



GAHC010266442013



2024:GAU-AS:9516-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./257/2013

ASSOCIATION FOR EXTENSIVE GROWERS INNOVATIVE SERVICE AEGIS
HAVING ITS HEAD AND REGISTERED OFFICE AT MATAI
LUWNGSANGBAM, IMPHAL 795002, REPRESENTED BY ITS SECY. N BOMI
SINGH

VERSUS

THE STATE THROUGH NATIONAL INVESTIGATION AGENCY NIA

Advocate for the Petitioner : MRSSHEELA KH., MR.B BASUMATARY,MR.M G SINGH

Advocate for the Respondent : , ,SC, NIA



BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER
(C.A.V.)

For the appellants	Mr. D.K. Mishra, Senior Advocate Mr. B. Prasad, Advocate.
For N.I.A.	Mr. D.K. Das, Senior Advocate Ms. P.K. Darjee, Ms. G.D. Choudhury Mr. D. Choudhury, Advocates.
For the Union of India	Mr. R.K.D. Choudhury, D.S.G.I. Ms. L. Devi, Advocate
Dates of hearing	01.02.2024, 04.02.2024, 05.02.2024, 06.02.2024, 07.02.2024, 15.02.2024, 16.02.2024, 16.02.2024, 19.02.2024, 20.02.2024, 21.02.2024, 22.02.2024, 23.02.2024, 26.02.2023, 27.02.2024, 28.02.2024, 29.02.2024. 01.03.2024 and 12.08.2024.
Date of judgment	23.09.2024

(K.R. Surana, J.)

Heard Mr. D.K. Mishra, learned Senior Counsel, assisted by Mr. B. Prasad, learned counsel for the appellant. Also heard Mr. D.K. Das, learned Senior Counsel, assisted by Ms. G.D. Choudhury, learned counsel for the sole respondent. With the permission of the Court, Mr. R.K. D. Choudhury, learned DSGI has also made his submissions.

2) The movable and immovable properties of the appellant i.e. the Association for Extensive Growers Initiative Service (AEGIS for short) was attached by the Chief Investigation Officer of NIA Case No. 10/2010, vide Memorandum of Attachment dated 11.11.2011 (Ext.94). Consequently, the



order of attachment dated 11.11.2011 (Ext.95) was also made by the same authority. Thereafter, by an order under No. 11034/20/2010-IS-VII(IV) dated 29.12.2011 (Ext.184) was issued by Sri Dharmendra Sharma, Joint Secretary (IS-I), Govt. of India, MHA & Designated Authority, thereby confirming the order of attachment under section 25 of the Unlawful Activities (Prevention) Act, 1967 [hereinafter referred to as 'UA(P)A' for short]. Aggrieved by the said orders, the present appeal has been filed by the appellant under section 25(6) of the UA(P)A.

3) It would be appropriate to mention herein that this appeal was listed together with CrI. Appeal nos. 169/2016, 262/ 2016, 263/2016, 264/2016, 265/2016, 289/2016, 291/2016, 295/2016, 299/ 2016, CrI.A.113/2017, 115/2017 and 145/2017. With the consent of the learned senior counsel for the appellant as well as the learned senior counsel for the sole respondent, this appeal was heard analogously with the other criminal appeals.

Submissions of the learned senior counsel for the appellant:

4) The learned senior counsel for the appellant has submitted that AEGIS was carrying out legitimate business of food processing and had invested a huge amount of money for setting up a pineapple processing plant, which partly financed by way of long term assistance of Rs.28.00 lakh, provided by the Govt. of India, Ministry of Agriculture and that the project was also partly financed by the Ministry of Food Processing by way of providing grant of Rs.56.00 lakh. The said project was also financed by the Imphal Urban Cooperative Bank (IUCB for short). Accordingly, it was submitted that the attachment of assets of the respondent was not sustainable on facts and in law.

Submissions by the learned senior counsel for respondent:



5) Per contra, the learned senior counsel for the respondent has questioned the maintainability of this appeal on the ground that no appeal was preferred after the attachment order was passed and that the present appeal was belatedly filed.

6) The learned senior counsel for the respondent has submitted that the detailed investigation was done by the NIA and in course of investigation it was found that AEGIS was a front organisation of United National Liberation Army (hereinafter referred to as UNLF for short). Accordingly, the Chief Investigating Officer, i.e. Sri S.P. Pani, who was examined as PW-84 in the connected criminal appeals, who was having the statutory power under section 25(1) of the UA(P)A to conduct search and to make seizure of property, on 11.11.2010, had attached the assets of AEGIS (appellant), as the said assets was out of the proceeds of terrorism. Consequently, the order of attachment was also made on 11.11.2010. A copy of above is stated to have been served on Secretary of AEGIS, namely, N. Bomi Singh (since deceased), who is arrayed as accused no. 23 in Special NIA Case No.1/2010.

