HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 147 of 2016

ORDER:

Rejecting an application made under Sections 451 and 457 Cr.P.C., by a third party for return of certain property documents seized in C.C. No.14 of 2012 on the file of the Principal Judge for SPE and ACB Cases-cum-IV Additional Chief Judge, City Civil Courts, Hyderabad, the present Criminal Revision Case is filed.

The first respondent herein registered a case in Crime No.23/ACB-CRII/2008 against the second respondent herein i.e., Ramgopal Rao for the offences punishable under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act. After completion of the investigation, the police filed charge-sheet, which was taken on file as C.C. No.3 of 2011. It is the case of prosecution that on 25.08.2008 the Accused Officer while working as Special Deputy Collector, Land Acquisition(Industries), Ranga Reddy District and Medak, was trapped while he was accepting bribe of Rs.11 lakhs from P.Lakshminarasimha Rao for showing a favour in de-notifyig the lands from acquisition for industrial purpose for Kocharam village, Turpan Mandal, Medak District. Pursuant to the said trap the house of the officer and Bank lockers were searched on 25.08.2008, which lead to discovery of movable and immovable properties in the name of the Accused Officer and also in the name of his dependent family members. It is the case of prosecution that the accused established a firm in the name and style of M/s. SSAARGORAP constructions and Estates Private Limited and got the same registered with the Registrar of Companies on 16.01.2003 with his wife Smt. P.Sailaja as Managing Director with 90% share and one Rajagambhir Rao as Director with 10% shareholding. During the search of the premises of B.Narasinga Rao & Co., Chartered Accountants, files pertaining above mentioned construction company were seized from the office. As stated earlier, the A.C.B. officials completed the investigation and filed charge-sheet showing a list of movable and immovable properties which are in the name of the Accused Officer and also in the name of the family members of the Accused Officer.

Pending the said proceedings Sri P.Rajagambhir Rao, who is holding only 10% of the shares in the company filed an application under Sections 451 and 457 Cr.P.C. for releasing of about 25 properties which were seized during the search and during the course of investigation. It is the case of the petitioner that the said properties were acquired by the company from the funds raised by them and that the Accused Officer has nothing to do with the said properties. It is his case that merely because the Accused Officer happens to be the husband of one of the Directors holding majority shares, these properties are tagged on to the assets of the Accused Officer.

A Counter came to be filed opposing the same. It is stated in the counter that though the company has not made any business from 2004 to 2008 but acquired assets worth Rs.4,61,89,570/-. It is their case that the ill-gotten money of the Accused Officer was flown into the company to divert the attention. The counter also shows that the documents furnished by the office of Assistant Registrar of Companies, A.P., Hyderabad shows that the Accused Officer has also signed at relevant places on annual returns and balance sheets as Director in violation of the conduct rules. It is further stated that the name of the company M/s.SSAARGORAP denotes S for Sailaja (Wife of A.O.), SA for Sai Akarsh (daughter of A.O), A for Abhishek (Son of A.O.), A for Akshar (Son of A.O.), G for Gopal, RA for Rao, P for Punugoti (Surname), which covers the names of the entire family including the name of the Accused Officer. Having regard to the above circumstances and taking into consideration the total disproportionate found was to the extent of Ac.3,66,52,295/-. It is contended that the petitioner is not entitled for any release of the property. In support of the same, they placed on record the evidence of P.W.1, who was examined in the said application and also Exs.P-1 to P-22. After hearing both sides the trial court rejected the said application.

The petitioner/third party is a Director of M/s.SSAARGORAP private constructions registered on 16.01.2003 under the Companies Act. The wife of the Accused Officer by name Smt. P.Sailaja Rao is one of the Directors of the company holding major share. A case in Crime No. 23/ACB-CRII/2008 was registered against the Accused Officer for being in possession of assets disproportionate of known sources of income. At the time of the search of the house, the A.C.B. officials seized documents pertaining to properties No.1 to 25 referred to in the grounds of revision. It is stated that the said properties were purchased by the construction company with a share capital of Rs.10 lakhs and the contributions made by friends and relatives. It is also contended that the Accused Officer has nothing to do with the said property.

The A.C.B. officials filed Crl.M.P. No.468 of 2010 under Sections 3 and 4 of the Criminal Amendment Ordinance 1944, for attaching all the properties including the properties which are subject matter of this case. In the said Cr.M.P. not only the Accused Officer, his wife and son are shown as respondents but also the company i.e., M/s.SSAARGORAP represented by its Managing Director and also the Managing Director were shown as respondents. The said application was allowed by the trial court attaching the properties which are in the name of the Accused Officer, his wife, children and also the properties in the name of the company.

The present application is filed seeking release of the very same properties which are attached by the trial court in Crl.M.P. No.468 of 2010. One of the contentions that was raised is that the order of attachment shall not effect third parties from filing an application since they were not parties to the said application. After considering the arguments of the learned Additional Public Prosecutor in the said application, the Court ordered interim attachment of the properties noted in the Annexures 1 to 4 which was made absolute on 19.12.2012 in Crl.M.P. No.468 of 2010. From the above, it is clear that the order of attachment made in Crl.M.P.No.468 of 2010 has become final which was not challenged either by the Accused Officer or by the third parties.

A perusal of the impugned order would show that the same appears to have been passed by taking into consideration the earlier order passed. As seen from the record, the application for attachment is filed by A.C.B. on 13.04.2010 and an order of attachment was passed on 26.04.2012 which was got extended on 19.12.2012. Meanwhile, the police filed charge-sheet on 22.08.2012._The order under challenge does not anywhere reflect the evidence of P.W.1 apart from that the counsel for the petitioner placed on record certain documents to show his source of income. Having regard to the facts stated above and since the order does not reflect the evidence adduced in deciding the present application, the petitioner is directed to file a fresh application, in which event the trial court shall decide the same basing on the evidence and documents filed by the petitioner, in accordance with law.

With the above direction, the Crl.R.C. is disposed of.

As a sequel to it, miscellaneous petitions pending, if any, in this Criminal Revision, shall stand closed.

C.PRAVEEN KUMAR,J

Dt:19.04.2016
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