case of large-scale defalcation of public funds, fraudulent transactions and falsification of accounts, to the tune of around Rs. 500 crores, which came to light in the Animal Husbandry Department of the State of Bihar. A similar situation prevailed in the Education, Cooperation and Fisheries Departments. It was agreed by all the counsel in above case that an in-depth investigation is required to be made. The only controversy between counsel on either side was whether the High Court, in exercise of its power under Article 226, could take the investigation away from the State police and entrust it to the Central Bureau of Investigation (CBI).

4. The allegation in brief was that the large number of accused persons in pursuance of a conspiracy defrauded Government of Bihar (now Jharkhand) to the extent of several hundred crores during the period 1990 to 1994 on the basis of fake allotment letters purported to have been issued by the Director, A.H. Department, for purchase of medicines. Fake supplies were shown by the suppliers and money was withdrawn on the basis of fake allotment orders and the same was misappropriated by the accused persons, suppliers, public servants and others. Several criminal cases under Sections 120B, 409, 420, 467, 468, 471 and 472 with Sections 13(2) and 13(1)(c) & (d) of the Prevention of Corruption Act, 1988 were registered.

5. One Dr. S.B. Sinha, who was a public servant, was found involved in 41 criminal cases registered against various accused. Dr. S.B. Sinha was father of Ravi Sinha, appellant No.1, appellant No.2 Nephew of Dr. S.B. Sinha, appellant No.3 wife of Dr. S.B. Sinha and appellant No. 4 is wife of Ravi Sinha, appellant No.1. An application was filed by the State of Bihar before the Court of Judicial Commissioner,

Ranchi under Section 3 of Criminal Law (Amendment) Order, 1944, arraying Dr. S.B. Sinha as respondent No.1, the appellant No.1, Ravi Sinha as respondent No.2, the appellant No. 2 as respondent No.4, appellant No.3 as respondent No.5 and appellant No.4 as respondent No.6 to the petition by which properties mentioned in Annexure-II to the petition were to be attached. It was further prayed that the said attachments be made absolute till final termination of the criminal proceedings after submission of charge-sheet, if any, by the C.B.I. In the application, it was mentioned that in the investigation by the C.B.I., it has been found that Dr. S.B. Sinha was involved in 41 cases registered and consequent to conspiracy, Government of Bihar was defrauded to the tune of Rs.600 crores.

6. Application was filed in RC No.31(A)/96, in which it was stated that money was misappropriated by the accused by causing wrongful gains to themselves and the substantial portion of the money was procured in obtaining various properties. Details of properties possessed by Dr. S.B. Sinha through self and other respondents were mentioned in Annexure-II. In that application, it was further stated that it is apprehended that Dr. S.B. Sinha, his wife, children and other respondents will withdraw the amounts and dispose of the properties during the course of investigation which is in an advanced stage. On the basis of said application, an order was passed on 30.08.1996 by the Judicial Commissioner, Ranchi, by which the application was allowed for ad-interim attachment of the properties detailed in Annexure-II. It was further directed that notice be issued to the opposite parties to show-cause as to why the interim order of attachment be not made absolute. Response to show-cause was shown by respondent Nos. 1, 3, 4 and 5 to the application on 21.02.1997 and respondent Nos. 2 and 6 to the application on 26.11.1998/08.12.1998. The respondents also challenged the jurisdiction of Judicial Commissioner, Ranchi. Dr. S.B. Sinha died on 25.10.1999. Opportunity was granted by Judicial Commissioner to produce evidence in support of show-cause given to the Judicial Commissioner.

