

Bihar Special Courts Act, 2009

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Act 5 of 2010

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Bihar Special Courts Act, 2009(Bihar Act No. 5 of 2010)Last Updated 13th January, 2020[Dated 21.01.2010]Preamble. - An Act To provide for the constitution of special courts for the speedy trial of certain class of offences and for confiscation of the properties involved.Whereas corruption is perceived to be amongst the persons holding public offices and public servants within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 in the State of Bihar;And, Whereas, the Government has sufficient reasons to believe that large number of persons, who have held or are holding public offices and are public servants within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 have accumulated vast property, disproportionate to their known sources of income by resorting to corrupt means;And, Whereas, it is obligation of the State to prosecute persons involved in such corrupt practices and confiscate their ill gotten assets.And, Whereas, the existing courts of Special Judges cannot reasonably be expected to bring the trials, arising out of those prosecutions, to a speedy termination and it is imperative for the efficient functioning of a parliamentary democracy and the institutions created by or under the Constitution of India that the aforesaid offenders should be tried with utmost dispatch;And, Whereas, it is necessary for the said purpose to establish Special Courts to be presided over by the persons who are or have been Sessions Judges/Additional Sessions Judges and it is also expedient to make some procedural changes whereby avoidable delay in the final determination of the guilt or innocence, of the persons to be tried, is eliminated without interfering with the right to a fair trial.Be, it enacted by the Legislature of State of Bihar in the Sixtieth Year of the Republic of India as follows: -

Chapter I

Preliminary

1. Short title extent and Commencement.

(1)This Act may be called the Bihar Special Courts Act, 2009.(2)It shall extend to the whole of the State of Bihar.(3)It shall come into force at once.

2. Definitions.

- In this Act, unless the context otherwise requires:-(a)"Act" means Prevention of Corruption Act, 1988.(b)"authorised officer" means any serving officer belonging to Bihar Superior Judicial Service and who is or has been Session Judge/Additional Sessions Judge, nominated by the State Government with the concurrence of the High Court for the purpose of section 13;(c)"Code" means the Code of Criminal Procedure, 1973; (2 of 1974)(d)"Declaration" in relation to an offence, means a declaration made under section-5 in respect of such offence;(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. (49 of 1988)(f)"Special Court" means a Special Court established under section 3; and(g)Words and expressions used herein and not defined but defined in the Code or the Act shall have the meanings respectively assigned to them in the Code or the Act.

Chapter II

Establishment of Special Courts

3. Establishment of Special Courts.

(1)The State Government shall, for the purpose of speedy trial of offence, by notification, establish as many Courts as considered adequate to be called Special Courts.(2)A Special Court shall be presided over by a Judge to be nominated by the State Government with the concurrence of the Patna High Court.(3)No person shall be qualified for nomination as a Judge of a Special Court unless he is a member of Bihar Superior Judicial Service and is or has been a Sessions Judge/Additional Sessions Judge in the State.

4. Cognizance of cases by Special Courts.

- A Special Court shall take cognizance of and try such cases as are instituted before it or transferred to it under section 10.

5. Declaration of cases to Be dealt with under This Act.

(1)If the State Government is of the opinion that there is prima-facie evidence of the commission of an offence alleged to have been committed by a person, who has held or is holding public and is or has been public servant within the meaning of section 2(c) of the Prevention of Corruption Act, 1988 in the State of Bihar, the State Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.(2)Such declaration shall not be called in question in any Court.

6. Effect of declaration.

(1) On such declaration being made, notwithstanding anything in the Code or any other law for the time being in force, any prosecution in respect of the offence shall be instituted only in a Special Court. (2) Where any declaration made under section-5 relates to an offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court under this Act, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to Special Court for trial of the offence in accordance with this Act.

7. Jurisdiction of Special Court as to Trial of Offences.

- A Special Court shall have jurisdiction to try any person alleged to have committed the offence in respect of which a declaration has been made under section 5, either as principal, conspirator or abettor and All of them can be jointly tried therewith at one trial in accordance with the Code.

