THE HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

BEFORE SINGLE BENCH: JUSTICE SHRI SHAILENDRA SHUKLA

Criminal Appeal No.8951/2018

Kailash S/o Late Mathuralal Sangate & others
vs.
State of Madhya Pradesh through SPE, Lokayukt, Ujjain

Counsel for the Parties	:	Shri Bhaskar Agrawal, learned counsel for the appellants. Shri Vaibhav Jain, learned counsel for the respondent.
Whether approved for reporting	:	Yes
Law laid down	:	1) Confiscation proceedings under the M. P. Special Courts Act, 2011 Rule 10(2) and 10(3) prescribing time limit for furnishing reply of 30 days in the first instance and 15 days in the second totalling to 45 days is of mandatory character. Neither Section 11 of the M. P. Special Courts Act, 2011 providing for adjournment nor provisions of Section 5 of the Limitation Act, 1963 are applicable. 2) The Authorised Officer is not empowered to grant time beyond 45 days in all for submission of statement of defence. The order of Authorised Officer to recall his previous order granting extension of time beyond 45 days will not amount to review as it is an administrative order and there would be no illegality in doing so. 3) The Special Courts should be very careful in seeing to it that extension of time beyond 45 days is not given in any case.
Significant paragraph numbers	:	1) 16, 17, 18, 19, 20, 24 2) 12, 13, 15 3) 25

J U D G E M E N T

(Delivered at Indore on this 5th day of March, 2019)

This order disposes the appeal filed under Section 17 of the M. P. Special Courts Act, 2011 (hereinafter for brevity will be referred as "the Act of 2011") against the order dated 05.10.2018 passed by the Authorised Officer of M. P. Special Court Act, Indore in Special Sessions Case No.3/2016 wherein the appellants have been denied the opportunity to file their reply in respect of confiscation proceedings being carried out by the respondent.

2. Brief facts of the case are that criminal case against the appellant Nos.1 and 2 bearing Crime No.8/2012 was registered in respect of the offences punishable under Section 13(1)(e) and 13(1)(2) of the Prevention of Corruption Act along with Sections 109 and 120-B of the IPC.

3. After filing of charge-sheet in the year 2013, on 22.08.2016, the respondent has further preferred an application under Section 13(1) of the Act of 2011 for confiscating the property of the appellants, which was the subject matter of the crime. This case was registered as Special Sessions Case No.3/2016.

4. As per the learned counsel for the appellants, the appellants preferred an application for providing legible copes of the documents filed by the respondent so that proper reply may be given. However, the respondent preferred an application under Rule 10 (1)(2)(3) of the M. P. Special Court Rules, 2012 (hereinafter for brevity will be referred as "the Rules of 2012) praying that opportunity to file reply may be denied to the appellants. This application of the respondent was allowed by the Special Judge vide impugned order dated 05.10.2018 and denied the opportunity of filing the written reply. It is this order, which has been challenged by the appellants.

5. The main grounds of this appeal were that it was wrong on the part of the Authorised Officer to conclude that the provided time of 45 days under the Rules of 2012 in all is mandatory in nature and that the Authorised Officer himself had granted time to file reply and therefore, could not review his own

order and deny the rightful opportunity to such reply which ought to have been afforded in view of the fact that legible copies of the documents had not been filed by the respondent, the appellants were not in a position to file the reply. It is further submitted that as per Rule 10(3) of the Rules of 2012, nothing more than presumption can be invoked against the appellants on failure to file reply within time and this presumption is rebuttable in nature, which has been duly rebutted.

6. In this appeal, it has been prayed by the appellants that the impugned order dated 05.10.2018 be set aside and the appellants may be permitted to file reply before the Authorised Officer so that substantive justice can be afforded in the matter.

7. Both the learned counsels for the parties were heard.

8. The main plank of the submissions lead by the learned counsel for the appellants has been two fold i.e. the order of the Authorised Officer denying the opportunity to file reply amounts to review of its earlier orders in which the appellants were being given time successively to file reply. The Authorised Officer was incompetent to pass such review order. Secondly, that the time stipulated under Rule 10(2) of 45 days in all is directory in nature and the Authorised Officer ought to have extended time in view of the fact that legible copies of the documents were not provided to the appellants.

9. It would be appropriate to narrate the chronology of sequence of events in the matter which are un-controverted. After filing the application by the respondent under Section 13(1) of the Act, 2011, notice was issued against the appellants. Notice was served on 29.07.2016. The appellants appeared on 26.08.2016. However, the reply was not submitted by the appellants and the appellants submitted that they were continuously provided time to file reply. However, two years later, the respondent filed an application on 31.07.2018 seeking an order that the appellants be denied the opportunity to submit their reply.

