IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.898 of 2016

Arising Out of PS. Case No.-12 Year-1995 Thana- C.B.I CASE District- Bhagalpur

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Smt. Lalita Devi wife of Late Shri Dwarika Nath Rai resident of Plot No. 12, Block B, Type A, People's Cooperative Colony, Kankarbagh, Patna.

... ... **Appellant**

Versus

The State of Bihar

... ... **Respondent**

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Appearance :

For the Appellant/s	:	Mrs.Archana Sinha, Sr. Advocate Mr. Alok Kumar Shahi, Advocate Ms.Nisha Kumari, Advocate
For the Respondent	:	Mrs.Abha Singh, APP
For the Vigilance	:	Mr.Akshat Arghya, Advocate Mr.Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT

Date : 29-08-2026

Heard Mrs. Archana Sinha, learned senior counsel appearing on behalf of the appellant and learned counsel for the State.

2. The present appeal has been preferred on behalf of the appellant against the judgment and order of confiscation dated 30.09.2016 as passed by Sri Rakesh Malviya, learned Additional District and Sessions Judge-VI-cum-Authorized Officer, Special Court No.1 (Vigilance) under Special Court Act, 2009, Bhagalpur (learned Authorized Officer) in Confiscation Case No. 02 of 2012 arising out of Vigilance P.S. Case No. 12 of 1995 (impugned judgment) through which the movable and

immovable property of the appellant (opposite party no. 2 before the learned Authorized Officer) and of her late husband (opposite party no.1 before the learned Authorized Officer) have been ordered to be confiscated.

3. On the basis of private complaint, a preliminary inquiry was initiated against the appellant's husband (O.P. No.1), who was then working as Superintending Engineer with the Public Health Engineering Department, Government of Bihar.

4. Subsequent to the retirement from service of O.P. No. 1, an FIR being Vigilance P.S. Case No. 12/1995 was registered on 18.04.1995 against the O.P. No. 1 for acquisition of disproportionate assets of Rs. 13,14,742/- **with respect to the check period from February, 1963 to May 1989**.

5. After investigation, a charge-sheet No. 14 of 2004 was filed on 10.09.2004, wherein apart from the O.P. No. 1, the appellant was also arrayed as an accused for the offences punishable under Sections 420, 467, 468, 471, 120B & 109 of the I.P.C. and section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947, corresponding to Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. The allegation against the appellant is that syhe had

deliberately abetted her husband in the acquisition of assets disproportionate to his known sources of income.

Date of events

18.04.1995	Vigilance Case No. 12/1995 registered against deceased accused.
10.09.2004	Chargesheet submitted against deceased accused and appellant.
20.11.2009	Quashing of appellant allowed.
17.04.2012	Confiscation proceedings initiated.
31.03.2016	Death of sole accused.
10.06.2016	Prevention of Corruption Act main trial abated.
30.09.2016	Confiscation order passed.

Argument on behalf of the appellant

(1) On Merit:

6. It is submitted by Mrs. Archana Sinha, learned senior counsel appearing for the appellant that the very initiation of confiscation proceeding against the appellant was illegal being in breach of the mandate of section 13(2)(a) of the Bihar Special Courts Act, 2009 read with Rule 14(1)(c) of the Bihar Special Courts Rule, 2010. In this context, it is pointed out by Mrs. Sinha that the said rule mandates the particulars to be contained in an application for confiscation moved by the State before the Authorized Officer as “the particulars of the known source of income of delinquent public servant”. It is submitted that deceased public servant (late D.N. Rai) had much prior to the

initiation of confiscation proceedings under the Bihar Special Courts Act, 2009, had vide his response dated 23.06.1989 had intimated the respondent that his main source of income was agricultural income from ancestral and inherited agricultural land of around 45 Bighas. While his wife, Mrs. Lalita Devi (appellant) had inherited irrigated agricultural land of around 8 Acres and 29.05 decimals. He had also indicated the income received by him and his wife from agriculture. This was their main and primary source of income. He had also separately indicated the income received from salary. Thus, at the time of initiation of confiscation proceedings against the late public servant on or around 17.04.2012, the respondent was duly aware of his primary source of income, i.e. inherited irrigated agricultural land. It is pointed out that respondent had also separately and confidentially crosschecked the extent of inherited land holdings of the deceased public servant (husband of the appellant) and against the appellant by the local revenue authorities, who had certified the aforementioned land holdings of the husband of the appellant and the appellant also.

7. It is submitted that the respondent has only disputed the income which the husband of appellant late Mr. D.N. Roy had received from the ancestral agricultural property, which was

never denied by the respondent. It is pointed out that statutory mandates refers to sources of income and not the actual income, however, in order to make out a prima facie case of disproportionate assets against the husband of the appellant late Mr. D.N. Roy (public servant), the respondent failed to mention the very source of income as being inherited ancestral agricultural land and as such, the initiation of confiscation proceeding in itself is illegal and *void ab initio.*

8. In support of aforesaid contention, Mrs. Sinha submitted that in order to ensure the sanctity of the information submitted by the respondent before the learned Special Court/Authorized Officer, the law mandates that the said information has to be supported by an affidavit. The obvious intention is to ensure that the learned Special Court/Authorized Officer has all the relevant information regarding the alleged assets and source of income of the delinquent public servant against whom confiscation proceedings are sought to be started.

9. The respondent in its application before the learned Special Court/Authorized Officer seeking initiation of confiscation proceedings against the movable and immovable properties of the sole accused in the pending PC Act trial, has only disclosed '**salary received**' and **'loan taken'** as the only

known sources of income of the late Mr. D.N. Roy without considering the agricultural income from the huge ancestral land, as mentioned aforesaid.

10. In this context, Mrs. Sinha refers para 6, 7 and 8, which reads as under:

> ***"6.*** *That, during investigation of Vigilance P.S. Case No. 12/95 it transpired that accused A1 had received Rs. 4,82,746 as salary during the check period. As per norms of the Vigilance Investigation Bureau, Bihar, Patna maximum 1/3rd of the salary earned during the check period was given to accused A1 as saving which comes to a tune of Rs. 1,60,915.*
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> ***7.*** *That, during investigation of Vigilance P.S. Case No. 12/95 it transpired that the accused A1 had taken Rs. 50,000/- as house building advance and Rs. 23,000/- as car advance during the check period which comes to a tune of Rs. 73,000/-. Thus, the accused A1 had acquired Rs. 2,33,915/- on the had savings.*
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> ***8.*** *That, during investigation of Vigilance P.S. Case No. 12/95 it transpired that the total expenditures/Investments done by the accused during the check period were calculated and found Rs. 22,20,361/-. The various properties are purchased in the name of accused A1, A2, A3, & A4. The entire expenditures/ Investments were met from the only source of income of accused A1 Dwarika Nath Rai, the then Superintendent Engineer, P.H.E.D., Bhagalpur.*
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> *(Emphasis supplied)"*

11. In support of aforesaid submission, Mrs. Sinha relied upon the legal report of this Court as available through **Naga Ram Vs. The State of Bihar** reported in **2012 (4) PLJR 523** and **Kapil Muni Rai Vs. The State of Bihar and Anr.** in **Criminal Appeal (SJ) No. 1034 of 2011;** discussing Section 13

of the Act and Rule 14 which categorically said that the aforesaid provisions of law required that the evidence has to be *prima facie* clear and it has to be produced on an affidavit and should not be deficient in giving required link as to what was the source of evidence. The affidavit filed by the respondent is totally contrary to the mandate of the Act and the Rules as mentioned aforesaid.

12. Highlighting the value of an affidavit, Mrs. Sinha pointed out that filing a statement on an affidavit is not an idle formality as it was held by Hon'ble Supreme Court in the landmark case of **Priyanka Srivastava Vs. State of Uttar Pradesh** reported in **(2015) 6 SCC 287** so as to curb frivolous complaints.

