HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.16109 of 2014

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner challenges the order dated 02.09.2014 in Crl.M.P.No.204 of 2014 in C.C.No.91 of 2013 on the file of learned Special Judge for trial of ACB cases in Rayalaseema Region at Kurnool whereunder learned Judge turned down the request of the petitioner to return the gold and silver articles seized by the Investigating Officer and attached by the Court.

2) The petitioner herein and her husband, who is the 2nd petitioner therein sought for return of the gold and silver articles on the ground that they are required for performing the marriage of their daughter Vinutha Reddy and they were ready to offer the security of immovable property of the brother of the 1st petitioner. The trial Court rejected their request on the ground that the necessity as projected by the petitioners is only optional and not mandatory and the date of marriage of their daughter and her age etc., particulars were not furnished and the release of the articles may result in sale or loss of the property and hence the articles have to be remained in the safe custody of the Court only till the disposal of the case.

Hence the present petition by the 1st petitioner.

3) Heard both sides.

4) Learned counsel for petitioner would submit that the reasons shown by the Court below for refusing to return the attached property are quite untenable. He submitted that the marriage of the daughter of the petitioners is fixed to be held on 15.02.2015 and it is customary that the gold and silver articles seized are required during the course of the marriage and therefore, the trial Court ought to have considered the request of the petitioner in a right perspective. Learned counsel further submitted that the petitioner is ready to offer third party property security or even ready to deposit the cash equivalent to the value of the gold and silver articles for securing their release and therefore, their request may be considered.

5) Per contra, while opposing the petition, learned Special Public Prosecutor Sri M.B.Thimma Reddy argued that the gold and silver articles were valued at the time of seizure and their value is appreciated day-by-day and therefore, it is not possible to fix their value at this stage and before 15th February, 2015 to direct the petitioner to offer third party property security or to make cash deposit. He further submitted that even if the petitioner produced the articles in Court as and when directed, it is difficult to ascertain whether the articles with same quantity and quality are produced or not and therefore, it is not apposite to return the articles to the petitioner. He thus prayed to dismiss the petition.

6) In the light of above rival arguments, the point for

determination is:

"Whether there are merits in this petition to allow?"

7) **POINT**: The property was attached and attachment was made absolute under the provisions of The Criminal Law(Amendment) Ordinance, 1944. Hence, before considering the merits of the petition, it is pertinent to ascertain whether the said Ordinance contained any provision for releasing the property attached by taking security. In this context, Section 8 appears to be enabling provision which reads thus:

> *"**Section 8. Security in lieu of attachment:***
> *Any person whose property has been or is about to be attached under this Ordinance may at any time apply to the District Judge to be permitted to give security in lieu of such attachment and where the security offered and given is in the opinion of the District Judge satisfactory and sufficient, he may withdraw or, as the case may be, would refrain from passing, the order of attachment."*

So Section 8 says that in fit cases, the Court by taking security withdraw the attachment in respect of a property seized and attached or to be attached.

8) Coming to the present request of the petitioner, her case is that the gold and silver articles seized are required for the performance of the marriage of their daughter. The apprehension of the prosecution is that the present value of the property is much more than the value at the time of the attachment and hence it is not possible to assess its present value within this short time to direct the petitioner to offer cash

security or third party property security and further even if the property is returned by fixing some value to be offered as security, still at the time of producing the property when required, it will be difficult to know whether the same quantity and quality of the articles is returned or not. In fact the trial Court also, it appears expressed the similar doubt. I find force in the submission of learned Special Public Prosecutor. The petitioner submits that they are ready to offer third party property security or deposit the cash and they will produce the articles intact as and when directed by the Court. Since the gold and silver articles can be remoulded and recasted with inferior metal and it will be difficult for the Court to find such amalgamation, it is not safe to order interim custody of such valuable articles. Therefore, I find no merits in the petition.

9) In the result, this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

_____

U. DURGA PRASAD RAO, J

Date: 13.02.2015
scs