10. Learned counsel for the appellants submit that there was no laxity on

the part of the appellants to furnish the reply and that the reply could not be furnished because legible copies of the documents were not provided to them. However, during the course of arguments, learned counsel for the appellants admitted that no application was filed on behalf of the appellants seeking legible copies of the documents. The bonafides of the appellants could have been assumed had they filed such application. However, no such application having been filed, no conclusion can be drawn other than that the appellants kept on lingering submissions to reply without any reasonable cause.

11. Now the moot question is whether the Authorised Officer once having granted time to file reply, can deny the same on the ground that no time more than 45 days could have been given?

12. Learned counsel for the appellants submit that such an order amounted to review of its own order and no such statute provides for review of the order. He has also pointed out that in the case of **Adalat Prasad vs. Rooplal Jindal & others** reported in AIR 2004 SC 4674, the Apex Court has held that the cognizance of case once taken by a Court, could not be revoked by the same Court implying thereby that review is not permissible.

13. To this, learned counsel for the respondent submits that there is difference between review and recall. When an order is made on merits, the same cannot be reviewed whereas, an administrative order, which is not passed on merits of the case, can certainly be recalled. Moreover, the Authorised Officer ultimately acted upon as per the provisions of the law and he could not have transversed beyond the mandate stipulated under the Act. He has also pointed out that similar submissions were made before another Co-ordinate Bench and the Co-ordinate Bench in **Cr. A. No.7962/2018** decided on **21.01.2019 (Smt. Leena Upadhyay vs. State of Madhya Pradesh)** has aptly observed that there cannot be an estoppel against the law.

Rival contentions were considered.

14. It is quite clear that the order granting time for furnishing reply is not based on merits of the case but is an administrative order.

15. On both criminal and civil side, one can see that scope of review of judgement or order has been provided on either side in a very limited manner. The word review has been used in relation to a judgement or order passed on merits. However, an administrative order such as granting adjournment is not an order on merits and recalling such order would not amount to reviewing the order. Even in the case of **Adalat Prasad (supra),** an order of taking cognizance was passed on merit which could not have been reviewed or recalled. Thus, to equate the administrative order with an order passed on merits, would not be appropriate. Further, as already stated by the Co-ordinate Bench, there cannot be estoppel against the mandatory provisions of law.

16. Now the only question is whether time limit for furnishing reply of 30 days in the first instance and 15 days in the second totalling to 45 days is of mandatory character or not.

17. Learned counsel for the appellants submit that this time span of 45 days is not of mandatory nature and has pointed out the fact that Section 11 of Act of 2011 itself gives scope for adjournment of a trial and in that event, prescription of 45 days for furnishing reply is merely directory in nature.

18. To this, learned counsel for the respondent has submitted that Section 11 of the Act of 2011 relates to trial of offence. He has also brought attention of this Court towards the word **"offence"**, which is defined under Section 2(e) of the Act of 2011 as under :-

> *2. Definitions — (e) "offence" means an offence of criminal misconduct which attracts application of Section 13(1)(e) of the Act either independently or in combination with any other provision of the Act or any of the provision of Indian Penal Code, 1860 (45 of 1860).*

19. He further submits that in confiscation proceedings, no trial is conducted as such and proceedings are based on affidavits and counter affidavits and no evidence is required to be taken therein and therefore, provisions of Section 11 of the Act of 2011 cannot be imported in confiscation

proceedings.

20. The matter relating to confiscation of property is prescribed under Section 13 of the Act of 2011 and the procedure thereto is specified under Rule 10 of the Rules of 2012. Rule 10 prescribes that the Authorised Officer shall follow the summary procedure and it involves, issuance of notice, filing of reply, opportunity to the Public Prosecutor to submit his own reply in response to the reply and finally adjudication. Thus, in confiscation proceedings, no evidence is required to be taken and therefore, there is no trial as such but barely procedure is needed to be adopted. This alone shows that Section 11 of the Act of 2011 does not relate to confiscation proceedings hence, submission of learned counsel for the appellants that he can be given adjournment in the confiscation proceedings is not correct.