13. It is submitted that as the confiscation proceedings initiated on the basis of incomplete and false information regarding the known sources of income of the sole accused late Mr. D.N. Rai is a gross violation of the aforesaid principles of law.

14. It is submitted by Mrs. Sinha that the deceased accused Late D.N. Rai in the year 1989, has himself informed to the respondent regarding his lawful source of income including the agricultural income from irrigated agricultural land inherited

by him and also by his wife (appellant), which was verified independently by the respondent through the Circle Officer, Charpokhari, who through vide his report dated 05.10.1989 had duly verified the extent of land holdings of late Mr. D.N. Roy as being 22.30 Acres from which the estimated annual agricultural income was held to be around Rs. 70,000/- per annum. Similarly, through a confidential inquiry by the respondent, the Circle Officer, Bikram through his report dated 05.02.1990 had confirmed the land holding of the appellant as 2 Acres and 16½ decimals of irrigated agricultural land making estimated annual income of around Rs. 9,500/- from its cultivation.

15. It is submitted that since the said income taken together were more than enough to meet the entire case of alleged disproportionate assets, the respondent malafidely concealed the same, and neither provided copy of aforesaid confidential report to the deceased accused or the appellant or more interestingly even to the learned Authorized Officer. It is submitted that only pursuant to the order dated 09.10.2014 as passed by this Hon'ble Court in Cr. Misc. No. 4503 of 2014 said documents were provided to the late Mr. D.N. Roy under the Right to Information Act, 2005.

16. In support of the aforesaid serious irregularities on

the part of respondent, it is pointed out by Mrs. Sinha that the Hon'ble Supreme Court held in the matter of **State Inspector of Police, Vishakhapattanam Vs. Surya Sankaram Karri [(2006) 7 SCC 172]; [Para 18]** that when a document being in possession of a public functionary, who is under a statutory obligation to produce the same before the court of law, fails and/or neglects to produce the same, an adverse inference may be drawn against him. The learned Special Judge in the aforementioned situation was enjoined with a duty to draw an adverse inference. He did not consider the question from the point of view of statutory requirements, rather has taken note of such factors, which were not germane.

17. Contextually, it is submitted by Mrs. Sinha that admittedly, both the aforesaid confidential reports of the Circle Officers were not provided by the respondent even to the learned Authorized Officer, and it were placed only by the deceased husband of the appellant before learned Authorized officer, therefore, the learned Authorized Officer was duty-bound to draw the requisite adverse inference against the respondent and accept the contentions as raised by deceased Mr. D.N. Roy and the appellant regarding their agricultural income which was not dealt with in the impugned judgment.

18. Arguing further *qua* aforesaid issue, it is submitted by Mrs. Sinha that aforesaid non-consideration of the Circle Officer reports also appears to be contrary to the section 35 of the Evidence Act, 1872, which categorically speaks that an entry in any public or other official book, register or record or electronic record, stating a fact in issue or relevant fact made by a public servant in the discharge of his official duty is itself a relevant fact. Therefore, summary rejection of the contents of the confidential report of both the Circle Officers is contrary to the mandate of section 35 of the Indian Evidence Act, 1872/Section 29 of the Bhartiya Sakshya Adhiniyam, 2023.

19. Traveling further on this issues it is submitted by Mrs. Sinha that not only the confidential reports of the Circle Officer qua agricultural income of the deceased husband of the appellant and also of the appellant, the actual cultivators of the land who were involved in cultivation have made their statements on oath that they gave this information to the police officials in 1991, who had visited the area for investigation of the case. But their independent statement as collected by the police during investigation qua agricultural income was also not taken into consideration. Ignoring all such important evidence, respondents merely through its rejoinder reiterated that during

investigation no income was given in favour of deceased husband of the appellant.

20. It is also pointed out that the appellant had also submitted the partition deed of her parental agricultural land and had filed an affidavit on behalf of all her three sisters testifying in favour of her agricultural income. But, the entire aforesaid relevant evidences were discarded by the learned authorized officer as to consider the claimed agricultural income by the appellant and her deceased husband while authoring the impugned judgment.

21. Arguing further, it is submitted by Mrs. Sinha that the immovable property mentioned at serial No. 1 of "**Schedule B"** of the confiscation items is the self-acquired property of the appellant and it was wrongly confiscated as it was acquired by the appellant through her agricultural income, rental income and the housing loan. It is also pointed out that property had been disclosed by the appellant in her Income Tax Return filed on 06.03.1989 for the assessment year 1987-88 and the said return had been duly accepted after the scrutiny by the Income Tax Department vide order dated 13.09.1989 of the Income Tax Officer, Ward-2(3) Patna, which was much prior to the registration of the FIR against the order of late husband of the

appellant Mr. D.N. Roy on 18.04.1995.

22. It is further argued by Mrs. Sinha that movable property as mentioned at serial No. 3 of **"Schedule A"** of the confiscation application ought not to have been included in the movable assets of late Mr. D.N. Roy (public servant). In this context, it is submitted that the movable items mentioned at serial No. 3 of **Schedule 'A'** are the items which are part of inventory list made by the respondent pursuant to a search carried out at the premises of late Mr. D.N. Roy on 22.04.1995, much beyond the check period, which is contrary to the law, and, therefore, same cannot be taken into consideration while passing the confiscation order. Interestingly, even their valuation has been taken on the basis of the valuation conducted on 22.04.1995, which constituted another illegality resulting in their inclusion in the movable assets of late Mr. D.N. Roy. Highlighting the illegality of initiation of confiscation proceeding, it is pointed out that in a confiscation application, the respondent has submitted a list of documents with the heading "**List of documents on which the confiscation proposal is based upon"**, the inventory list was not the part of the said list of documents and on this ground alone, it cannot be counted as movable assets of late Mr. D.N. Roy. It is submitted

that the maximum items of inventory is the golden jewellery of the appellant which was self acquired or was her *stridhan* beside the other useful household items including the furniture.

23. Arguing further, it is submitted that respondent has not disputed the fact that the appellant purchased the land for the said property (serial No. 1, Schedule B) in the year 1976 after paying consideration amount of Rs. 3,714/- and has himself annexed the purchase paper for the said property showing the same acquisition cost. As per the documents submitted by the respondent with the confiscation application, which is a valuer's report, the cost of construction of the ground and first floor of the property was Rs. 3,06,000/-. Thus, the total valuation of the said property ought to have been Rs. 3,714 + 3,06,000 = Rs. 3,09,714/-, which was wrongly taken by authorized officer as Rs. 5,57,000/- by adding almost the entire construction of the second floor, which was constructed beyond the check period as it was constructed between 1998 and 2002. It is submitted that all such facts were brought in defence before the special court, but was not taken into consideration. In this context, it is submitted that Rule 11 (d) of the Bihar Special Courts Rules, 2010 stipulates that if the delinquent public servant submits his statement of defence, the Special Public

Prosecutor shall have an opportunity to reply to the same. Whereas, Rule 11(h) stipulates that the Authorized Officer shall pronounce final verdict on consideration of statement of defence and reply of Public Prosecutor. But, in the present case, the Authorized Officer passed the order only on the basis of materials brought on record by the opposite parties and the public prosecutors by completely ignoring the documents and materials which was brought on record in defence by the appellant and her deceased husband as submitted aforesaid either in connection of their agricultural income or valuation of some of the properties beyond the check period and also by not accepting the independent income of the appellant and, on these scores also the impugned judgment is bad in the eyes of law and, therefore, same is fit to be set-aside/quashed.

II. Argument *qua* abatement of confiscation proceedings and also the effect of "discharge" of the appellant.

24. It is submitted by Mrs. Archana Sinha, learned senior counsel for the appellant that proceeding was initiated against the appellant, her two minor children and her deceased husband who was the public servant. In this context it is pointed out that the chargesheet was also submitted against the appellant, who challenged the chargesheet before this Court through Cr. Misc.