7. On 26.03.2001, a petition was filed by C.B.I. praying therein that order of ad-interim attachment be made absolute. The respondent Nos. 2 to 6 to the application did not participate in the proceedings before the Judicial Commissioner, Ranchi. After April, 1999, various dates were fixed by the Judicial Commissioner whereby several opportunities were

- A given to the respondents for adducing evidence. Since these opportunities were not availed of by the respondents, Judicial Commissioner by an order dated 03.05.2001 made the ad-interim attachment of properties absolute. On a petition filed under Clause 9(2) of Ordinance for appointment of a receiver to manage the attached properties, the Judicial Commissioner passed an order on 12.06.2001 directing the C.B.I. to suggest the names of competent persons for appointment of receiver.
- B Aggrieved by the orders dated 03.05.2001 and 12.06.2001, Criminal Appeal Nos. 307 and 310 of 2001 was filed by the appellants in the High Court. The Division Bench of the High Court vide its judgment dated 21.06.2007 dismissed the criminal appeals. Aggrieved by the said
- C judgment, Criminal Appeal Nos. 1561 of 2008 and 1521 of 2008 has been filed.

Criminal Appeal Nos. 1542-1543 of 2008 and Criminal Appeal Nos. 1558-1559 of 2008

8. Several criminal cases were got registered by the C.B.I. against different accused persons including one Vijay Kumar Mallick. Vijay Kumar Mallick was also an accused in R.C. Case No.28(A)/96, R.C. Case No.32(A)/96 and R.C. Case No.33(A)/96. The alleged amount of fraud in the said three cases was to the extent of Rs.24,69,60,090/- as reported in the First Information Reports. An application was filed before the Judicial Commissioner, Ranchi by State of Bihar against Vijay Kumar Mallick(as O.P. No.1), Smt. Komal Mallick, (as O.P. No.2) and Sandeep Mallick and three other persons. It was alleged in the application that in the course of investigation, it has transpired that Vijay Kumar Mallick is involved in three cases being R.C. Case No. 28(A)/96, R.C. Case No. 32(a)/96 and R.C. Case No. 33(A)/96 in which prima facie the amount defrauded is to the extent of Rs.24,69,60,090/-. It was further alleged that Vijay Kumar Mallick has acquired huge movable and immovable assets in his own name and in the name of his wife and children and others at different places. In Annexure-II, the statement and details of the properties was given. It was further stated that O.P. No.1 and others have not invested in the properties from their own source of
- D
- E
- F
- G
- H
- income. Request was made in the application for issuing an ad-interim order for attachment of properties. On 30.08.1996, the Judicial Commissioner passed an ad-interim order attaching the properties as per details given in Annexure-II. The ad-interim order of attachment was made absolute on 27.04.2001 and further order on 12.07.2001 was passed directing the C.B.I. to suggest names for appointment of receiver.

9. Respondent NOs. 2, 3 and 4 to the application had filed criminal appeals in the High Court of Jharkhand. The High Court of Jharkhand vide its order dated 26.03.2003 set aside the orders passed by the Judicial Commissioner and further directed the Judicial Commissioner to pass a fresh order after hearing the parties. Show-cause was shown before the Judicial Commissioner. The Judicial Commissioner after noticing the show-cause passed a detailed order dated 13.10.2004 making the ad-interim order as an absolute. Vide order dated 18.10.2004, direction was given for appointment of receiver to manage the attached properties. By subsequent order dated 14.12.2004, Deputy Commissioner, Ranchi was appointed as receiver.

10. Criminal appeals were filed against order dated 13.10.2004, 18.10.2004 and 14.12.2004 being Criminal Appeal Nos. 1931 of 2004 and 694 of 2005 before the Jharkhand High Court. The Division Bench of the Jharkhand High Court dismissed both the appeals vide its judgment dated 21.06.2007. Aggrieved by the said judgment Sandeep Malik has filed Criminal Appeal Nos. 1542-1543 of 2008 and Kamal Malik has filed Criminal Appeal Nos. 1558-1559 of 2008.

11. We have heard learned counsel for the appellants appearing in these criminal appeals as well as learned counsel appearing for the State of Jharkhand.