7) It has been submitted that under section 25(2) of the UA(P)A, the Investigating Officer is required to inform the Designated Authority with 48 hours of such seizure and attachment. Under section 25(3), the Designated Authority before whom the seized property is produced is required to either confirm or revoke the order of seizure or attachment within the time prescribed after providing an opportunity to the person concerned of making a representation.

8) It is also submitted that as the seized cash was produced before the Designated Authority, the said authority had passed an order of retention of cash.



9) Consequently, the Designated Authority had passed an order dated 29.12.2011, thereby confirming the attachment.

Submissions of the learned DSGI:

10) Per contra, the learned DSGI by referring to evidence of the herein below noted prosecution witnesses, examined by prosecution in connection with Spl. NIA Case No. 1/2010, it was submitted that their evidence implicates the appellant i.e. AEGIS to be a front organisation of UNLF. It is also submitted that from the e-mails retrieved by PW-80 from the e-mail of M. Joy Singh and R.K. Meghen (accused nos. 18 and 19 in Spl. NIA Case No. 1/2010), it has been established that the UNLF, as a part of their strategy and cover as well as to build up its financial assets, invested their money in different projects and companies including AEGIS.

11) It was submitted that the prosecution has been able to prove that the food industry of AEGIS was established and financed by UNLF and that the affairs of AEGIS was administered by UNLF through N. Bomi Singh (since deceased), Y. Brajabuidhu Singh and A. Ibomcha Singh (accused nos. 23, 24 and 25 in Spl. NIA Case No. 1/2010).

12) To support his contentions, the learned DSGI has referred to the following documents exhibited in Spl. NIA Case No. 1/2010, viz., (i) minutes of AEGIS (Ext. Nos. 190/1 to 190/5), attended by the herein before referred N. Bomi Singh (since deceased), Y. Brajabuidhu Singh and A. Ibomcha Singh (accused nos. 23, 24 and 25 in Spl. NIA Case No. 1/2010); (ii) Ext. Nos. 191/1 to 191/8, which shows how UNLF takes decisions on manufacturing and marketing of AEGIS items; (iii) e-mails (Ext. No. 192/1 to 192/7) containing accounts of AEGIS sent to R.K. Meghen (accused no. 19 in Spl. NIA Case No.



1/2010); (iv) e-mails (Ext.193/1 to 193/12) sent to R.K. Meghen (accused no. 19 in Spl. NIA Case No. 1/2010) showing direct interference by UNLF in decision making of AEGIS; and (v) e-mails (Ext.194/1 to 194/2 to R.K. Meghen (accused no. 19 in Spl. NIA Case No. 1/2010), which proves that AEGIS is controlled by the said R.K. Meghen, who was the then Chairman of UNLF.

Maintainability of this appeal:

13) The respondent did not object to the maintainability of this appeal when the appeal was admitted for hearing and therefore, there is a deemed waiver of objection. Moreover, no affidavit-in-opposition has been filed by the respondent and therefore, no objection as to maintainability of this appeal is pleaded by the respondent.

14) Be that as it may, the appellant had made a statement in the memorandum of this appeal, explaining the delay in filing the appeal. Therefore, the appeal is held to be maintainable on facts and in law as provided under section 26 of the UA(P)A.

Discussion and decision on merit:

15) Considered the submissions as well as deposition of witnesses on which reliance was placed and also perused the relevant documentary evidence available on record, on which reliance was placed by both sides.

16) Before examining the evidence and materials on record, it would be appropriate to refer to some statutory provisions of UA(P)A, which are referred below:-

Legal provisions relevant to this appeal:

17) The relevant provisions of clause (g), (h) and (k) of Sub-Section

(1) of section 2 and the provisions of sections 21, 24, 24(A), 26 and 28 of UA(P)A are quoted below:

2(g) "proceeds of terrorism" means all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found, and includes any property which is being used, or is intended to be used, for the purpose of a terrorist organisation;

2(h) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, and includes cash and bank account;

2(k) "terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

S.21 Punishment for holding proceeds of terrorism.- Whoever knowingly holds any property derived or obtained from commission of any terrorist act or acquired through the terrorist fund shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

S.24 Forfeiture of proceeds of terrorism.- (1) No person shall hold or be in possession of any proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

24A. Forfeiture of proceeds of terrorism.—(1) No person shall hold or be in possession of any proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist organisation or terrorist gang or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

(3) Where proceedings have been commenced under this section, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to, or, the value of the proceeds of terrorism involved in the offence.



26. Court to order forfeiture of proceeds of terrorism.- Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

28. Appeal. (1) Any person aggrieved by an order of forfeiture under section 26 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the court, which passed the order appealed against, is situated.