No. 40861/2008, where one of the learned coordinate Bench vide order dated 20.11.2009, quashed the order dated 04.08.2008 passed by the Special Judge, Vigilance-1, Patna in Special Case No. 7/1995 arising out of Vigilance P.S. Case No. 12 of 1995 against the appellant, which was not challenged by the department before any higher forum till now and therefore said order almost attains its finality.

25. It is submitted that the in view of aforesaid, the status of appellant is that of an “acquittal” and in support of the same, the learned senior counsel relied upon the legal report of Hon’ble Supreme Court as available through **Ex. Sqn. Ldr. R. Sood Vs. Union of India & Ors.** reported in **2026 INSC 366,** and therefore, the impugned order is completely contrary to the established legal principles against the appellant.

26. In this context, it is further submitted that the deceased husband of the appellant, who was the public servant died on 31.03.2016, whereas the confiscation order was passed on 30.09.2016 after six month of his death and, as such it is apparent that no such explanation or written statement was supplied by him and all such explanation was explained by filing the written statement on behalf of appellant, whose status was that of an “acquittal” in view of aforementioned Cr. Misc.

No. 40861 of 2008.

27. It is further argued that no doubt as per the established principle of law, the confiscation order is not a trial and is almost like "enquiry" for satisfying the judicial conscience so as to find out whether there exists a "**reason to believe"** regarding existence of the circumstances or grounds indicating, whether the disproportionate assets were acquired by the delinquent public servant by virtue of the commission of the offence as defined within the meaning of section 2(e) of the Act. Such "reason to believe" for the purpose of passing any confiscation order must be founded on sound and judicious reasoning and must not be contrary to the established principles of law or be arrived at in a vague and mechanical manner. It is submitted that the impugned order of confiscation in the present case does not appear to have been passed judiciously as the reason to believe **" does not appear to be founded"** in view of aforesaid discussion and, therefore, the impugned order is liable to be set-aside/ quashed.

Argument on behalf of the Vigilance Department, Bihar, Patna.

28. Mr. Anil Singh, learned counsel appearing on behalf of the Vigilance, submitted that during course of investigation all legal income of the delinquent public servant namely, D.N.

Rai (since died), was calculated but the income from agriculture as claimed by the opposite party (appellant) were not found true during course of investigation. The opposite parties did not filed any reliable documentary evidence regarding their agricultural income in their show cause filed during course of proceeding. Such claim of the appellant is only with a view to hide the ill-gotten money acquired by her husband.

29. It is submitted that during the course of investigation, it transpired that Shri Dwarika Nath Rai had received as salary Rs. 4,82,746/- during the check period. He had obtained house advance Rs. 50,000/- and a car loan of Rs. 23,000/- during the check period, therefore, the total saving stands of Rs. 2,33,915/- during the check period. The total expenditure and investment in movable and immovable properties during the check period was found to the tune of Rs. 22,20,361/-. Therefore, the disproportionate assets were calculated to the tune of Rs. 19,86,556/-.

30. It is submitted by Mr. Singh that the valuation of house has been shown as Rs. 10 Lakhs by the appellant and the delinquent public servant themselves as admitted by them in their statements on oath in Title Suit No. 81/90 before the court of learned Sub-Judge-V, Ara that the value of the said house is

Rs. 10 Lakhs. It is further submitted that the item mentioned in the inventory has been valued in consultation with the family members of the delinquent public servant, therefore, same cannot be viewed with any doubt.

31. It is argued by Mr. Singh that the confiscation proceeding is a separate proceeding of preventive nature and it is different from the concerned case of D.A. trial. During the lifetime of Dwarika Nath Rai, the notice was issued to him by the court and the same was received, whereafter, he appeared before the court and filed his show cause reply. The other parties including the appellant also filed their show cause reply and the Vigilance Investigation Bureau filed the rejoinder of the show cause replies of the opposite party.

32. Considering the show cause replies and rejoinder, learned authorized officer of the Vigilance Investigation Bureau passed the order of confiscation for Rs. 15,00,446/- of movable and immovable properties.

33. It is submitted that while filing show cause reply, the opposite parties were unable to place any reliable documentary evidences regarding the purchase of assets beyond the check period and, thus, the opposite party (appellant) was unable to satisfy the court regarding the claimed seven (07) items, as to

why not these items be included in the assets of confiscation proceeding.

34. It is further submitted by Mr. Singh that the plea of opposite parties regarding her lawful source of income is wrong and misleading, as during the course of investigation no separate lawful source of income of the appellant was found. It is thus argued that order passed by the learned Special Court, Vigilance, Bhagalpur dated 30th September, 2016 is justified and in accordance with the provisions of law and, therefore, the prayer of the opposite party is devoid of any merit.

Legal Discussion

35. For better understanding of facts, it would be apposite to reproduce Schedule "A" & "B" regarding movable and immovable properties respectively, which were under consideration before the Confiscation Authority/court, reads as under:

Schedule A – Movable Properties

Sl. No.	Description of properties with date of acquisition	Value of Properties (in Rs.)	Name of the person in whose name the properties has been acquired.
1.	Purchase of Fiat Car registration No. BHP-7755 in October 1976	30,380	O.P. No. 2
2.	Investment of NSC No. 09EE888815	10,000	O.P. No. 1
3.	On 22.04.95 as per inventory list made in Vigilance P.S. Case No. 12/95	5,66,795	O.P. No. 1

4.	One **.32** bore pistol No. 618638	6,000	O.P. No. 1
5.	Balance in SBI Boring Road account No. 26102/154 and account no. 127/53C-17486	1,53,409	O.P. No. 1
6.	Balance in PNB, Kankarbagh, Patna A/c No. 4005	60,500	O.P. No. 1
7.	Hero Honda Motorcycle Reg. No. BPL/7744	12,000	O.P. No. 1
	Total =	**8,39,084/-**	

<u>Schedule B – Immovable Properties</u>

Sl. No.	Description of properties with date of acquisition	Value of Properties (in Rs.)	Name of the person in whose name the properties has been acquired.
1.	Land and building at plot, Holding No. 405/A12B, Circle No. 8A, Area 4000 Sqr. Ft. P.C. Colony, Kankarbagh	10,00,000	O.P. No. 2
2.	Purchased building, Holding No. 1283, Circle No. 249, Khata No. 99, Khersra No. 6798, Touji No. 249, at New Punaichak, Rajbanshi Nagar, Patna.	1,98,000	O.P. No. 2
3.	Purchased 3 Khata and 7 dhur, Jamabandi No. 4827, Khata No. 617, Khesra No. 1521, Land in Patliputra, Mainpura at Patna.	1,83,277	O.P. No. 2
4.	Purchased 3 Khata and 7 dhur, Jamabandi No. 4828, Khata No. 617, Khesra No. 1521, Land in Patliputra, Mainpura at Patna.		O.P. No. 3
5.	Purchased 3 Khata and 5 dhur, Jamabandi No. 4829, Khata No. 617, Khesra No. 1521, Land in Patliputra, Mainpura at Patna.		O.P. No. 4
	Total =	**13,81,277/-**	
Grand Total of Schedule A + B = 22,20,361/-			

36. Giving a thoughtful consideration to the submission as advanced by learned counsel appearing for the parties and also upon perusal of record, it transpires that the learned trial court while passing the impugned order of confiscation did not appreciate the other source of income by the appellant and her husband who was the public servant like the agricultural income, loan, rental income. Some of the properties, which were acquired beyond the check period which are protected under Section 16 of the Bihar Special Courts Act, 2009, were also taken for calculating disproportionate assets through the impugned order.