12. We first take up the Criminal Appeal Nos. 1561 of 2008 and 1521 of 2008 filed by Ravi Sinha & Ors. Shri K. V. Viswanathan, learned senior counsel appearing for the appellants have raised various submissions in support of the appeals. The foremost submission raised by Shri K. V. Viswanathan is that Dr. S.B. Sinha, who was allegedly the brain behind conspiracy having died on 25.10.1999, which fact having brought to the notice of the Judicial Commissioner, there was no reason to continue the attachment and to make the attachment order absolute on 03.05.2001. It is submitted that due to death of Dr. S.B. Sinha, criminal proceedings against him has abated. Dr. S.B. Sinha no longer could have been convicted due to abatement of proceedings and the order of attachment ought to have been withdrawn.

13. Learned senior counsel has relied on judgment of this Court in *U. Subhadramma & Ors. Vs. State of Andhra Pradesh, (2016) 7 SCC 797*. He submits that due to death of an accused neither any guilt can be pronounced nor any conviction can be ordered and the order of

- A attachment of properties ought to have been withdrawn and the Judicial Commissioner committed error in making the order absolute. It is further submitted that appellants were alleged to be only name lenders and except Ravi Sinha, other three appellants are not involved in fodder scam case. In any case, the attachment could have been with regard to the properties of Dr. S.B. Sinha and the properties of the present appellants were not
- B liable to be attached. Ravi Sinha has been accused in four cases out of which in one case, he has been acquitted and in another case, he was not sent up for trial. In one case, i.e. RC No. 39/1996, appeal has already been filed in the High Court and the case i.e. R.C. No. 68/1996 is pending in the trial court. He further submits that amount alleged to be
- C misappropriated in R.C. No. 39/1996 and R.C. No. 68/1996 stands secured as the same was deposited before the trial court pursuant to orders of the Hon`ble High Court granting him bail.

14. It has been further contended that C.B.I. had not sought orders under Section 12 of the 1944 Ordinance at the stage of conviction in
- D R.C. No. 39/1996, it cannot now do so. The stage of Section 12 having come and gone, no orders can be passed with regard to properties attached.

15. Shri K.K. Venugopal, learned Attorney General refuting the submission of learned senior counsel for the appellants contends that the
- E order of attachment as well as order making the attachment absolute are in accordance with law. He submits that in a fodder scam, which relates to non-supply of medicines and in which money more than Rs.600 crores has been defrauded, the accused are part of a larger conspiracy. Ravi Sinha has already been convicted by judgment and order dated 12.06.2008 in R.C. No. 39(A) of 1996 (Spl. No. 41 of 1996), it has been
- F proved that he has committed offence. Sentence of Rigorous Imprisonment for various offences including fine has been awarded against him. The properties at this state where a larger conspiracy was hatched and large number of accused having been convicted and/or are still facing trial, the attachment of the properties could not have been
- G withdrawn. Even though Dr. S.B. Sinha had died in the year 1999, the properties attached could not have been released. One of his legal heirs was also facing criminal proceedings in the same larger conspiracy to misappropriate the Government fund.

16. Shri K.K. Venugopal further submits that the mere fact that
- H allegations against Shri Ravi Sinha in the charge sheet, which was filed

against him were of specific amount cannot be said to mean that once the aforesaid amount is mentioned, the properties already attached should be withdrawn since properties were acquired under larger conspiracy and the smaller conspiracy was part of a larger conspiracy. Shri Venugopal has also referred to judgment of this Court in *State of Jharkhand Vs. Laloo Prasad Yadav, (2017) 8 SCC 1*. Shri K.K. Venugopal answering the submissions with regard to Sections 12 and 13 of Ordinance contends that proceedings under Sections 12 and 13 are independent proceedings and merely because at the time of conviction order passed against Ravi Sinha, no mention was made of properties, which were attached shall not come in the way in passing an order under Section 13 of the Ordinance, 1944. After completion of the criminal proceedings, order can be passed under Section 13.