(2) Where an order under section 26 is modified or annulled by the High Court or where in a prosecution instituted for any offence under Chapter IV or Chapter VI, the person against whom an order of forfeiture has been made under section 26 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

18) In connection with the trial of Spl. NIA Case No. 1/2010, the prosecution had examined 84 witnesses, including Rakesh Kumar Jain (PW-24); N. Holland Singh (PW-29); B. Haridas Sarma (PW-43); O.S. Ashok (PW-64); Dharmendra Sharma (PW-77); Surinder Singh Bakshi (PW-79); Aseem Srivastava (PW-80); Swyam Prakash Pani (PW-84). The learned senior counsel for both sides had extensively relied on the evidence of above named witnesses in Spl. NIA Case No. 1/2010. The record of their evidence is available in the Trial Court Record (TCR for short) of Spl. NIA Case No. 1/2010. The said record was called for in connection with the connected criminal appeals, i.e. Crl. Appeal nos. 169/2016, 262/2016, 263/ 2016, 264/2016, 265/2016, 289/ 2016, 291/ 2016, 295/2016, 299/2016, Crl.A.113/2017, 115/ 2017 and 145/2017.

19) It may be mentioned that the impugned memorandum of attachment and order of attachment, both dated 11.11.2011 and the impugned order dated 29.12.2011, confirming the attachment, were not the subject



matter of decision by the Court of Special Judge, NIA, Guwahati in connection with Special NIA Case No. 1/2010 tried and decided by it. Therefore, the Court is of the considered opinion that the memorandum and order of attachment dated 11.11.2011 and confirmation order dated 29.12.2011, which are the subject matter of challenge in this appeal are liable to be examined without being influenced with the judgment and sentence that has been passed by the Special Judge, NIA, Assam in Spl. NIA Case No. 1/2010 because AEGIS has not been arrayed as an accused in Spl. NIA Case No. 1/2010.

20) As both sides have extensively referred to the record of evidence available in connection with the trial of Spl. NIA Case No. 1/2010, which was called for in connection with the connected criminal appeals, it would be relevant to examine the evidence of the prosecution witnesses on which both sides have placed reliance.

Relevant evidence in the trial of Spl. NIA Case No. 1/2010, which was tried by the learned Special Judge, NIA, Assam at Guwahati:

(i) *Evidence of Rakesh Kumar Jain and its analysis:*

21) Rakesh Kumar Jain, who was examined as PW-24 in connection with Spl. NIA Case No. 1/2010 is a Chartered Accountant. On a perusal of his evidence, it is observed that the learned Trial Court had misread and misconstrued his deposition and recorded an erroneous finding to the effect that Y. Brajabidhu Singh (accused no. 24 in Spl. NIA Case No.1/ 2010) was involved with UNLF without considering the evidence on record that the loan that was obtained by AEGIS from IUCB was repaid by liquidating the fixed deposit receipts of the said society.

22) Moreover, the said witness had stated that "*some of the*



contributions were not supported by proper documents." However, in paragraph 54 of the judgment in Spl. NIA Case No. 1/2010, the aforesaid statement of PW-24 was wrongly recorded to the effect that "*large number of contributions were not supported by documents and he found other anomalies."*

23) As the said witness, namely, Rakesh Kumar Jain had disclosed that a part of the funds of AEGIS was received from the Government of India, it must be presumed that finance made available by the Govt. of India and by the IUCB cannot be considered and/or held proceeds of terrorism.

24) Moreover, after examining the balance sheet, the said witness had not stated how much unaccounted assets including money was possessed by the AEGIS, so as to quantify the value of assets which could then be presumed to be the proceed of terrorism or any terrorist act of UNLF.

25) Therefore, from the evidence of Rakesh Kumar Jain, the prosecution has not been able to show that any property or assets of AEGIS is out of the proceeds of terrorism or funded by UNLF.

(ii) Evidence of N. Holland Singh (PW-29) and its analysis:

26) In the proceeding of Spl. NIA Case No. 1/2010, N. Holland Singh was examined as PW-29). The learned senior counsel for the respondent has not been able to show how his evidence helps to establish that AEGIS is the front organisation of UNLF and that the assets of AEGIS is borne out of the proceeds of terrorism. In his examination-in- chief, N. Holland Singh has merely stated that Sri B. Haridas Sharma (PW-43 in Spl. NIA Case No.1/2010) was the then President of AEGIS. He had also stated that Sri N. Bomi Singh (since deceased) (A-23 in Spl. NIA Case No.1/2010) and Y. Brajabidhu Singh (A-24 in Spl. NIA Case No.1/2010) are the Executive Member and Secretary respectively



of AEGIS.

27) The said witness has not made any incriminating statement against AEGIS in his evidence by which it can be culled out that the business and properties of AEGIS is funded by UNLF. Therefore, from the evidence of Rakesh Kumar Jain, the prosecution has not been able to show that any property or assets of AEGIS is out of the proceeds of terrorism or funded by UNLF.

