

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.187 OF 2016

IN

CRIMINAL APPEAL NO.144 OF 2015

SHIRISH MADHUKAR SALVEKAR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Ganesh Bhujbal, Advocate for the Applicant.

Ms.Anamika Malhotra, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 12th APRIL 2018

P.C. :

1 This is an application by applicant/accused no.1 for return of original agreements dated 23rd October 2000 in respect of Flat No.7, 3rd Floor of D.S.K.Nishigandha, Pune, and the agreement dated 20th February 2003 registered with the Sub-Registrar in respect of Flat No.A/01, Maitri Lily, Maitri Garden, Thane(West) which are on the record of the learned trial court at Exhibits 40 and 43.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that the appeal is challenging conviction of the accused persons for offence punishable under the provisions of Prevention of Corruption Act in respect of alleged disproportionate assets and while deciding the said case, the learned trial court had not directed impounding of these documents or confiscation of the flats. He argued that the applicant/accused has already deposited the fine amount and therefore, these documents of title need to be returned to him, as in the operative portion of the order of the impugned judgment, there is no order in respect of these documents.

3 The learned APP opposed the application by contending that the applicant/accused should approach the learned trial court for getting the documents back. The applicant/accused may dispose of the flats and therefore, original agreements cannot be returned to him.

4 I have carefully considered the rival submissions and also perused the material placed on record. Special Case bearing No.1 of 2012 came to be decided by the impugned judgment and order dated 9th January 2015 with the following order :

“1 Accused No.1 stands convicted u/s. 235(2) of Cr.P.C. for the offence punishable u/s.13(1)(e) r/w. 13(2) of the Prevention of Corruption Act, 1988 and accused no.2 stands convicted u/s.235(2) of Cr.P.C. for the offence punishable u/s. 109 of Indian Penal Code r/w. Sec. 13(2) of the Prevention of Corruption Act, 1988.

2 Each accused is sentenced to suffer R.I. for one year and to pay fine of Rs.1,00,000/- (Rs.One ac only) each. (Total fine Rs.2,00,000/-). In default to suffer S.I. for six months each.

3 Both the accused are entitled to get set off u/s. 428 of Cr.P.C. for the period already undergone imprisonment.

4 The seized cash amount of Rs.29,80,550/- be confiscated to the Government after the appeal period is over and if not required in Appeal pending

before Hon'ble High Court in Criminal Case No.03 of 2003.

5 Both accused are directed to furnish fresh PR bond of Rs.15,000/- each and solvent surety in the like amount as per the provisions of Sec.437-A of Cr.P.C.

6 Copy of this order be sent to Collector for information.

7 Delivered in open Court.”

5 Perusal of this order makes it clear that the learned trial court has directed confiscation of the seized cash apart from imposition of fine of Rs.2 lakh on accused persons. The learned Advocate for the applicant/accused has tendered across the bar photocopies of the receipts issued by the trial court showing that the entire fine amount has been deposited by the present applicant/accused as well as co-accused.

6 The applicant/accused cannot be directed to approach the learned trial court for getting these exhibited documents back because of pendency of this appeal. The order which is reproduced hereinabove does not show that the subject flats covered by the agreements were confiscated to the State and the agreements are merely exhibited documents. Therefore, there cannot be final order for disposal of those documents by the learned trial court. Keeping these original documents in the record and proceedings may cause their deterioration with passage of time as the subject appeal of the year 2015 is not likely to be heard in few years. Therefore the order :

ORDER

- i) The application is allowed in terms of Prayer Clause (a) on the applicant/accused substituting the original agreements with photocopies thereof.
- ii) The application is accordingly disposed of.

(A. M. BADAR, J.)