Submissions in Criminal Appeal Nos. 1542-1543 of 2008 and 1558—1559 of 2008

17. Learned counsel appearing for the appellant in aforesaid criminal appeals contends that the above appeals involved totally different issues from the Ravi Sinha's case. The trial court and the High Court have not considered the various materials like Income Tax Returns, Wealth Tax Returns, Electricity Receipts, House Tax Receipts, Bank Drafts etc., which clearly established the independent status/sources of income of the Appellants. The High Court has merely confirmed the order of trial court without consideration of the material. There was no justification for attachment of property at Sl. No.3 i.e. Kashmere Gate property since the said property was acquired in the year 1955 in the name of Sandeep Malik. The Property No. 158, Gali Bagichewali, Kashmere Gate, Delhi was purchased in the year 1955 in the public auction. The property of Engineer's Enclave, New Delhi in which Sandeep Malik is a co-owner was purchased in the year 1991 i.e. much before the alleged scam.

18. Learned counsel appearing for the State of Jharkhand has refuted the above submission and submitted that application which was filed by the State clearly alleged that properties were purchased out of ill-gotten money by Vijay Kumar Mallick in his name and in names of his relatives. It is further stated that the value of properties was only about Rs. 25 lakhs whereas the defalcation alleged was more than a crore, hence attachment of other properties of accused are also permissible under the provisions of Ordinance, 1944.

A 19. We have considered the submissions of learned counsel for the parties and have perused the records.

20. We first proceed to the submissions raised by Mr. K.V. Viswanathan. The principal submission of Shri K.V. Viswanathan is that after death of Dr. S.B. Sinha on 25.10.1999, the attachment of properties ought to have been withdrawn since after the death of the accused neither any order of conviction can be passed nor even guilt can be pronounced. He has placed reliance on judgment of this Court in *U. Subhadramma & Ors. Vs. State of Andhra Pradesh, (supra)*. This Court in the said case was considering the provisions of Ordinance, 1944. The properties were attached after the death of accused and further conviction was pronounced several years after his death. This Court held that no application for attachment could have been made after the death of the accused and the conviction pronounced after death of the accused was null and void. In Paragraph 12 of the judgment, following has been held:-

D “12. 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 Section 3 of the Criminal Law Amendment Ordinance, 1944, who was actually dead. Section 3 contemplates

E 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

F 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. 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.”

H

21. There cannot be any dispute to the proposition that no proceedings under Ordinance, 1944 can be undertaken against the accused after his death and the prosecution cannot continue after the death of an accused. There cannot be any dispute that after death of Dr. S.B. Sinha, no prosecution could have been continued against him, in fact after noticing his death, the charge sheet was not submitted by C.B.I. against Dr. S.B. Sinha.

22. In the present case, there is one fact, which makes the present case different from the case of *U. Subhadramma & Ors. Vs. State of Andhra Pradesh, (supra)*, i.e. in the present case, Ravi Sinha, the son of Dr. S.B. Sinha was himself accused in large number of cases. In one case, he had already been convicted and fined. In another case relating to the similar fodder scam, i.e., R.C. No. 36/1996, the trial is going on. There is a specific allegation that he had received payment but did not supply medicine worth Rs.9.75 lakhs in R.C. Case No. 39/1996, in which he has been convicted. Allegation was against him that the company was paid a sum of Rs.5.90 lakhs and there was non-supply of medicine. The appellants themselves in their appeal No. 1561 of 2008 has filed a rejoinder affidavit and in Paragraph 16, following has been stated:-

“That what emerges from the aforesaid facts is that out of four cases against him Ravi Sinha has been acquitted in one and not sent up for trial in another. Even in the other two, in one the trial is underway and in the other he has been convicted but his appeal is pending before the Hon’ble High Court. While nothing needs to be said about the first two cases, even with respect to the latter two cases, the amount allegedly misappropriated by Ravi Sinha, assuming whilst denying that ultimately the charges are found true, stands secured as he has already deposited the amount with the trial court. Therefore there can be absolutely no rationale for initiating separate attachment proceedings against him as the very object of the attachment proceedings, under the Ordinance is to secure the amount allegedly misappropriated so that in case of conviction, the attached assets could be forfeited and liquidated to make good the amount misappropriated. Being conscious of this legal position, the CBI has not initiated and cannot initiate any attachment proceedings against Ravi Sinha but is rising this issue of cases against Ravi Sinha just to prejudice this Hon’ble Court.