(iii) Evidence of B. Haridas Sarma (PW-43) and its analysis:

28) In his examination-in- chief, B. Haridas Sarma, who was examined as PW-43 in Spl. NIA Case No.1/2010, had stated that he had joined AEGIS after he had retired as Director, Agriculture, Govt. of Manipur. At the time when NIA had closed the operation of AEGIS, he was working as the President of the Executive Committee. He had stated that before he became the President, Y. Brajabidhu Singh (accused no. 24 in Spl. Case No. 1/2010) was the President of AEGIS. He had further stated that the initial capital of AEGIS was Rs.197.00 lakh, which was later revised to Rs.206.00 lakh. He had also stated that a sum of Rs.50.00 lakh was taken as loan from IUCB when Brajabidhu Singh was the President of AEGIS, which was not utilized and returned. Ext.93 (in Spl. Case No. 1/2010) is the statement of B. Haridas Sarma recorded under section 164 CrPC before the Magistrate, 1st Class, Kamrup, Guwahati on 24.05.2011 and Ext.93/1 and 93/2 marked therein are his signatures thereon. Ext.94 (in Spl. Case No. 1/2010) is the attachment notice and Ext.94/1, 94/2 and 93/3 exhibited therein are his signatures on the said document. Ext.95 (in Spl. Case No. 1/2010) is the notice under section 25(1) of UA(P)A, addressed to N. Bomi Singh (since deceased) (accused no. 23 in Spl. Case No. 1/2010), who is



Secretary, AEGIS, and Ext.95/1 is the signature of N. Bomi Singh (since deceased), as token of receipt of that notice. He had also exhibited statement of accounts (Ext.96 in Spl. Case No. 1/ 2010) of AEGIS prepared by Rakesh Kumar Jain, the Chartered Accountant for the period from 16.06.2006 to 31.03.2007 and the signatures of Y. Brajabidhu Singh (accused no. 23 in Spl. Case No. 1/2010) as Ext.96/1 to 96/6.

29) In his cross-examination, B. Haridas Sarma had stated that AEGIS had received long term loan of Rs.28.00 lakh from Ministry of Agriculture and Ministry of Food Processing on approval of their project and a further sum of Rs.56.00 lakh was received as grant. He had personally visited Delhi to meet officials of concerned Ministries for availing such funds and loans. He does not know how loan from IUCB was managed, but he was told that it was for book-keeping. He had also stated that while proceeding towards the Court, he was briefed by DSP, NIA by the name Bakshi about the statement to be given before the Magistrate and after giving his statement, he was escorted back by the said police officer. In his cross examination, when B. Haridas Sarma was confronted with his statement made under section 164 CrPC that "*Now in 2011, I came to know that all these three aforesaid named three people have link with United National Liberation Front (UNLF) and they invested money of this UNLF into our Food Processing scheme of AEGIS*", he had replied that he did not actually said the said portion of statement to the Magistrate. He had also stated that he cannot remember if his statement under section 164 CrPC was read over to him by the Magistrate. He had also stated that he does not remember the name of UNLF member with whom Brajabidhu Singh (accused no. 24 in Spl. NIA Case No. 1/2010) is related.

30) Thus, no incriminating materials against AEGIS can be culled out



from the evidence of PW-43. Rather, from the evidence of PW-43, the prosecution has proved that AEGIS had received funds from the Central Government through Ministry of Agriculture and Ministry of Food Processing, which cannot be said to be a fund provided by UNLF through terrorist act. Part of the funding was also received through loan of Rs.65.00 from IUCB, which was returned by liquidating fixed deposit receipts. The aforesaid component of funds cannot be said to be proceeds derived from terrorist act.

Evidence of O.S. Ashok (PW-64) and its analysis:

31) Shri O.S. Ashok, who was examined as PW-64 in Spl. NIA Case No.1/2010, is the authorised person who had signed the prosecution sanction in respect of N. Bomi Singh (since deceased) (accused no. 23 in Spl. NIA Case No. 1/2010), Y. Brajabidhu Singh (accused no. 24 in Spl. NIA Case No. 1/2010), A. Ibomcha Singh (accused no. 25 in Spl. NIA Case No. 1/2010).

32) On a perusal of his evidence, it is seen that he had not disclosed anything to identify which part of the property of AEGIS is derived from the proceeds of terrorism.

