

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION NO.32862 OF 2011

Between:

Smt.M.Leela Rani

... Petitioner

and

State of Andhra Pradesh, represented by
Director General, Anti Corruption Bureau,
Hyderabad, and others.

... Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 24th AUGUST,
2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes /No |
| 3. | Whether His Lordship wishes to see the fair copy of the judgment? | Yes /No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.32862 OF 2011

ORDER

The petitioner is the wife of the second respondent, who was a Joint Inspector General in the Registration and Stamps Department of the State.

The Anti Corruption Bureau (ACB) registered Crime No.10/ACB-CR/2005 (Old No.9/ACB-CR/2005) against the second respondent under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988. In the course of investigation in the said crime, searches were conducted by the ACB at various locations. Gold and silver, property documents, black beads, locker keys, etc. were seized during these searches. A final report was submitted by the ACB opining that a disproportionate assets case was made out against the second respondent warranting his prosecution. The Government however refused sanction for his prosecution and directed the ACB to make over the records and material to the Tribunal for Disciplinary Proceedings (hereinafter, 'the Tribunal') for conducting an enquiry against him. The case was thereupon taken on file in TEC No.1 of 2011 by the Tribunal. While so, the petitioner filed M.P.No.5 of 2011 therein for release of the seized gold and silver along with the registered sale deeds bearing Document Nos.4786 of 1992 and 6428 of 2001, other records and the bank locker keys. By order dated 16.08.2011, the Tribunal dismissed the said petition. Aggrieved thereby, she filed the present writ petition.

The Inspector of Police, Anti Corruption Bureau, City Range-I,

Hyderabad, filed a counter-affidavit setting out the facts relating to registration of Crime No.10/ACB-CR/2005 against the second respondent. She further stated that as the Government refused to grant sanction for his prosecution and as the case was taken on file by the Tribunal, all the material relating to the case, including those items return of which is now sought by the petitioner, were transferred to the custody of the Tribunal. She justified the seizure of the gold and silver, clarifying that the gold, acquisition of which was properly explained, was immediately returned to the petitioner. She further stated that the two lockers, viz., in Indian Overseas Bank, Koti, and in State Bank of Hyderabad, Kukatpally, were got opened in the presence of mediators and the gold stored therein was also seized. She concluded by stating that as per the order of the learned Principal Special Judge for SPE and ACB Cases, Hyderabad, the case property was deposited before the Tribunal for necessary further action.

The second respondent, the husband of the petitioner, filed an affidavit stating that he had attained the age of superannuation on 30.04.2014 but there was no progress in the proceedings pending before the Tribunal for several years. He asserted that the gold and silver, property documents and the lockers belonged to his wife and that he had no claim in relation thereto.

Perusal of the order dated 16.08.2011 passed by the Tribunal reflects that the petitioner had earlier asked for release of the gold etc. by way of Criminal MP No.384 of 2006 filed before the learned Special Judge for SPE and ACB Cases, Hyderabad. However, the said MP was dismissed by order dated 05.07.2006 and aggrieved thereby, she filed Crl.R.C.No.2034 of 2006 before this Court. By order dated 19.11.2007, this Court ordered return of only a black beads chain to her. The petitioner again filed Crl.M.P.No.119 of 2009 before the learned Special Judge for SPE and ACB Cases, Hyderabad, for release of the gold and silver along with the property documents. By order dated 19.06.2009, the petition was dismissed holding that as the matter had been referred

to the Tribunal, any order in that regard would have to be passed by the said forum. Aggrieved thereby, the petitioner filed Crl.R.C.No.1816 of 2009 before this Court. By order dated 23.02.2010, the said case was disposed of giving liberty to the petitioner to move an appropriate application before the Tribunal. The petitioner thereupon filed M.P.No.5 of 2011 in T.E.C.No.1 of 2011 on the file of the Tribunal and suffered the order under challenge.

The reasoning of the Tribunal for dismissing the said miscellaneous petition was that return of the subject property was not just and reasonable at that stage as the charge-sheet was already filed and there would be no delay in proceeding further. The prosecution was therefore directed to see that the main case itself was disposed of as early as possible by adducing appropriate evidence. As at that stage, the Tribunal could not conclude as to what order would be passed by it after conduct of the trial, it held that it was not just and reasonable to return the subject property to a third party then. Opining so, the Tribunal dismissed the petition.

It is an admitted fact that the Government refused to grant sanction for prosecution of the petitioner's husband by the ACB and upon its direction, the matter was made over to the Tribunal for taking necessary action, if any, against him. Perusal of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960, and the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989, framed thereunder, demonstrates that the Tribunal was constituted for enquiring into allegations of misconduct by Government servants. Thereafter, upon the report submitted by the Tribunal in the prescribed manner, the Government is empowered to pass orders thereon as it thinks fit. In essence, the aforestated Act and Rules provide for disciplinary action being taken against the Government servant concerned. As no separate scheme of penalties and punishments is provided in the said Act and Rules, recourse would necessarily have to be taken by the Government to Rule 9 of the Andhra

Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, which details the minor and major penalties that may be imposed on a Government servant. Significantly, none of the penalties stipulated under this Rule provide for confiscation of property seized from the Government servant concerned. Thus, the subject property, which was seized by the ACB and was thereafter made over to the Tribunal, would be relevant only for the purpose of determining the misconduct, if any, on the part of the petitioner's husband and such property would not be liable to confiscation for appropriation by the Government.

Further, the only reason that weighed with the Tribunal at the time it dismissed the miscellaneous petition filed by the petitioner in 2011 was that the case would be concluded expeditiously. However, it is stated before this Court that the case is no nearer to attaining completion and is still at the stage of examination of witnesses. There is therefore no sanction in law for the Tribunal to continue to retain custody of the seized property.

Sri V. Ravikiran Rao, learned counsel for the ACB, pointed out that it was not established before this Court as to whether the petitioner owned the seized property or her husband. However, the second respondent, the petitioner's husband, filed affidavit dated 08.08.2015 stating that the gold and silver, property documents and lockers belonged to his wife and that he had no claim thereto. In the light of this declaration by the petitioner's husband, there need be no apprehension as to any rival claim from him at a later date.

On the above analysis, the order under challenge is set aside and the Tribunal for Disciplinary Proceedings, Hyderabad, is directed to return the seized property to the petitioner after taking the following steps. Due inventory of each gold and silver item shall be obtained from a Government approved jewellery appraiser with specific reference to the weight of each such item and its monetary value. Photographs of all such items shall also be obtained for the purpose of record. Photocopies of the property documents and other records shall be obtained by the

Tribunal before returning the originals. As it is stated that the lockers, the keys of which are with the Tribunal, have been opened and the contents thereof seized, such locker keys also shall be returned.

The writ petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

24th AUGUST, 2015

PGS/Svv