A True copy of a chart dated Nil giving the status of the cases against Ravi Sinha is appended hereto marked ANNEXURE –R/11"

23. It is thus an admitted position that Ravi Sinha had been convicted in the fodder scam case and in one case trial is already going on. There being an order of conviction of Ravi Sinha and in other case trial being underway making attachment order absolute cannot be faulted with. It is true that prosecution against Dr. S.B. Sinha could not have been continued after his death and no guilt can be pronounced of Dr. S.B. Sinha, he being dead. However, the properties which were already under attachment, having come in the hands of accused Ravi Sinha as one of the legal representatives, who has been convicted in a fodder scam case and is facing trial in another case, present is not a case where this Court can exercise its jurisdiction under Article 136 to interfere with the order of the High Court and of the Judicial Commissioner in making the order of attachment absolute. We thus do not find the present case fit to exercise our jurisdiction under Article 136 on the above submission of learned counsel for the appellants.

24. The submission raised by Mr. Viswanathan in regard to Sections 12 and 13 of the Ordinance needs now to be considered. Sections 12 and 13 of the Ordinance are as under:-

E "12. Criminal Courts to evaluate property procured by scheduled offences.

(1) Where before judgment is pronounced in any criminal trial for a scheduled offence it is represented to the Court that an order of attachment of property has been passed under this Ordinance in connection with such offence, the Court shall, if it is Convicting the accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence.

(2) In any appeal or revisional proceedings against such conviction, the appellate or revisional Court shall unless it sets aside the conviction, either confirm such finding or modify it in such manner as it thinks proper.

(3) In any appeal or revisional proceedings against an order of acquittal passed in a trial such as is referred to in sub-section (1), the appellate or revisional Court, if it convicts the accused, shall record a finding such as is referred to in that sub-section.

H

(4) Where the accused is convicted of a scheduled offence other than one specified in item I of the Schedule to this Ordinance and where it appears that the offence has caused loss to more than one Government referred to in the said schedule or local authority the finding referred to in this section shall indicate the amount of loss sustained by each such Government or local authority. A

(5) Where the accused is convicted at the same trial of one or more offences specified in item I of the Schedule to this Ordinance and of one or more offences specified in any of the other items of the said Schedule, the finding referred to in this section shall indicate separately the amounts procured by means of the two classes of offences. B C

13. Disposal of attached property upon termination of criminal proceedings.

(1) Upon the termination of any criminal proceedings for any scheduled offence in respect of which any order of attachment of property has been made under this Ordinance or security given in lieu thereof, the agent of the [State Government or, as the case may be, the Central Government] shall, without delay inform the District Judge, and shall where criminal proceedings have been taken in any Court, furnish the District Judge with a copy of the judgment or order of the trying Court and with copies of the judgments or orders, if any, of the appellate or revisional Courts thereon. D E

(2) Where it is reported to the District Judge under sub-section (1) that cognizance of the alleged scheduled offence has not been taken or where the final judgment or order of the Criminal Court is one of acquittal, the District Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned. F

(3) Where the final judgment or order of the Criminal Courts is one of conviction, the District Judge shall order that from the property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to Government such amount or value as is found in the final judgment or order of the Criminal Courts in pursuance of G H

A Section 12 to have been procured by the convicted person by
means of the offence, together with the costs of attachment as
determined by the District Judge and where the final judgment or
order of the Criminal Courts has imposed or upheld a sentence of
fine on the said person (whether alone or in conjunction with any
B other punishment), the District Judge may order, without prejudice
to any other mode of recovery, that the said fine shall be recovered
from the residue of the said attached property or of the security
given in lieu of attachment.