Evidence of Dharmendra Sharma (PW-77) and its analysis:

33) Dharmendra Sharma, who was examined as PW-77 in Spl. NIA Case No.1/2010, had stated that in the year 2011 he was posted as Joint Secretary (Internal Security-1), MHA, Govt. of India and he was notified as the Executive Authority under UA(P)A vide MHA notification dated 15.04.2011 and that he was informed by S.P. Pani, Investigating Officer of NIA about two separate seizure of cash of Rs.17.00 lakh in August, 2011 and attachment of properties of AEGIS in November, 2011. He had passed an order on 18.08.2011, confirming that the I/O had informed about seizure of cash suspected to be



proceeds of terrorism during 48 hours. He had stated that the order dated 18.08.2011, confirming the retention of seizure of Rs.17.00 lakh was passed after the inspection and confirmation of the cash amount in his office. He had exhibited the said order dated 18.08.2011 as Ext.88 in Spl. NIA Case No./1/2010, and Ext.88/1 therein is his signature. Ext.182 in Spl. NIA Case No.1/2010 is the inspection and confirmation of seizure dated 18.08.2011 of cash under Section 25(5) of the UA(P)A and Ext.82/1 therein is his signature.

34) He had also stated that on 12.11.2011, he was telephonically informed by the Investigating Officer of NIA that the property of AEGIS is suspected of being proceeds of terrorism of UNLF. Accordingly, on 24.11.2011, he had passed an order under Section 25 of the UA(P)A, and thereby gave two weeks (15 days) time to the Secretary of AEGIS to give a representation, if any, against the proposed action of attaching the property of AEGIS. He had stated that after considering the fact that Shri N. Bomi Singh (since deceased), the then Secretary AEGIS (accused no. 23 in Spl. NIA Case No.1/2010 had acknowledged the receipt of memorandum of attachment on 18.12.2011 and had stated that he had no comment to offer on the proposed order of attachment of the property, by the impugned order dated 29.12.2011, he had confirmed the order of attachment of the said property under Section 25(3) of the UA(P)A. Ext. 183 in Spl. NIA Case No.1/2010 is the fax message dated 11.11.2011 sent by S.P. Pani, informing the designated authority about availability of sufficient material evidence regarding involvement of AEGIS with the UNLF. Ext. 184 in Spl. NIA Case No.1/2010 is the order dated 29.12.2011 confirming the order of attachment of AEGIS, and Ext.184/1 is the signature of Dharmendra Sharma (PW-77 in Spl. NIA Case No.1/2010). It is stated that the copy of order was sent to N. Bomi Singh (since deceased), the then Secretary,



AEGIS (accused no. 23 in Spl. NIA Case No. 1/2010). In his cross-examination, the said witness had denied the suggestion that there was no material at all for connecting the seized properties with any unlawful organization including UNLF.

35) On perusal of the materials available on record, the Court is constrained to hold that the evidence of Dharmendra Sharma (PW-77 in Spl. NIA Case No.1/2010), insofar as it relates to seizure of cash of Rs.17.00 lakh by S.P. Pani (PW-84 in Spl. NIA Case No.1/2010) is not evidence against AEGIS. In this regard, it may be mentioned that as per the contents of Ext.182 (of Spl. NIA Case No. 1/2010), it discloses that seizure of cash of Rs.17.00 lakh was made from Ngambam Robert Singh. There is no evidence to connect Ngambam Robert Singh with AEGIS. Moreover, it is not the case of the prosecution that Ngambam Robert Singh was holding a sum of Rs.17.00 lakh on behalf of AEGIS or that the said sum of Rs.17.00 lakh was seized from Ngambam Robert Singh because it was established or proved that the said money was a part of the asset/ property of AEGIS. In Ext.183 (of the case of Spl. NIA Case No. 1/2010), it is disclosed that during investigation, sufficient materials evidences have been brought on record establishing the fact that the land, the building and other appurtenant including the plants and machineries of AEGIS Food Processing Unit at Makai, Mantripukhuri, Imphal represents the proceeds of terrorism of the terrorist outfit UNLF. However, no material particulars based on which such satisfaction was arrived at by Dharmendra Sharma has been discussed or disclosed.

36) Moreover, by the impugned order dated 29.12.2011, passed by Dharmendra Sharma (Ext.184 in Spl. NIA Case No.1/2010), the attachment of the properties of AEGIS was confirmed. In the said order, it is only mentioned that after going through the details of the case, connected documents as well as



representation made by Shri Ningthoujam Bomi Singh (since deceased), the then Secretary, AEGIS, Dharmendra Sharma (PW-77 in Spl. NIA Case No.1/2010), who is the competent authority, has recorded his satisfaction that the attachment made thereunder is a part of proceeds of terrorism, and as such under Section 25(3) of UA(P)A, the order of attachment of the property was confirmed. The material based on which satisfaction was arrived at by Dharmendra Sharma have not been disclosed either in Ext.184 referred above or produced before this Court.

37) Accordingly, in light of the discussions above, the Court is constrained to hold that the evidence of Dharmendra Sharma is not a conclusive proof regarding allegation that GEGIS is funded by UNLF or that any assets/properties of AEGIS is funded out of proceeds of terrorism.