8. Procedure And powers of Special Courts.

(1) A Special Court shall, in the trial of such cases, follow the procedure prescribed by the Code for the trial of warrant cases before a Magistrate. (2) Save as expressly provided in this Act, the provisions of the Code and of the Prevention of Corruption Act, 1988 (49 of 1988) shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purpose of the said provisions, the persons conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor. (3) A Special Court may pass, upon any person convicted by it, any sentence authorised by law for the punishment of the offence of which such person is convicted.

9. Appeal against orders of Special Courts.

(1) Notwithstanding anything in the Code, an appeal shall lie from any judgment and sentence of a Special Court to the High Court of Patna both on facts and law. (2) Except as aforesaid, no appeal or revision shall lie in any court from any judgment, sentence or order of a Special Court. (3) Every appeal under this section shall be preferred within a period of thirty days from the date of judgment and sentence of a Special Court. Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied for reasons to be recorded in writing that the appellant had sufficient cause for not preferring the appeal within the period.

10. Transfer of Cases.

- Notwithstanding the other provisions of this Act, it would be open to the High Court of Patna to transfer cases from one Special Court to another.

11. Special Court not bound to Adjourn a Trial.

(1) A Special Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice and for reasons to be recorded in writing. (2) The Special Court shall endeavour to dispose of the trial of the case within a period of one year from the date of its institutions or transfer, as the case may be.

12. Presiding Judge may act on evidence recorded By his Predecessor.

- A Judge appointed under section 3 to preside over a Special Court may act on the evidence recorded by his predecessor or predecessors or partly recorded by his predecessor or predecessors and partly recorded by himself.

Chapter III

Confiscation of Property

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.

17. Appeal.

(1)Any person aggrieved by any order of the authorised officer under this Chapter may appeal to the High Court within thirty days from the date on which the order appealed against was passed.(2)Upon any appeal preferred under this section the High Court may, after giving such

parties, as it thinks proper, an opportunity of being heard, pass such order as it thinks fit.(3)An appeal preferred under sub-section (1) shall be disposed of preferably within a period of six months from the date it is preferred, and stay order, if any, passed in an appeal shall not remain in force beyond the prescribed period of disposal of appeal.

18. Power to take possession.

(1)Where any money or property or both have been confiscated to the State Government under this Act, the concerned authorised officer shall order the person affected, as well as any other person, who may be in possession of the money or property or both to surrender or deliver possession thereof to the concerned authorised officer or to any person duly authorised by him in this behalf, within thirty days of the service of the order:Provided that the authorised officer, on an application made in that behalf and being satisfied that the person affected is residing in the property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be specified on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property.(2)If any person refuses or fails to comply with an order made under sub-section (1), the authorised officer may take possession of the property and may, for that purpose, use such force as may be necessary.(3)Notwithstanding anything contained in sub-section (2) the authorised officer may, for the purpose of taking possession of any money or property or both referred to in sub-section (1), requisition the service of any police officer to assist and it shall be the bounden duty of such officer to comply with such requisition.

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.

Chapter IV

Miscellaneous

20. Notice or Order not to be invalid for error in description.

- No notice issued or served, no declaration made and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein, if such property or person is identifiable from the description so mentioned.

21. Act to be in addition to any other law.

- The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

22. Bar to other Proceedings.

- Save as provided in sections 9 and 17 and notwithstanding anything contained in any other law, no suit or other legal proceedings shall be maintainable in any Court in respect of any money or property or both ordered to be confiscated under section 15.

23. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

24. Power to Make rules.

- The State Government may, by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.

25. Notifications under section 3 and declarations under section 5 to be laid.

- Every notification made under sub-section (1) of section 3 and every declaration made under sub-section (1) of section 5 shall be laid, as soon as may be, after they are made, before the State Legislature.

26. Overriding effect.

- Notwithstanding anything in the Prevention of Corruption Act, 1988 and the Criminal Law Amendment Ordinance, 1944 or any other law for the time being in force, the provisions of this Act shall prevail in case of any inconsistency.