C (4) Where the amounts ordered to be forfeited or recovered under
sub-section (3) exceed the value of the property of the convicted
person attached, and where the property of any transferee of the
convicted person has been attached under Section 6, the District
Judge shall order that the balance of the amount ordered to be
forfeited under sub-section (3) together with the costs of
attachment of the transferee's property as determined by the
D District Judge shall be forfeited to Government from the attached
property of the transferee or out of the security given in lieu of
such attachment; and the District Judge may order, without
prejudice to any other mode of recovery that any fine referred to
in sub-section (3) or any portion thereof not recovered under that
sub-section shall be recovered from the attached property of the
E transferee or out of security given in lieu of such attachment.

(5) If any property remains under attachment in respect of any
scheduled offence of any security given in lieu of such attachment
remains with the District Judge after his orders under sub-section
(3) and (4) have been carried into effect, the order of attachment
F in respect of such property remaining shall be forthwith withdrawn
or as the case may be, the remainder of the security returned,
under the orders of the District Judge.

(6) Every sum ordered to be forfeited under this section in
connection with any scheduled offence other than one specified
in item I of the Schedule to this Ordinance shall, after deduction
of the costs of attachment as determined by the District Judge, be
credited to the Government {being a Government referred to in
G the said Schedule} or local authority to which the offence has
caused loss, or where there is more than one such Government or

H

local authority, the sum shall, after such deduction as aforesaid, be distributed among them in proportion to the loss sustained by each.” A

25. A perusal of Section 12(1) indicates that when the Court in any criminal trial is represented that an order of attachment of property has already been passed, the Court shall, if it is convicting the accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence. Thus, Section 12(1) is to be invoked before the judgment is pronounced and the Court is obliged to record a finding when it is represented to the Court that an order of attachment of property has been passed. B C

26. Learned Attorney General has placed before us a copy of the judgment dated 12.06.2008 of trial court in R.C. No. 39(A) of 1996 convicting Ravi Sinha. A perusal of which does not indicate that Court was represented by C.B.I. that any property has already been attached. Thus, the present is not a case where any order was to be passed by the Court under Section 12(1). In the submission, it has been pressed by Mr. Viswanathan that once stage under Section 12(1) has passed, on it cannot be done later. According to him, now no order can be passed with regard to attached properties, hence there is no justification for continuation of attachment. Whether any order can still be passed with regard to attached property is a question to be answered. Section 13 of the Ordinance, 1944 as stated above provides for disposal of attached property upon termination of criminal proceedings. Termination of criminal proceedings are defined in Section 2(2) of the Ordinance, 1944, which provides as follows;- D E

“2(2). For the purpose of this Ordinance, the date of the termination of criminal proceeding shall be deemed to be F

(a) where such proceeding are taken to the Supreme Court in appeal, whether on the certificate of a High Court or otherwise, the date on which the Supreme Court passes its final order in such appeal; or G

(b) where such proceedings are taken to the High Court and orders are passed thereon and

(i) no application for a certificate for leave to appeal to the Supreme Court is made to the High Court, the day immediately H

- A following the expiry of ninety days from the date on which the High Court passes its final orders;
- (ii) an application for a certificate for leave to appeal to the Supreme Court has been refused by the High Court, the day immediately following the expiry of sixty days from the date of
- B the refusal of the certificate;
- (iii) a certificate for leave to appeal to the Supreme Court has been granted by the High Court, but no appeal is lodged in the Supreme Court, the day immediately following the expiry of thirty days from the date of the order granting the certificate;
- C or
- (c) where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last judgment or order of a Criminal Court in the Proceedings.”
- D 27. In the present case against the order of conviction dated 12.06.2008, appeal is already pending in the High Court as has been pleaded by the appellant. Thus, criminal proceedings have not yet been terminated. Further, in one criminal case, trial is already pending against the accused in which provisions of Sections 12 and 13 can still be resorted
- E to. Thus, this submission cannot be accepted that once a judgment is pronounced in a criminal case by the Court and if no findings have been recorded with regard to attached properties, no order can be passed with regard to attached properties. Section 13 gives ample power to deal with attached properties after termination of criminal proceedings. Mr. Viswanathan has also submitted that even accepting the allegations
- F against Ravi Sinha, the allegations centre around only to Rs. 9.75 lakhs and Rs. 2.95 lakhs in R.C. No. 39/1996. He submits that there can be no justification for keeping the properties under attachment when the allegations are only upto the amount given above and further in the order granting bail, the appellant has already secured the aforesaid amount.
- G We have already noticed that one more trial is still pending against Ravi Sinha. It is not necessary for us to consider the extent of amount which has been found to be misappropriated by Ravi Sinha and computing the value of properties attached. These are the questions which can very well be raised by the appellant Ravi Sinha in Section 13 proceedings or at the time of judgment in pending trial by invoking Section 12 of the
- H