Evidence of Surinder Singh Bakshi (PW-79) and its analysis:

38) Surinder Singh Bakshi, who was examined as PW-79 in Spl. NIA Case No. 1/2010, at the relevant time was the I.O. of the case from April, 2011 till filing of the charge-sheet. In his examination-in-chief, he had stated that during investigation, he had assisted Swayam Prakash Pani, IPS, SP, NIA., who was the Chief Investigating Officer. He had stated that on 10.01.2012, he had arrested A-23, A-24 and A-25 in course of investigation and he had assisted the said S.P. Pani in the attachment of the properties of AEGIS which were funded by UNLF from the proceeds of terrorism. He had exhibited the memorandum for attachment (Ext.94 in Spl. NIA Case No.1/2010) under section 25 of the UA(P)A and his signature (Ext.94/4 to Ext.94/7) thereon. He had also exhibited the seizure memo dated 10.11.2011 (Ext.56 of Spl. NIA Case No. 1/2010) regarding seizure of some documents from Rakesh Kumar Jain, Partner of D.K. Vohra & Co., Chartered Accountant of AEGIS and his signature thereon as Ext.56/18.



39) The said Surinder Singh Bakshi had not proved the contents of any document he had seized to show how and in what manner AEGIS was funded by UNLF. His oral evidence cannot partake the character of proof because he claims to be one of the Investigating Officer of the case and he had seized financial statements of AEGIS and its bank accounts, but he did not make any attempt to find out which part of the property or assets of AEGIS was disproportionate to its known sources and then project that the unaccounted value of property is created due to funds received from UNLF and/or such funds was the proceeds of terrorism. He has also failed to show from any of the seized document that any person who is at the helm of affairs of AEGIS were running the management as handlers B. Haridas Sarma, N. Bomi Singh (since deceased), Y. Brajabidhu Singh and A. Ibomcha Singh (accused nos. A-23, A-24 and A25 in Spl. NIA Case No. 1/2010) or by handling B. Haridas Sarma (PW-43 in Spl. NIA Case No. 1/2010, who was the President of AEGIS during the relevant period.

40) Therefore, the oral evidence of said witness, namely, Surinder Singh Bakshi has failed to prove the allegation that AEGIS is funded

Evidence of Aseem Srivastava (PW-80) and its analysis:

41) Shri Aseem Srivastava, who was examined as PW-80 in Sp. NIA Case No.1/2010 has stated in his examination-in- chief that he had conducted a part of investigation under instructions from Shri Swayam Prakash Pani, IPS, S.P. and Chief Investigating Officer, NIA, New Delhi (PW-84 in Spl. NIA Case No. 1/2010).

42) In his evidence-in-chief, Aseem Srivastava has stated that on 03.02.2012, he took over the case as the Chief Investigating Officer as the



previous Chief Investigating Officer went for compulsory training course. As per his deposition, he had scrutinized all the case records, specially the retrieved emails recovered from email accounts of Rajkumar Meghen @ Sanaiyaima (accused no. 19 of Spl. NIA Case No. 1/2010) and M. Joy Singh @ Longyei (accused no. 18 of Spl. NIA Case No. 1/2010). He has stated that on the basis of those records and oral testimony of witnesses, it was established that in order to gain its financial assets out of extorted money, the UNLF, as a part of strategy and cover, invested money in different projects/companies including AEGIS. He had stated that AEGIS had established its food processing unit that was financed and administered by UNLF. He had also stated that UNLF had made substantial investment in the AEGIS and handled its day-to-day affairs through its over-ground members, namely, N. Bomi Singh (since deceased) (accused no. 23 in Spl. NIA Case No. 1/2010), Y. Brajabidhu Singh (accused no. 24 in Spl. NIA Case No. 1/2010) and A. Ibomcha Singh (accused no. 25 in Spl. NIA Case No. 1/2010), who were respectively the Secretary, Executive Member and Treasurer of AEGIS. He had also submitted that the abovenamed persons were handled by accused Kh. Tomba @ Pambei, N. Marjit @ Thabal, and Rajkumar Meghen @ Sanayaima. He had stated that during the course of investigation, property of AEGIS was attached and subsequently forfeited as it was found (*sic.* word ought to have been "funded") by proceeds of terrorism.

43) In the context of the above, it may be mentioned that out of the three handlers named above, Kh. Tomba @ Pambei, and N. Marjit @ Thabal were not arrayed as accused in Spl. NIA Case No. 1/2010 for reasons best known to the prosecution.

44) Moreover, the said witness, namely, Aseem Srivastava in his oral testimony has only made omnibus allegations against AEGIS without exhibiting



any proof that any property or asset of AEGIS was funded by UNLF or that N. Bomi Singh (since deceased) (accused no. 23 in Spl. NIA Case No. 1/2010), Y. Brajabidhu Singh (accused no. 24 in Spl. NIA Case No. 1/2010) and A. Ibomcha Singh (accused no. 25 in Spl. NIA Case No. 1/2010), were handled by accused Kh. Tomba @ Pambei, N. Marjit @ Thabal, and Rajkumar Meghen @ Sanayaima (accused no. 19 in Spl. NIA Case No. 1/2010).