37. The other contention, raised by learned senior counsel appearing for the appellant that the proceedings against Late Dwarika Nath Rai, (public servant), the confiscation order is bad in the eyes of law as he died during the pendency of the proceedings and, therefore, same stood abated and furthermore, the status of the appellant upon discharge amounts to an acquittal.

38. For considering the various aspects of the case regarding which submission has been advanced by the parties, it would be apposite to reproduce the legal provisions, relating to confiscation of properties under Bihar Special Courts Act, 2009

(hereinafter referred to as the "Act of 2009"). **Sections 13, 14, 15, 16 & 19** relates to confiscation of property under the Act of 2009. For better understanding of the position of law, they read as under:

> "**13. Confiscation of property.**— (1) Where the State Government, on the basis of *prima-facie* evidence, have reasons to believe that any person, who has held or is holding public office and is or has been a public servant. has committed the offence, the State Government may, whether or not the Special Court has taken cognizance of the offence, authorise the Public Prosecutor for making an application to the authorised officer for confiscation under this Act of the money and other property, which the State Government believe the said person to have procured by means of the offence.
> (2) An application under sub-section (1)—
> (a) shall be accompanied by one or more affidavits, stating the grounds on which the belief, that the said person has committed the offence, is founded and the amount of money and estimated value of other property believed to have been procured by means of the offence; and
> (b) shall also contain any information available as to the location for the time being of any such money and other property, and shall, if necessary, give other particulars considered relevant to the context.
>
> **14. Notice for Confiscation.**— (1) Upon receipt of an application made under section 13 of this Act, the authorised officer shall serve a notice upon the person in respect of whom the application is made (hereafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the source of his income, earnings or assets, out of which or by means of which he has acquired such money or property, the evidence on which he relies and other relevant information and particulars, and to show cause as to why all or any of such money or property or both, should not be declared to have been acquired by means of the offence and be confiscated to the State Government .
> (2) Where a notice under sub-section (1) to any person

specifies any money or property or both as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.
(3) Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the authorised officer, by the person affected or the State Government shall be open to be rebutted in the trial before the special court provided that such rebuttal shall be confined to the trial for determination and adjudication of guilt of the offender by the special court under this Act.

15. Confiscation of property in certain cases.— (1) The authorised officer may, after considering the explanation, if any, to the show cause notice issued under section 14 and the materials available before it, and after giving to the person affected (and in case here the person affected holds any money or property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any other money or properties in question have been acquired illegally.
(2) Where the authorised officer specifies that some of the money or property or both referred to in the show cause notice are acquired by means of the offence, but is not able to identify specifically such money or property, then it shall be lawful for the authorised officer to specify the money or property or both which, to the best of his judgment, have been acquired by means of the offence and record a finding, accordingly, under sub-section (1).
(3) Where the authorised officer records a finding under this section to the effect that any money or property or both have been acquired by means of the offence, he shall declare that such money or property or both shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances:
Provided that if the market price of the property confiscated is deposited with the authorised officer, the property shall not be confiscated.
(4) Where any share in a Company stands confiscated to the State Government under this Act, then, the Company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the Articles of Association of the Company, forthwith register the State Government as the transferee of such share.
(5) Every proceeding for confiscation of money or property

> or both under his Chapter shall be disposed of within a period of six months from the date of service of the notice under sub-section(1) of section-14.
> (6) The order of confiscation passed under this section shall, subject to the order passed in appeal, if any, under section 17, be final and shall not be called in question in any Court of law.
>
> **16. Transfer To be *null* And *void*.**—Where, after the issue of a notice under section 14, any money or property or both referred to in the said notice are transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be void and if such money or property or both are subsequently confiscated to the State Government under section 15, then, the transfer of such money or property or both shall be deemed to be *null* and *void*.
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> **19. Refund of Confiscated money or property.**—Where an order of confiscation made under section 15 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the price thereof including the money so confiscated with the interest at the rate of five percent per annum thereon calculated from the date of confiscation."

39. Similarly, it would be apposite to reproduce **Rule 13, 15 and 17** of the Bihar Special Court Rules, 2010 (herein after referred to as the "Rules of 2010"), which reads as under:

> **"13. Application of Code of Criminal Procedure.**— The provisions of the Code of Criminal Procedure, 1973 shall, in so far as they are not inconsistent with the provisions of the Act, apply to the proceedings before the authorised officer.
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> **15. Application of Indian Evidence Act.**— The Indian Evidence Act shall *mutatis mutandis* be applicable to proceedings before the Court and the authorised officer in recording the evidence.

17. Maintenance of Registers by the Authorised Officer. - (1) The following Registers may be maintained in the office of the authorised officer, namely:-

(1) C.C. Register	As prescribed in form III
(2) Receipt Register	
(3) Issue Register	As prescribed by the Government
(4) Despatch Register	
(5) Accounts Register	

(2) The authorised officer may also maintain such other Registers as may be considered necessary in the conduct of business of his office."

40. In the case of ***State of Orissa v. Debendra Nath Padhi*** reported in ***(2005) 1 SCC 568, Bharat Parikh v. CBI*** reported in ***(2008) 10 SCC 109, Indu Jain v. State of M.P.*** reported in ***(2008) 15 SCC 341***, ***Asian Resurfacing of Road Agency (P) Ltd. v. CBI,*** reported in ***(2018) 16 SCC 299,*** Apex Court has defined "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. The ambit of the provision has been explained by the Apex Court in para no. 10 of the case of **Kedari Lal vs. State of M.P.** reported in **2015 (14) SCC 505**, which is reproduced hereinafter:

"10. The expression "known sources of income in Section 13(1)(e) of the Act has two elements, first, the income must be received from a lawful source and secondly, the receipt of such income must have been intimated in accordance with the provisions of law,

> *rules or orders for the time being applicable to the public servant. In N. Ramakrishnalah [N. Ramakrishnaiah v. State of A.P., (2008) 17 SCC 83, while dealing with the said expression, it was observed that ".... Qua the public servant, whatever return he gets from his service, will be the primary item of his income. [Other income which can conceivably be] income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment.'*

41. In case of ***Vishwanath Chaturvedi v. Union of India*** reported in ***(2007) 4 SCC 380***, the Apex Court has observed that "submission of income tax returns and the assessments orders passed thereon, would not constitute a foolproof defence against a charge of acquisition of assets disproportionate to the known lawful sources of income as contemplated under the PC Act and that further scrutiny/analysis thereof is imperative to determine as to whether the offence as contemplated by the PC Act is made out or not."

42. In similar circumstances, the assessment being reflected in income tax returns, the Apex Court granted relief to the public servant in ***M. Krishna Reddy v. State [M. Krishna Reddy v. State*** reported in ***(1992) 4 SCC 45***, it was observed as follows:

> *"14.... Therefore, on the face of these unassailable documents i.e. the wealth tax and income tax returns, we hold that the appellant is entitled to have a deduction of Rs 56,240 from the disproportionate assets of Rs 2,37,842."*

15. If the amounts in question, which were duly intimated and are reflected in the income tax return are thus deducted, the alleged disproportionate assets stand reduced to Rs 37,605, which is less than 10% of the income of the appellant. In case of Krishnanand v. State of M.P. reported in(1977) 1 SCC 816 and in M. Krishna Reddy v. State reported in (1992) 4 SCC 45, the Apex Court Court had granted benefit to the public servants in similar circumstances."