Ordinance, 1944. We are since confined to the only question in the present case; i.e. whether the attachment order ought not to have been made absolute, and thus need not go into this submission in detail or express any opinion? We thus are of the view that order passed by the Jharkhand High Court dismissing the criminal appeals filed by the appellant against order of Judicial Commissioner making the attachment order absolute need no interference in exercise of our jurisdiction under Article 136.

28. Now, we come to the criminal appeals of Sandeep Malik and Kamal Malik. The High Court while dismissing the criminal appeals filed by the appellant has made following observations in Paragraph 8 :-

“Perusal of the impugned order dated 13.10.2004 clearly indicates that the court below had considered each and every aspect of the matter and gave reasoning as to how the opp. party-appellants have failed to prove that those properties were purchased out of their own source of income. The court below, on the other hand, would refer to various materials collected by the prosecuting agency to show that those properties must have been purchased by the appellant no.1, Vijay Kumar Mallik, through ill-gotten money. There is no dispute in the fact that other appellants are closely related with appellant no.1, Vijay Kumar Mallik, who has been convicted ultimately by the court below.”

29. As noted above, earlier the interim attachment orders were made absolute by Judicial Commissioner, which orders were set aside by the High Court and the matter was remanded. After remand, show-cause was given by the appellants which we have considered in detail as given by the Judicial Commissioner. Judicial Commissioner vide order dated 13.10.2004 has referred to the various evidences brought on the record including oral evidence with regard to properties i.e. Engineers Enclave, as well as 158, Bageechewali, Kashmere Gate, New Delhi. There is a detailed consideration from Page 76 to Page 81 of the paper book of Criminal Appeal Nos. 1558-1559 of 2008. After consideration of facts and evidences, the Judicial Commissioner was found it a fit case to make an attachment absolute. The High Court has confirmed the aforesaid order vide its judgment dated 21.06.2007. In so far as submissions of learned counsel for the appellants regarding Kashmere Gate property, which was purchased in 1955, learned counsel for the State has submitted that power to attach the property does not confine

- A only to the properties acquired by ill-gotten money but to secure the property misappropriated, any property of the accused can be attached. A perusal of Section 4 of Ordinance, 1944 indicate that power to attach the money or other property alleged to have been so procured is very much there. Further, section provides that “if it transpires that such
- B money or other property is not available for attachment, such other property of the said person of equivalent value as the District Judge may think fit...” Thus, the power is not confined and the power can be exercised for attaching several properties to take care of the amount which alleged to be defaulted. In the present case, in the order making the attachment absolute, following observations have been made:-
- C “In the present case annexure-I to the main application shows that the amount allegedly received by O.P. No.1 from A.S.D. Chaibasa is Rs.1,49,41,000/- Annexure-II to the main application shows the valuation of the attached properties to be Rs.25 lacs which is much less than the amount said to have been procured
- D by means of scheduled offences....”

Thus, the submission that the property which was acquired in the year 1955 could not have been attached cannot be accepted.

- E 30. The appellants in the present case virtually are asking us to reappraise the evidence and record a finding that the properties attached were purchased by them of their own finances; which exercise need not be gone into for exercise of jurisdiction under Article 136 in facts and circumstances of the present case.

31. In result, all the appeals are dismissed.