45) Therefore, the evidence of Aseem Srivastava is not found to be sufficient to establish that AEGIS is the front organisation of UNLF and that assets and properties of AEGIS that was seized by NIA was out of funds of UNLF or it was proceeds of terrorism.

Evidence of Swyam Prakash Pani (PW-84) and its analysis:

46) Swyam Prakash Pani, who was examined as PW-84 in Spl. NIA Case No.1/2010, was the Chief Investigating Officer of NIA Case No.10/2010, which was tried as Spl. NIA Case No.1/2010. In his examination-in- chief, he had not exhibited any documentary evidence to prove that AEGIS was a front organisation of UNLF. He had not identified which part of the attached properties and assets of the AEGIS were financed by UNLF or otherwise created out of proceeds of terrorism. However, he had denied in his cross-examination that AEGIS had any connection with the UNLF or any other unlawful organization.

47) Thus, the evidence of Swyam Prakash Pani also does not prove that AEGIS was a front organisation of UNLF and moreover, he had not identified which part of the attached properties and assets of the AEGIS were financed by UNLF or otherwise created out of proceeds of terrorism.

Analysis of the evidence of the relevant witnesses referred herein above, who



were examined in Spl. NIA Case No.1/2010:

48) None of the PWs examined by the prosecution in Spl. NIA Case No. 1/2010 had stated that he or she was a victim of extortion and/or any other terrorist act of UNLF. The prosecution has failed to prove that UNLF had provided proceeds of terrorism to AEGIS and that any part of the assets and properties which were attached vide memorandum of attachment and impugned order of attachment dated 11.11.2011, was from proceeds of terrorism.

49) Thus, in the considered opinion of the Court, the prosecution i.e. the respondents cannot get any advantage from the evidence of the hereinabove referred prosecution witnesses that were examined in connection with Spl. NIA Case No. 1/2010.

50) Be that as it may, as observed hereinbefore, the two orders impugned in this appeal dated 11.11.2011 and 29.12.2011 are required to be examined independent of the trial of Spl. NIA Case No. 1/2010, without being influenced by the evidence and outcome of the said case as AEGIS was not arrayed as an accused in the charge-sheet submitted in the said case.

51) As the AEGIS is not an accused in Spl. NIA Case No. 1/2010, no court had any occasion to hold that a particular sum of money was received by AEGIS and then converted into its movable and/or immovable properties and assets, which were attached by NIA. There is, thus, no finding that any properties and/or assets is created out of the proceeds of terrorism. Resultantly, the respondents has not been able to show that any order was passed by the learned Trial Court in the proceedings of Spl. NIA Case No. 1/2010, ordering forfeiture of proceeds of terrorism as envisaged under section 26 of the UA(P)A.

52) As per the provisions of ___ of the UA(P)A, notwithstanding that



AEGIS is not an accused, but if any of its assets is obtained and/or created out of proceeds of terrorism, such property can be attached. However, in this case, NIA has failed to produce any documentary evidence to show that any part of business of AEGIS was run from proceeds of terrorism. NIA has not made any attempt to show before this Court that any of the assets and properties of AEGIS was obtained beyond its known source of funds, which might have led to a possible presumption that any reasonable man would believe that the unaccounted money invested in procuring or creating assets of AEGIS was obtained through proceeds of terrorism.

53) The evidence of Rakesh Kumar Jain, N. Holland Singh, B. Haridas Sarma, O.S. Ashok, Dharmendra Sharma, Surinder Singh Bakshi, Aseem Srivastava and Swyam Prakash Pani, as discussed hereinbefore are not sufficient to establish that any money belonging to UNLF was used for funding the operations of AEGIS or to create its assets and properties. Although the books of accounts, profit and loss account, balance sheet, and bank statement of AEGIS were seized and examined by NIA, they not been able to prove any particular entry in any exhibited document which discloses that any money collected by UNLF as a part of its proceeds of terrorism was employed to fund any activity whatsoever of AEGIS or to finance procurement of any assets or properties or part thereof that were seized by the NIA vide (a) memorandum of attachment dated 11.11.2011, (b) order of attachment dated 11.11.2011, and (c) confirmation order dated 29.12.2011.

Maintainability of this appeal:

54) By memorandum of attachment dated 11.11.2011, the properties of AEGIS was attached, on the same date i.e. 11.11.2011, the order of attachment was also passed by Dharmendra Sharma. Thereafter, the impugned



order dated 29.12.2011 was also passed by Dharmendra Sharma. By the said order dated 29.12.2011 (Ext.184 in Spl. NIA Case No. 1/2010), the attachment of the properties of AEGIS was confirmed.