21. Regarding submissions that the period of 30 days and 15 days are barely directory in nature, learned counsel for the respondent has brought attention of this Court to the fact that the confiscation proceedings need to be carried out within the fixed time-frame i.e. 6 months so that during pendency of case pertaining to offence of disproportionate income, the accused may not be in a position to alienate his property. He further submits that the confiscation proceedings are interim and summary in nature. If the main case results in acquittal of the accused, then the property of confiscation shall revert back to the accused. He also submits that the purpose of confiscation would be defeated if the provision relating to time provided is viewed liberally since lapse of time would not only provide opportunity to the accused to alienate the property but the property would also in course of time be devalued and therefore, as per the learned counsel for the respondent, provision of 45 days time for furnishing the reply ought to be construed strictly. Learned counsel for the respondent has cited the judgement of the **Patna High Court** passed in **Cr. A. No.112/2015** decided on **24.03.2017 (Omprakash Singh vs. State of Bihar).** In this judgement, while the written submissions (reply) was filed after 52 days of appearance and where there

was a delay of only 7 days, it was held that such belated delay is not at all entertainable.

22. Learned counsel for the respondent has also invited the attention of this Court to a judgment of Co-ordinate Bench in **Criminal Appeal No.7840/2018 (Mahesh and Another vs. State of Madhya Pradesh dated 21.12.2018)**. In this judgment, detailed discussion has been made, as to when can a particular provision can be termed to be mandatory or directory. The Co-ordinate Bench took recourse to discussing the principles of interpretation of statute, as also the judgment of Apex Court in the case of **Raza Buland Sugar Company Limited Rampur vs. Municipal Board, Rampur** reported in **AIR 1965 SC 895** and other cases as well. Ultimately, in para-16, it was observed that in order to determine as to whether any particular provision is directory or mandatory in nature, the Court is required to look into not only the express language of the provision, but also the intention of the legislature, the object, nature and design of the enactment, the consequence of treating the provision directory or mandatory. It has been held that the intention of legislature is to be gathered from the object and nature of the proceedings. It was observed that **Madhya Pradesh Vishesh Nyayalaya Adhiniyam 2011** has been enacted to provide for constitution of Special Court for speedy trial of certain class of offence and confiscation proceeding is not pretrial punishment and is barely interim in nature. In para-19 of the judgment, it has been held that the entire scheme of the Act and the Rule is time bound because the proceeding is interim in nature. In para-20, it has been held that the purpose of providing time bound manner of concluding the proceeding is to deprive a person who acquires the property by means which are not legally approved, from enjoyment of such ill-gotten wealth. Hence, if these confiscation proceedings are allowed to be delayed till conclusion of prosecution, the very purpose of confiscation would be frustrated.

23. In para-22 of the judgment, the Co-ordinate Bench has concluded that provisions contained in Rule 10(2)&(3) are mandatory in nature and in case of

non-filing of reply within a period of thirty days with extended period of fifteen days, the Authorized Officer has no option, but to presume that the affected person has no defence to put forward and to proceed with adjudication of the matter. Thus, in this judgment, the Co-ordinate Bench in light of the above has held that forty five days in all can be provided for filing the reply which is mandatory in nature. There is nothing to dispel the observations so made by the Co-ordinate Bench. The conclusion thus can be drawn that the period of forty five days for furnishing the reply is mandatory in nature.

24. Now it is to be seen as to whether there is any scope for filing the application for condonation of delay under Section 5 of the Limitation Act, 1963? While dealing with this issue, another case of Co-ordinate Bench of this Court which is **Om Prakash Vishwapremi vs. Special Police Establishment Lokayukt** in **Criminal Appeal No.7049/2018** dated **13.12.2018,** it has been held that Section 5 of Limitation Act, 1963 is not applicable after forty five days. It was also pointed out that wherein Statute provides for extension of period, then the provisions of Section 5 of Limitation Act, 1963 would not be applicable. In this particular case in hand, initial period of thirty days has been made extendable by further fifteen days. Thus, the statute itself encompasses extension of time by fifteen days and when the specific provision for extension of time has been made under the Statute, the provision of Section 5 of Limitation Act will not be applicable, meaning thereby, that a total number of forty five days is the maximum time within which reply could have been filed, but has not been filed.

25. It is being seen that the Special Courts are not adhering to time limit of 45 days (in all) for allowing statement of defence to be filed. Even the Public Prosecutors are not submitting their objection in this respect and due to this laxity, purpose of the Act of disposal within six months is being defeated. The Special Courts are expected to strictly adhere to maximum stipulated time period of 45 days for allowing statement of defence to be filed.

26. To reiterate in the end, the Authorized Officer committed no mistake in denying filing of reply by the appellants after stipulated period of forty five days. It is also clear that a period of forty five days is mandatory in nature and provision of Section 5 of Limitation Act would not apply meaning thereby there can be no extension of time beyond forty five days. Thus, it is quite clear, that the Authorized Officer had committed no impropriety or legal mistake in denying the opportunity to the appellant to file his reply. This appeal, thus, stands rejected.

(Shailendra Shukla)
Judge

gp/arun