

GAHC010203312023



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

Case No. : Crl.Rev.P./424/2023

SEWALI BORAH
W/O SRI RANJIT KUMAR BORAH
R/O FLAT 2C, BLOCK B, UTSAV KANAN,
HENGRABARI, GHY-781036

VERSUS

THE CENTRAL BUREAU OF INVESTIGATION
REP. BY THE SC, CBI

Advocate for the Petitioner : MR P KATAKI

Advocate for the Respondent : SC, CBI

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

08.04.2024

1. Heard Mr. P. Kataki learned counsel for the petitioner and Mr. M. Haloi, learned Special Public Prosecutor, CBI.
2. The petitioner, being the wife of the accused Mr. Ranjit Kumar Borah, who is the accused in special case no 2 of 2022, has preferred this revision u/s 397/401 of Cr. P.C., 1973 against the order dated 24/08/2023 passed by the learned Special Judge, CBI Additional Court no 2 in MISC (CBI) case no

17/2023, whereby the prayer for Zimma of seized articles along with the documents has been rejected.

3. The factual matrix leading to this case is that on 14/12/2021, an FIR was lodged alleging that the accused Ranjit Kumar Borah while posted as Deputy Chief Engineer (Construction) in NFR, Maligaon, had obtained two nos of benami flats as gratification from accused Chintan Jain. It was also alleged that on 28/10/2021, Ranjit Kumar Borah also demanded bribe amounting to Rupees 2.10 crore from said Chintan Jain in lieu of aforesaid two benami properties for extending undue benefits in past and in future as well.
4. On receipt of the said information, a case was registered vide RC AC- 1/2021 A00011 u/s 120(B) IPC read with section 7/8/11 of Prevention of Corruption Act, 1988. During the course of investigation, CBI seized the following articles and documents as per seizure list –
 - a. One bunch of papers containing Deeds of Agreements made by Mrs. Sewali Borah and Seababrata Kashyap.
 - b. One bunch of loose papers containing statement of account for M/S. Jush Enterprise with Central bank of India, tax invoices, E-stamps, Power of Attorney.
 - c. One bunch of loose papers containing various tax invoices, services, cash memos etc.
 - d. One bunch of loose papers consisting E-stamps used by Mrs. Sewali

Borah and enclosed documents.

- e. One bunch of papers consisting of maps submitted to GMC.
- f. One bunch of loose papers consisting Annual statement of investment made in the name of Mrs. Sewali Borah.
- g. And jewellery.

5. After completion of the investigation, charge sheet has been submitted vide CS no 02/2022 dated 10/02/2022.
6. It is submitted by the learned counsel for the petitioner, that the petitioner filed a petition on 27/12/2022 for de-freeze of the two bank accounts and also to release/custody of the seized articles and the documents mentioned in serial no 1 to 21 and 1 to 27 of the seizure list. The CBI court after hearing both the parties, partly allowed and disposed of the matter by de-freezing the bank accounts of the petitioner and to release the jewellery items in favour of the petitioner but rejected the prayer to give zimma mentioned in serial no 1to 21 of the seizure list.
7. It is also the submission of the learned counsel for the petitioner that on 09/06/2023, the petitioner again filed a petition seeking zimma of the seized articles and documents vide serial No.1 to 21 of the seizure list. The CBI has filed objection and has submitted that the said documents are essential for further investigation of the case and accordingly the prayer of the petitioner was rejected.

8. It is further submitted by learned counsel for the petitioner that the seized articles vide serial no 1 to 4, containing loose papers belongs to the petitioner and her son Seababrata Kashyap, serial no 5 is GMC receipt, serial no 6 regarding annual statement which belongs to the petitioner, serial no 9 is required for loan purpose, serial no 10 is the LIC policy which is going to be matured, serial no 11 and 12 are required for updating the bank statements, serial no 13 is a red diary, serial no 15 is regarding telly index diary and serial no 21 is one locker key of locker number 40 of HDFC bank for keeping the gold ornaments.
9. According to the learned counsel for the petitioner, due to non availability of such documents the petitioner could not pay her income tax nor filed her income tax return. It is also submitted that the charge sheet was submitted on 10/02/2022. In the charge sheet the aforesaid documents were not relied upon. After 18 months of filing of charge sheet, no supplementary report has been submitted. Therefore, the order dated 24/08/2023 is bad in law and is liable to be set aside.
10. In response, learned Special PP CBI, has vehemently opposed in releasing the seized articles and documents vide serial no 1 to 6, 9 to 12, 14, 15 and 21 as per seizure list. The learned counsel for the CBI submits that the accused Mr. R. K. Borah, husband of the present petitioner used to demand crores of Rupees and other valuable articles from one Chintan Jain and the said money was handed over to the husband of the petitioner in the flat wherein the petitioner also resided along with her husband.
11. It is also submitted by learned CBI counsel that during investigation some ATM cards, debit cards of different banks were recovered and seized from

the possession of the husband of the petitioner. The bank accounts of the husband of the petitioner shows his disproportionate assets though he is a government employee in the capacity of Deputy Chief Electrical Engineer, NEF, Maligaon.