55) In the orders impugned herein, it is only mentioned that after going through the details of the case, connected documents as well as representation made by Shri Ningthoujam Bomi Singh (since deceased), the then Secretary, AEGIS (accused no. 23 in Spl. NIA Case No. 1/2010, Dharmendra Sharma (PW-77 in Spl. NIA Case No.1/2010), who is the competent authority, has recorded his satisfaction that the attachment made thereunder is a part of proceeds of terrorism, and as such under Section 25(3) of UA(P)A, the order of attachment of the property was confirmed.

56) The learned senior counsel for the respondent had not been able to show that merely because the order of attachment was not assailed earlier in point of time i.e. immediately after the properties was attached on 11.11.2011, any provision of statutory law prohibits the challenge to the order of attachment dated 11.11.2011 and the order dated 29.12.2011, by which attachment was confirmed.

57) Save and except making an order prayer before the Court to decide the issue of maintainability, the respondents have not filed any affidavit-in-opposition to question the maintainability of the present appeal in these 11 (eleven) years this appeal is pending for disposal.

58) Therefore, the Court is inclined to hold that the present appeal is maintainable on facts and in law.

Decision:

59) In this appeal, the respondent has failed to demonstrate how and



in what manner whole or any part of the assets and properties of AEGIS has been funded through the proceeds of terrorism as defined under Section 2(1)(g) and how any part of such properties of AEGIS can be linked with terrorist act as defined under Section 2(1)(k) read with Section 15 of the UA(P)A.

60) Although heavy reliance has been placed on documents exhibited in Spl. NIA Case No. 1/2010 as Ext.190/1 to Ext.190/5, Ext.191/1 to Ext.191/8, Ext.192/1 to Ext.192/7, Ext.193/1 to Ext.193/12, Ext.194/1 to Ext.194/2. Those exhibits do not establish that UNLF had funded AEGIS.

61) It may be stated that the emails referred above were not proved in original, but emails which were translated from Meitei language to English by an unknown person and correctness of which was vetted by protected witness no.80, who was never examined in Court, were exhibited.

62) It is not the case of the prosecution that any property of AEGIS was intended to be used for terrorism, which is an essential ingredient of Section 24 of the UA(P)A. The prosecution has not been able to identify the proceeds of terrorism, which is held by AEGIS, which is an essential ingredient of Section 24(A) of the UA(P)A. Moreover, as per Section 26 of the UA(P)A, the Court can order forfeiture of proceeds of terrorism. Moreover, only in connection with proceeds of terrorism, show-cause notice can be issued under Section 27 of the UA(P)A.

63) As already indicated above, the Ministry of Agriculture and the Ministry of Food Processing, Govt. of India had funded as sum of Rs.28.00 lakh and Rs.56.00 lakh respectively as already mentioned earlier and it is not the case of the prosecution that UNLF, a terrorist organisation had routed the proceeds of terrorism to AEGIS through the Govt. of India. It is also not the



case of the prosecution that it was the proceeds of terrorism of UNLF that was availed as loan by AEGIS through the IUCB. Therefore, it was the incumbent on the prosecution to identify which part of the properties and assets of AEGIS is based on proceeds of terrorism. In this regard, the prosecution had failed miserably.

64) In this case, the memorandum of attachment and the order of attachment were made on 11.11.2011. The order confirming the attachment was made on 29.11.2011. For the reasons and discussions made hereinbefore, the said two orders dated 11.11.2011 and 29.12.2011, which are impugned herein are held to be not sustainable on facts and in law.

65) Resultantly, the said two orders dated 11.11.2011 and 29.12.2011, which are impugned in this appeal are not found sustainable and accordingly, the Court is inclined to allow this appeal by setting aside the Memorandum of Attachment dated 11.11.2011 prepared by Shri Swayam Prakash Pani, IPS, SP, Chief Investigating Officer of NIA Case No. 10/2010 (Ext.94 in Spl. NIA Case No.1/2010); order of attachment dated 11.11.2011 made by Shri Swayam Prakash Pani, IPS, SP, Chief Investigating Officer of NIA Case No. 10/2010 (Ext.95 in Spl. NIA Case No.1/2010); and the impugned order under No. 11034/20/2010-IS-VII(IV) dated 29.12.2011, issued by Dharmendra Sharma, Joint Secretary (IS-I), MHA & Designated Authority (Ext.184 in Spl. NIA Case No.1/2010).

66) Resultantly, it is ordered that the properties of AEGIS, which has been attached and confirmed as mentioned hereinbefore are restored back to the persons from whom they were seized, which shall be done after preparing a detailed inventory.



67)

This appeal stands allowed.

68)

The parties are left to bear their own cost.

JUDGE

JUDGE.

Comparing Assistant