43. The Apex Court in case of ***Nirankar Nath Pandey vs. State of U.P. & Ors. (Criminal Appeal No. 5009 of 2024), Seeta Hemchandra Shashittal & Anr. vs. State of Maharashtra & Ors. reported in (2001) 4 SCC 525 and Pankaj Kumar Vs. State of Maharashtra & Ors, reported in (2008) 16 SCC 17*** held that the cornerstone of a disproportionate assets case under Section 13(1)(e) of the P.C. Act is a meticulous computation juxtaposing 'known sources of income against acquired assets. In ***Nirankar Nath Pandey (supra)***, the Hon'ble Supreme Court, quashed an FIR where the Vigilance Department failed to consider the wife's independent income from yoga teaching, agriculture, and rentals. The Court held that the public servant's wife's income must be considered as well, while calculating the total income and assets. I find it apt of reproduce paragraph 9 of ***Nirankar Nath Pandey (supra)*** which inter alia is as follows:

"9. We are of the view that the Appellant's wife's income must be considered as well while calculating the total income and assets. Both the Appellant and his wife have filed the relevant income tax returns in order to show their respective incomes and assets. The Respondents in their

Counter-Affidavit have not denied these income tax returns or alleged them to be forged or fabricated. Therefore, when a public servant is submitting his income tax returns, they should be presumed to be true and correct. If you duly consider the income tax returns of the Appellant and his wife for the check period of the year 1996-2020, the total income is coming up to be Rs.1.21,06,268/-(Rupees One Crore Twenty One Lakh Six Thousand Two Hundred Sixty Eight only) which is in fact more than the assets amounting to Rs.1.16,02,669/- (Rupees One Crore Sixteen Lakh Two Thousand Six Hundred Sixty Nine only) which is said to be the disproportionate assets in question under the present FIR."

44. In backdrop of aforesaid legal discussion, it would be apposite to reproduce **para 23 to para 37 from the Impugned Judgment,** which reads as under:

"23. *From the petition on behalf of State of Bihar and show causes submitted by the O.P.'s as well as the reply therefor submitted on behalf of State of Bihar and rival submissions of learned counsels for the parties, it appears that there is allegation of disproportionate movable assets of Rs. 8,39,084/- depicted in Schedule A of the petition of the State of Bihar and disproportionate immovable assets of Rs. 13,81,277/- given in Schedule B of it and thereby a total disproportionate asset has been stated to be of Rs. 22,20,361/-. According to State, the check period is 1963 to 1989-90 and during such period, O.P. No. 1 has had valid income from salary and other sources as Rs. 2,33,915/- and he has assets/investments as Rs. 22,20,361/- which if deducted from aforesaid valid income would come to Rs. 19,86,446/- which is the value of disproportionate assets of O.P. No. 1. State has put forward copies of different documents in support of their such contentions. Thus it is clear that there is allegation of disproportionate asset of Rs. 19,86,446/-. Now it is to be analyzed as to whether the O.P.'s have come up with convincing explanation and supportive material to demolish the contentions of the State of Bihar in this case.*

24. *According to O.P. No. 1, he inherited 22.30 acres land* *after the demise of his father in the year 1970 and according to Annexure G issued by the Circle Officer, Charpokhari to the Vigilance Department, he had an estimated annual income of Rs. 70000/- from such property and thereby he had a total income of Rs. 18,90,000/- in the head of agriculture during the check period. In this regard, O.P.No. 1 has placed reliance on Annexure G which suggests that in this report a tentative income has been estimated to be Rs. 70000/- per annum but it is not the definite conclusive report as to O.P. No. 1 did have such income. O.P. No. 1 has also put forward Annexures B to F but those can not be considered to be a satisfactory proof of his valid income. It is worthwhile mentioning that O.P. No. 1 has not come up with his Income Tax Return of such period and has also not come up with specific details that in this particular season or year he had such and such specific income and he used the same in so and so manner or he deposited the same in so and so account or invested it on a particular occasion in a particular manner. Therefore, such contention advanced by the O.P. No. 1 seems to be not convincing. It has been argued that Vigilance Department has not disclosed Annexure G information in their affidavit and has not relied over it and suppressed it and thus on this account their case fails. But in my considered view, the Vigilance Department has rightly not taken it in to account being a hypothetical report which is indefinite and inaccurate.*

***25**. O.P. No. 1 has further contended that Vigilance Department has wrongly included the immovable property at Sl. No. 1 of Schedule B being separate property of O.P. No. 2 acquired by O.P. No. 2 from own exclusive income from her agricultural land, income from rent and housing loan. It is also contended that its value is highly inflated. It is submitted that O.P. No. 1 has shown her such income in her Income Tax Return filed in March 1989. O.P. No. 2 has also contended that the immovable property at Sl. No. 1 of Schedule B is her self acquired separate property from her independent income of agriculture from her ancestral property, housing loan of Rs. 50000/- and rental income which had been declared in her Income Tax Return of March 1989. O.P. No. 2 has come up with further story that in fact her father had only four daughters who did partition of his 13.45 acres land among his daughters Including O.P. No. 2 out of which O.P. No. 2 got a share of 2 acres 16.50 decimals and as per conservatively assessed income from* *such property, she had income at the rate of Rs. 9500/- per annum. O.P. No. 2 has further stated that due to old age and ailment, her parents resided with her during 1970 to 1978 and there was an agreement among the sisters of O.P. No. 2 that till their parents are alive, entire Income even from their share will go to O.P. No. 2 in order to help her to extend proper care to their parents. According to O.P. No. 2, this way she had a total of Rs. 4,27,600/- as income from the agriculture from her share as well as from the shares of her three sisters. O.P. 2 has put forward Annexure A, B, C, D and E in support of her such assertion. Annexures B & D are the affidavits of Ramdasi Devi and Janardan Devi who have merely stated, that their parents maximum times resided with O.P. No. 2 and they gave entire agriculture income to O.P. No. 2 and they themselves started taking the income of their share after the demise of their parents from the year 1978. Similarly Annexure E is the affidavit of one Ajay Kumar Singh who appears to be son of late Jagrani Devi (another sister of O.P. No.2) who has also sworn in like wise. From these documents, it appear that no specific period or year is mentioned that from such time their parents started living with O.P. No.2 and it is also not clear that the parents used to live with her continuously. Moreso it is also not clear that what was the specific income to which their parents used to give to O.P. No. 2 and in what manner and on what occasions because it was not known to the three sisters of O.P. No. 2 and therefore it can be safely presumed that even their parents gave any income to O.P. No. 2 or not is not known to them. Therefore in my considered opinion these Annexures are of no help to O.P. No. 2. At this juncture it is germane to mention that O.P. No. 2 while relying on Annexure L Income Tax Assessment order for the year 1987-88, has averred that she has disclosed her such income in her Income Tax Return. But Annexure L suggests that it was her first IT Return. On the other hand O.P. No. 2 has averred that during 1970 to 1978 she got Rs. 4,27,600/- as agricultural income. But no any document or IT Return in this regard has been put forward. Even no reason has been assigned as to why previously no IT Return was filed whereas as per assertions made by O.P.No. 2, during 1970-78, she had such agriculture income apart from rental income. Her such averments are self contradictory and not convincing. Even Annexure L shows that IT Department found Rs. 30,530/- income as unexplained. Therefore the explanation put forward by both O.P. No. 1 & 2 as regards* *to immovable property at Sl. No. 1 of Schedule B is absolutely unconvincing.*

26. *Further, the said rental income of O.P. No. 2 from house property, as averred by both O.P. No. 1 & 2 also remains unfounded and unexplained in absence of any specific details of such rent and its account. Further, both O.P. No. 1 & 2 have averred that CO.P. No. 2 had car loan from SBI, Boring Road, Patna and in support of it, Annexure F has been filed which is a certificate from the bank regarding such loan. But such certificate does not explain as to who repaid such loan in what manner and from which account. Therefore once again repayment of such loan is unexplained. Similarly, no document has been filed regarding repayment of housing advance.*