12. According, to the learned counsel for the CBI, the articles or the documents sought to be released by the petitioner including investment, bank account details which are essentially required for the purpose of further investigation of the instant case. On 10/02/2022, at the instant case, the first charge sheet has been submitted against the accused persons including the husband of the petitioner, keeping further investigation open to unearth Hawala Transactions along with investigation on ATM cards of M/s Biswas Electric works, Patna, recovered from the possession of the accused R. K. Borah, husband of the present petitioner.

13. It is further submitted that the instant case, involves corruption at higher levels in Indian railways. There was a nexus of corruption at deeper level which needs to be unearthed and further investigation on this aspect is underway. Thus, releasing the aforesaid articles and documents at this stage would be detrimental to the further investigation of the instant case. Therefore, learned CBI counsel has prayed for dismissal of the petition filed by the present petitioner regarding release of the seized articles and documents as per seizure list.

14. I have considered the submissions of learned counsel for the parties. Perused the order of CBI Court dated 24.08.2023. The order reveals that the prayer of the petitioner was rejected as further

investigation on the matter is going on, though first charge-sheet has been laid. Apparently, the documents sought to be taken zimma by the petitioner belongs to the petitioner and her son pertaining to tax invoice, Bank Statement account, GMC tax payment receipts, LIC policy etc. It also appears that first charge sheet was submitted on 10.02.2022 and according to CBI counsel, after two years of submission of first charge-sheet, investigation is still pending.

15. So far as the prayer for release of the seized articles/documents are concerned, this Court is of the view that petitioner's articles/documents cannot be kept seized awaiting completion of investigation. At this juncture, we may refer the provisions of S. 451 and S.457 of Cr.P.C. which are reproduced as follows:

"451. Order for custody and disposal of property pending trial in certain cases.-When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation-For the purposes of this section, "property" includes

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. Procedure by police upon seizure of property.-

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry

or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

16. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as-

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;
- (3) if the property is subject to speedy and natural decay, to dispose of the same.

17. In the case of *Sundarbhai Ambalal Desai Vs State of Gujrat* reported in 2002 (8) Supreme 525, it was held that:-

"7. In our view, the powers under [Section 451](#) Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

- 1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.*
- 2. Court or the police would not be required to keep the article in safe custody;*
- 3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its*

production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles."

18. The question of proper custody of the seized article is raised in number of matters. In [Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr.](#), [1977] 4 SCC 358, the Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct

control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

19. In view of the aforesaid legal proposition and under the facts and circumstances of the case, it reveals that the documents were seized in connection with this case wherein charge-sheet has been submitted against the husband of the petitioner. Though it reflects from the submission of learned counsel for the CBI that further investigation is still going on however, the first charge-sheet has been submitted on 10.02.2022. After that two years have been elapsed. On perusal of the case diary it cannot be ascertained whether the seized documents vide Sl No. 1 to 4, 5, 6, 9, 10, 11, 12, 13, 15 and 21 are required for further investigation of the case. Therefore, in view of the settled principles regarding interim release of property under Section 451 and 457 Cr.P.C. the application filed by the petitioner deserves to be allowed subject to the following conditions:

- (i) The revision petitioner is entitled for interim custody of the articles/documents seized vide Sl No. 1 to 4, 5, 6, 9, 10, 11, 12, 13, 15 and 21 as per seizure list standing in the name of the petitioner and her son on condition that the petitioner will not dispute the said documents and the balance showing in the statement of account as on the date of seizure.
- (ii) The revision petitioner shall execute an indemnity bond for a sum of Rs.25,00,000/- (Rupees twenty five lakhs) with one surety of like sum and also execute an undertaking that she is ready to repay the amount which was in her account as on the date of seizure if

ordered by court.

- (iii) The revision petitioner shall produce such documents if required by the trial court on disposal of the same at the final stage of trial.

20. The trial court shall keep the certified zerox copy and also photos of those tax invoice, Bank Statement account, GMC tax payment receipts, LIC policy etc. before releasing them to the petitioner.

21. The petitioner shall not cause any damage to the entries in the bank account as on the date of seizure. Petitioner shall produce such documents and articles as and when directed by trial court.

22. With the above observation and direction, this Criminal Revision Petition stands disposed of.

JUDGE

Comparing Assistant