27. *Further, both O.P. No. 1 & 2 have controverted the valuation of immovable property at Sl. No. 1 of Schedule B. According to O.P. No. 2, it should te merely 3,55,636/-and she has placed her reliance on Annexure J, K & L. On the other hand on behalf of State of Bihar two documents at Sl. No. 7 of their list of documents have been put forth which are valuers report which goes to suggest that the cost of ground and first floor including the cost of land comes to a total of Rs. 3,06,000/-. On the other hand, according to O.P. No. 2, they incurred a cost of Rs. 2,51,000/- for construction of second floor to which, according to her, she got constructed during 1988-92. In support of construction of second floor, O.P. No. 2 has merely filed one document Annexure L which is IT assessment order. According to O.P. No. 2, out of such Rs. 2.51.000/- only 50000/- could have been added in the cost of the immovable property at Sl. No. 1 of Schedule B. But Annexure L can not be considered to be conclusive document to establish that second floor was actually constructed during 1988-92. As such from the above discussion, I am of well considered view that the cost of the property at Sl. No. 1 of Schedule B should be Rs. 3,06,000/- (as per Sl. No. 7 of the list of the documents of State of Bihar) and Rs. 2,51,000/- is suggested by O.P. No. 2 and thereby the total cost of this property should be 5,57,000/- and not Rs. 10,00,000/- as mentioned by on behalf of State of Bihar which has manifestly got no basis except that in the year 1993, O.P. No. 2 filed some reply in itle Suit No. 81/90 before the Court of Sub Judge V, Ara which can not be taken as the valid basis for such value which case also seems to* *has been withdrawn later.*

28. *As regards the immovable properties at Sl. No. 2, 3, 4 and 5 of Schedule B, while justifying unconvincingly about the purchase of the same validly by all the O.P.'s, it has been stated by all of them that Sl. No. 2 has been sold on 30/02/1997 and Sl. No. 3 to 5 have been sold on 23/12/2005 vide Annexure H and Annexure 1 registered sale deeds, respectively. It has been argued on behalf of O.P.'s that these properties had already been sold prior to initiation of proceedings under Special Courts Act, 2009 and issuance of notice u/s 14 of the Act and attention has been invited towards the provision enshrined in Section 16 of the Act. A bare perusal of the provision embodied u/s 16 of the Act goes to show that, "where, after issue of a notice under Section 14, a money or property or both referred to in the said notice are transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be void and if such money or property or both are subsequently confiscated to the State Government under Section 15, then, the transfer of such money or property or both shall be deemed to be null and void." Here in the case at hand, even the petition for confiscation has been filed by the State of Bihar on 17/04/2012 and thereafter, as per record, notices u/s 14 of the Act have been issued to the O.P.'s on 29/06/2012 vide D.B. No. 02. Therefore, I find force in the argument on behalf of the O.P.'s and the immovable properties at Sl. No. 2 as well as Sl. No. 3-5 ought not to have been included being disposed off well before the initiation of proceedings under the Act and therefore such disposal has got protection under the provisions laid in Section 16 of the Act. As such the immovable properties at Sl. No. 2, 3, 4 and 5 can not be made subject matter of confiscation in this case under the mandate of Section 16 of the Special Courts Act, 2009. As a result of elucidations at above, it is the immovable property at Sl. No. 1 of Schedule B which is only liable to be confiscated in this case.*

29. *So far as the movable assets detailed in Schedule A are concerned, at its Sl. No. 1 is ar No. BHP-7755 allegedly purchased in October 1976 in the name of O.P. 1. for a value of Rs. 30,380/-. As per O.P. No. 1 & 2, it was purchased thrown a loan of Rs. 23000/- taken from SBI, Boring Road, Patna which has been sold 1995 self. About the said loan*

Annexure F certificate from bank has been filed which is in the name of O.P. No. 2. But, as already discussed, it is to reiterate that no explanation regarding its repayment has been put forward by the O.P. No. 2. It is true that it has been said that the car has been disposed off in the year 1995, but no any document in support of such assertion has been filed in order to convince that it is disposed off in 1995 in order to invite the benefit of the provision of Section 16 of the Act. Thus I am constrained to conclude that Sl No. 1 of Schedule A is liable to be confiscated.

***30.** At Sl. No. 2 of Schedule B is the mention of investment in NSC No. 09EE888815 and in support of it, xerox copy of NSC has been filed vide Sl. No. 1 of list of document with the petition. A perusal of xerox copy of NSC goes to indicate that it has been issued on 24/01/1995. It is argued that this investment is beyond the check period of this case from 1963 to 1989-90. Therefore the NSC in question clearly appears to be beyond the check period and thus it can not be taken into account for confiscation.*

***31.** Sl. No. 3 of Schedule A is related to different items including jewellery's etc as per inventory list dated 22/04/1995 of Case No. Vigilance P.S. 12/95 which has been valued to be Rs 5,66,795/- acquired by O.P. No. 1 in the names of O.P. No. 1 & 2 and is with the O.P.'s. In this regard, the explanation which has been put forward by O.P. No. 1 is that some of these items have been purchased by him and some are Stri Dhan of O.PP. No. 2 received at the time of her marriage with O.P. No. 1 and has contended that it could not have been included in the assets of O.P. No. 1. The value of the items of inventory list has also been controverted by O.P. No. 1 and it has been contended that the real value should be around Rs. 1,20,000/-. The explanation of O.P. No. 2 is also almost synonymous to explanation of O.P. No. 1. But here it is to mention that O.P. No. 1 or 2 has not come up with any cogent document to substantiate their such assertions. As such I am constrained to hold that Sl. No. 3 of Schedule A as per inventory list is rightly added in the assets of O.P. No. 1 and in absentia any contrary document, it is rightly valued to Rs. 5,66,795/- and therefore in absence of any cogent and convincing explanation, the same is liable to confiscation.*

***32.** At Sl. No. 4 of Schedule A is the .32 bore pistol no.*

618638 in the name of O.P. No. 1 valued to Rs. 6000/-, O.P. No. 1 has not denied about such pistol but has ambiguously said that it has been sold. However, no details have been given as to when it was sold and to whom and no any document in this regard has also been filed by O.P's to get the benefit of Section 16 of the Act. Therefore, once again I am compelled to infer that Sl. No. 4 of Schedule A is also liable to be confiscated in this case.

***33.** At Sl. No. 5 of the Schedule A, balance in SBI A/c No. 26102/154 and A/c No. 127/53 C-17486 of Rs. 1,53,409/- in the name of O.P. No. 1 has been mentioned. In support of it State of has filed xerox copy of pass book, bank statement & certificate of bank at Sl. No. 2 of the list of the documents along with their petition. These documents are fully supportive to assertion made in the confiscation petition. On behalf of O.P. No. 1, it has been argued that it also included interest etc. But no any explanation as regards to such deposits of money of that magnitude in the bank accounts has i, en put forth. As such, I am again constrained to infer that Sl. 5 of Schedule A is also liable to confiscation.*

***34.** Similarly Sl. No. 6 of Schedule A is related to deposits of Rs. 60500/- in PNB, Kankarbagh, Patna in A/c No. 4005 in the name of O.P. No. 1. In support of it, copy of details of such account has been filed at Sl. No. 3 of the list of documents. From the details of this account, it appears that during 16/10/1989 to 07/03/1990, there appears to be deposit of total 60,500/- by way of cash. The account appears to be in the name of OP. No. 2. O.P. No. 1 has stated that it is the individual income of O.P. No. 2. O.P. No. 2 has also said that it is her separate own income. But O.P. No. 2 has remained able to give specific details of such amount as to from where Rs. 20000/- have been deposited at three occasions and what is the source of such money. It is argued that such deposit has been done beyond the check period. But, as mentioned earlier it has been deposited during 1989-90 and thus it is well within the check period and thus it is reasonably liable to be confiscated.*

***35.** At Sl. No. 7 of Schedule A is the mention of Hero Honda motor cycle having registration no. BPL/7744 valued to Rs. 12000/- in the name of O.P. No. 1. In support of it, xerox copy of papers have been filed at Sl. No. 4 of list of documents. O.P. No. 1 has stated that it has been sold in the* *year 2005. It has been argued on his behalf that since it has been sold in the year 2005, it is protected u/s 16, of the Act. No any document has been filed in support of such contention that it is already sold in the year 2005 in order to invite the benefit of Section 16 of the Act. As such I am to safely hold that the motor cycle at Sl. No. 7 of Schedule is also liable for confiscation.*

***36.** From the above elucidations, it is manifestly clear that in the items mentioned in Schedule A meant for movable assets, barring Sl. No. 2 NSC of Rs. 10000/-, rest all other items mentioned at Sl. No. 1 and 3 to 7 are liable for confiscation which are valued to Rs 8,29,084/-.*

***37.** Similarly, as discussed above in detail, since item no. 2 to 5 of Schedule B for immovable properties are protected a/s 16 of the Act, therefore it is merely Sl. No. 1 of Schedule B valued to Rs. 5,57,000/- as per discussion in para 27 of this order shall be liable for confiscation."*

45. In **para 8, 9 & 12** of **U. Subhadramma and Others Vs. State of Andhra pradesh and Anr. [(2016) 7 SCC 797],** the Hon'ble Supreme Court observed, which reads as under:

"8. Section 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-section (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 section 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 section 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 section 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 vaporised 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. [*Willie (William) Slaney* v. *State of M.P.*, (1955) 2 SCR 1140 at p. 1195 : AIR 1956 SC 116 : 1956 Cri LJ 291; *Babu Singh* v. *State of Punjab*, (1963) 3 SCR 749 at p. 766 : (1964) 1 Cri LJ 566; *Ashish Batham* v. *State of M.P.*, (2002) 7 SCC 317, para 8 : 2002 SCC (Cri) 1718; *Ranjitsing Brahmajeetsing Sharma* v. *State of Maharashtra*, (2005) 5 SCC 294, para 35 : 2005 SCC (Cri) 1057 and *Sher Singh* v. *State of Haryana*, (2015) 3 SCC 724, paras 12 & 17 : (2015) 2 SCC (Cri) 422]

9. As far as the circumstances of this case are concerned, we find that there has been a gross miscarriage 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 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.

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 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. 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."

46. It would be further apposite to reproduce **para 9, 10 & 12** from the legal report of Hon'ble Supreme Court as available through **State of Bihar through Vigilance Vs. Sudha Singh** as available through **2026 SCC OnLine SC 450,** which reads as under:

"**9.** The question to be dealt with is, when does a proceeding before a Court of law, abate? In ***Gurmail Singh* v. *State of U.P.* [(2022) 10 SCC 684 : (2023) 1 SCC (Cri) 403]** C.T Ravikumar J, observed as under:

> 27. The term "abatement" or "abate" has not been defined in CrPC. In the said circumstances, its dictionary meaning has to be looked into. As relates criminal proceedings going by the meaning given in *Black's Law Dictionary*, 10th Edn., abatement means "the discontinuation of criminal proceedings before they are concluded in the normal course of litigation, as when the defendant dies". Thus, it can be seen that the meaning of "abatement" can only be taken in criminal proceedings as "discontinuation of such proceedings owing to the death of the accused/convict pending such proceedings". In short, it would reveal that an appeal against conviction (except an appeal from a sentence of fine) would abate on the death of the appellant as in such a situation, the sentence under appeal could no longer be executed.
>
> 28. The abatement is certainly different from acquittal and a mere glance at the proviso to Section 394(2) CrPC, will make this position very clear. The said proviso reads thus:
>
> "Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the appellate court for leave to continue the appeal; and if leave is granted, the appeal shall not abate."

10. It is clear from the above pronouncement that there is a clear distinction between acquittal and abatement of proceedings. The latter takes place since the death of the accused leaves no other possibility open. It is not a comment on the merits of the matter. In the present case, the death would not let the respondent '*off the hook*' since she had been proceeded against for holding the delinquent officer's, allegedly illegally begotten property right from the time that the authorities became alive to his alleged misdeeds. Still further, we may observe that it is a settled position in law that a non-public servant can be proceeded against when the initial case is registered under Section 13 of PC Act by virtue of Section 107 of Penal Code, 1860. In *P. Nallammal*

v. *State [(1999) 6 SCC 559 : 1999 SCC (Cri) 1133]*, it has been held as follows:

> "**17.** Thus, one of the objects of the new Act was to incorporate all the provisions to make them more effective. Section 165-A of the Penal Code read like this:
>
> "165-A. *Punishment for abetment of offences defined in Section 161 or Section 165.*—Whoever abets any offence punishable under Section 161 or Section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."
>
> 18. Therefore, the legislative intent is manifest that abettors of all the different offences under Section 13(1)(*e*) of the PC Act should also be dealt with along with the public servant in the same trial held by the Special Judge.
>
> …
>
> 24. Shri Shanti Bhushan cited certain illustrations which, according to us, would amplify the cases of abetments fitting with each of the three clauses in Section 107 of the Penal Code vis-a-vis Section 13(1)(*e*) of the PC Act.
>
> The first illustration cited is this:
>
> If *A*, a close relative of the public servant tells him of how other public servants have become more wealthy by receiving bribes and *A* persuades the public servant to do the same in order to become rich and the public servant acts accordingly. If it is a proved position there cannot be any doubt that *A* has abetted the offence by instigation.
>
> Next illustration is this:
>
> Four persons including the public servant decide to raise a bulk amount through bribery and the remaining persons prompt the public servant to keep such money in their names. If this is a proved position then all the said persons are guilty of abetment through conspiracy.
>
> The last illustration is this:
>
> If a public servant tells *A*, a close friend of his, that he has acquired considerable wealth through bribery but he cannot keep them as he has no known source of income to account, he requests *A* to keep the said wealth in *A*'s name, and *A* obliges the public servant in doing so. If it

is a proved position *A* is guilty of abetment falling under the "Thirdly" clause of Section 107 of the Penal Code.

25. Such illustrations are apt examples of how the offence under Section 13(1)(*e*) of the PC Act can be abetted by non-public servants. The only mode of prosecuting such offender is through the trial envisaged in the PC Act."

Recently, a co-ordinate bench in *P. Nallammal* v. *State [2025 SCC OnLine SC 1040]* followed the above pronouncement and, while differing on the eventual conclusion, were *ad idiem* on the point of law.

12. The BSCA is a special statute, enacted by the State legislature after having received Presidential assent therefor. The Act itself provides for the situations in which the money/property confiscated thereunder can be returned to the owner, making the legislative intent fairly clear and obvious. They are: (a) modification or annulment of the confiscation order by the High Court or (b) acquittal by the Special Court. In other words, no other possibilities have been accounted for. Here itself we may deal with the argument advanced on part of the respondent that the BSCA does not provide for substitution of Legal representatives and so the proceedings cannot continue. Such a submission is entirely misconceived for the respondent had also been put to notice right at the inception of proceedings along with the delinquent officer. We are of the considered view that the only path available to High Court was to decide the respondent's appeal on merits for that route is the only one available to reach the two possibilities contemplated under this Act."

47. It would be further apposite to reproduce **para 18 and 19** of **Ex. Sqn. Ldr. R. Sood case (supra),** which reads as under:

"**18.** This understanding, at first glance, is fallacious. Discharge is a pre-trial termination of proceedings for lack of evidence. As and when ordered, discharge signifies and reinforces the position that there is no material against the accused for him to stand trial. Whereas, acquittal is a post-trial outcome declaring the accused either innocent due to lack of credible material or on account of grant of the benefit of doubt. Insufficient evidence to even frame charges for standing trial would lead to a discharge while evidence presented not proving guilt leads to acquittal. In that sense, an accused discharged of a criminal offence stands on a better footing than an accused who is finally acquitted after a full-fledged trial. It is not the law that an accused, unless he is acquitted, must still carry the label on his forehead that he is accused of a criminal offence. Once an accused has been discharged, he is entitled to avail of all benefits that are otherwise available to an acquitted person and cannot be placed in a less advantageous position. We are left surprised at the understanding of the officer who prepared the proceeding note.

19. In support of our view of discharge standing on a 'better footing' than acquittal, one may profitably refer to the decision of this Court in ***Yuvraj Laxmilal Kanther* v. *State of Maharashtra [2025 SCC OnLine SC 520].*** The relevant paragraph therefrom is reproduced below:

> **16.** Section 227 CrPC deals with discharge. What Section 227 CrPC contemplates is that if upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is no sufficient grounds for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. At the stage of consideration of discharge, the court is not required to undertake a threadbare analysis of the materials gathered by the 17 prosecution. All that is required to be seen at this stage is that there are sufficient grounds to proceed against the accused. In other words, the materials should be sufficient to enable the court to initiate a criminal trial against the accused. It may be so that at the end of the trial, the accused may still be acquitted. At the stage of discharge, court is only required to consider as to whether there are sufficient materials which can justify launch of a criminal trial against the accused.

> By its very nature, a discharge is at a higher pedestal than an acquittal. Acquittal is at the end of the trial process, may be for a technicality or on benefit of doubt or the prosecution could not prove the charge against the accused; but when an accused is discharged, it means that there are no materials to justify launch of a criminal trial against the accused. Once he is discharged, he is no longer an accused.
>
> (emphasis ours)"

Conclusion:

48. No doubt, an order of confiscation made under Section 15 of Bihar Special Courts Act, 2009, can be modified or annulled by the High Court in appeal considering on merits or where the person affected is acquitted by the Special Court, the money, property or both shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the value thereof, including the money so confiscated together with interest at the rate of five per cent *per annum* thereof calculated from the date of confiscation. The present case tested within aforesaid legal parameters i.e. on merits and also on acquittal of the co-accused/appellant.

49. Now coming to the factual aspects of this case, it appears that Late Dwarika Nath Rai, (public servant), who was the husband of the appellant submitted documents in support of his ownership of inherited agricultural land measuring 22.30

Acres issued by the Circle Officer, Charpokhari certifying that the estimated monthly income of the officer was Rs. 70,000/- from such property amounting to agricultural income having total of Rs. 18,90,000/- during the check period. Impugned order as mentioned aforesaid shows that the Authorized Officer declined to accept the same on the ground that it was not a definite and conclusive report establishing that the husband of the appellant had earned such income. It was also not considered for the reason that husband of the appellant had not produced his income tax return for the relevant period and has also not come up with specific details as to the income earned by him in a particular season or year. The affidavit of different persons who were actually involved in agricultural practice in the land of the deceased officer was also not taken into consideration, whereas on the other hand, the appellant's income from her agricultural land, rental and the housing loan were also not taken into consideration, though, she had duly filed her income tax return in the March, 1989, explaining all such income. On the basis of her income tax return, she obtained a housing loan of Rs. 50,000/-. The rental income was also mentioned in the income tax return of March 1989. Thus, it appears from the impugned judgment that authorized officer, as per his own convenience, failed to accept the contentions of the opposite party/appellant. He failed to believe the income of the deceased husband of the appellant for the period because income tax return was not filed by him, whereas on other hand, he failed to appreciate the income relating to the period for which the appellant had filed her income tax return. This approach adopted by the authorised officer appears to be arbitrary, unfounded and cannot be appreciated, which can be gathered from **para 24** of the impugned order itself, as discussed aforesaid.

50. Thus, this Court is of the considered view that non-consideration of the agricultural income of the appellant is bad in the eyes of law in view of **Nirankar Nath Pandey case (supra).**

51. From perusal of record, it also appears that at serial No. 3 in **Schedule 'A'** of movable properties, the inventory list was made on 22.04.1995, i.e. much beyond the check period and, this irregularities also does not appear to be answered in the impugned order. Similarly, construction of second floor of the house which was completed after check period was also not taken into consideration.

52. From the provisions of Rule 13 of Bihar Special

Courts Rules, 2010, it appears that the provisions of the Code of Criminal Procedure, 1973, shall apply to the proceeding before the authorized officer. Ratio as laid down by Hon'ble Supreme Court in **U. Subhadramma case (supra),** was not discussed in **Sudha Singh's case (supra).**

53. In the aforesaid context, it would be apposite to reproduce **para 35** of legal report of Hon'ble Supreme Court through **A.P. Electrical Equipment Corporation Vs. Tahsildar and Ors.** reported in **2025 SCC OnLine SC 447,** which reads as under:

> "35. If two decisions of this Court appear inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in *quinn v. Leathern,* [1901] A.C. 495 and reiterated by the Privy Council in *Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore* AIR 1940 PC 230:
>
> > "*… .. every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found."*
> > and follow that decision whose facts appear more in accord with those of the case at hand."

54. No doubt, 'abatement' or 'abate', neither of which has been defined in Cr.P.C., is distinct in its legal connotation

from acquittal and the two cannot be placed on the same footing. Now, one of the important questions that arises whether the death of public servant which took place much prior to passing of confiscation order, whether such an order of confiscation can be said to be valid, on the basis of written submission filed by co-accused/appellant, who had already been discharged and whose discharge had attained the status of acquittal much prior to the passing of the confiscation order.

55. It transpires from the record that the applicant who is Lalita Devi, (wife of Late Dwarika Nath Rai) preferred a quashing petition before this Court through Cr. Misc. No. 40861 of 2008, against the order dated 04.08.2008 passed by the Special Judge, Vigilance – 1, Patna in Special Case No. 7/1995, has already been quashed and allowed, for the reason that court, for the discussed reasons through its order, failed to find absolutely any material against the appellant as to proceed with the trial. Thus, the status of the appellant before the authorized officer in view of the legal report of Hon'ble Supreme Court as available through **Ex. Sqn. Ldr. R. Sood's case (supra)** as discussed aforesaid, is of acquittal meeting out one of the consideration for annulment of a confiscation order.

56. The record also suggests that the written statement

and additional written statement on behalf of the Late Shri Dwarika Nath Rai (since died) was filed by this appellant in the capacity of his wife after his death. Late Shri Dwarika Nath Rai was died on 31.03.2016, whereas the confiscation order was passed on 30.09.2016, which also suggests that an opportunity of fair enquiry was not given to deceased officer, which amounting to violation of principle of natural justice also. If the trial abates after the death of the accused, then, certainly, the confiscation proceedings, being essentially in the nature of an inquiry, ought also to come to an end upon the death of the delinquent public servant. It should not be allowed to run merely on the basis of documents supplied on behalf of the co-accused, who had already been discharged, as discussed aforesaid.

57. Thus, on both scores, this Court is convinced enough that the present impugned confiscation order is fit to be declared 'annulled'/set-aside, considering the merit as discussed aforesaid and also on the score of death of the public servant during the confiscation proceeding and further by taking note of the fact that status of the appellant was of acquittal, as discussed aforesaid.

58. Accordingly, the present appeal stands allowed.

59. Hence, the impugned order of confiscation dated 30.09.2016 passed by learned Additional District and Sessions Judge-VI-cum-Authorized Officer, Special Court No. 1, Vigilance, under Special Courts Act, 2009, Bhagalpur in Confiscation Case No. 02/2012 arising out of Vigilance P.S. Case No. 12 of 1995 is hereby set-aside/quashed.

60. Let a copy of this judgment be sent to the learned trial court alongwith TCR, if any, forthwith.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	AFR
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