

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1935 OF 2017

Rajendra Singh
Age Adult, Occ. Business,
Residing at 501, Pushpa Kunj,
A-Road, Churchgate,
Mumbai 400 020

... Petitioner

Vs.

1. Central Bureau of Investigation
New Delhi

2. State of Maharashtra
(copy to be served on App.
High Court, Mumbai)

3. Dipendra Singh
Age Adult, Occ. Business
501, Pushpa Kunj,
A-Road, Churchgate,
Mumbai - 400 020

... Respondents

...

Mr. Omkar G. Nagwekar for the Petitioner.
Mr. Y.M. Nakhwa, APP for the Respondent-State.
Mr. Dinesh Mota for the Respondent No.3.

...

**CORAM : PRAKASH D. NAIK, J.
DATE : 27th JULY, 2018.**

P.C.

- 1 Heard both sides for final disposal.
2. The orders dated 16th January, 2017 and 20th March, 2017

passed by the Sessions Court in Criminal Appeal No. 564 of 2016 below Exh.16 is under challenged in this petition. Vide order dated 16th January, 2017, the Respondent No.3 is permitted to assist Special Public Prosecutor, CBI through lawyer. The order dated 20th March, 2017 rejects the application preferred by the petitioner seeking clarification of order dated 16th January, 2017.

3. The petitioner is convicted by the Court of learned Magistrate by Judgment dated 30th September, 2010 for offences under Sections 419, 420, 467, 468 read with 120(B) of Indian Penal Code and sentenced to imprisonment for one year. The conviction was awarded in Criminal Case No. 36/W/1998 initiated by Respondent No.1. The Judgment of conviction is challenged by the petitioner by preferring Criminal Appeal No. 564 of 2010 before the Court of Sessions. The Respondent No.3 preferred an application for intervention in the said appeal. The application was opposed by petitioner's advocate. The petitioner filed reply to the said application and also tendered written submission before the Sessions Court. The learned Sessions Judge by order dated 16th January, 2017 allowed the said application by allowing the Respondent No.3 to assist SPP, CBI through lawyer. The petitioner thereafter preferred an application seeking clarification of order

dated 16th January, 2017 which was rejected on 20th March, 2017.

4. Learned counsel for the petitioner Mr. Mundargi submitted that the Respondent No.3 had mentioned in the application that the said application be treated as an appeal provided under Section 372 of Code of Criminal Procedure, 1973. An appeal under Section 372 of Code of Criminal Procedure has to be filed subject to law of limitation which governs the filing of criminal appeal. The learned Judge by its order dated 16th January, 2017 allowed application Exh.16 which would amount to allowing appeal under Section 372 of Code of Criminal Procedure. The application was preferred belatedly. The Sessions Court has allowed the application without going into the question whether Respondent No.3 is a victim or an aggrieved party. The Court has not considered the submissions of the petitioner that the Respondent No.3 would never be victim or aggrieved party in the case. The Sessions Court has not taken into consideration the submissions advanced by the advocate for the petitioner opposing the application and proceeded to pass cryptic order allowing the said application. In view of the prayers sought in the application which was allowed by the Sessions Court, the petitioner had sought clarification which was also rejected by the Sessions Court. The

petitioner was convicted on 30th September, 2010 whereas the purported application under Section 372 of Code of Criminal Procedure was preferred after 6 years and 24 days from the date of order of conviction passed by the trial Court. The said application/appeal was beyond law of limitation. There was no application for condonation of delay and the application preferred by the Respondent No.3 was allowed without following procedure established by law. It is further submitted that Respondent No.3 was not the complainant and was also not the owner of the gold. His late father Narendra Singh was also not the owner of the gold. The gold was owned by the joint family Singh brothers and all gold invested in gold bank scheme of RBI had been purchased by the Singh family in the name different members. The gold was to be shared jointly after redemption. The Respondent No.3 and Dipendra Singh have received their share of gold owned by the Singh family, even though the gold of 240 kg did not stand in the name of their late father Narendra Singh. The respondent No.3 who is the cousin of the petitioner cannot claim the gold which was in the name of their father as their own property. The Sessions Court without going into the factual aspect have concluded that the Respondent No.3 is an aggrieved party in the

proceedings and has permitted his advocate to prefer the said appeal/application under Section 372 of Code of Criminal Procedure inspite of enormous delay. It is further submitted that the respondent No.3 had prayed that his advocate Virendra Parikh be permitted to appear for him. Appearance of Virendra Parikh for Respondent No.3 was clearly case of conflict of interest. Mr. Parikh had appeared in the the said proceedings as a Special Public Prosecutor for CBI and thus he cannot be permitted to represent the Respondent No.3 in the proceedings before the Sessions Court. Respondent No.3 was not examined in the Criminal Case as witness. Mr. Parikh had appeared for the CBI in the complaint filed by CBI on behalf of RBI and as such he was privy to secret instructions and documents provided by CBI during the trial. He therefore, cannot use the knowledge for the benefit of person who is not the complainant nor a witness and has benefited from the family arrangement of Singh family under which he has received one-fourth share of the family gold. It is further submitted that Mr. Parikh had appeared for CBI even in the said appeal for few dates and thereafter he has withdrawn himself from appearing for CBI and therefore he cannot be permitted to represent Respondent No.3 in the appeal proceedings. The respondent No.3 had

challenged the family arrangement before Calcutta High Court in G.A. No. 368 of 1997. The Calcutta High Court has held that the agreement of 1992 is perfectly legal, valid and binding. The Respondent No.3 has not appeared as witness, complainant intervenor or aggrieved party before the trial Court. The impugned order passed by the Sessions Judge is contradictory in nature and cannot be understood. The respondent No.3 had pleaded that the said application be treated as an appeal. The learned Sessions Judge has thus permitted the Respondent No.3 to file an appeal and contrary to that the Court has also observed that the advocate is permitted to assist the Special Public Prosecutor for CBI. The Respondent No.3 preferred similar application before the said Court which was not pressed and thereafter second application was preferred in which the impugned order was passed by the Sessions Court.

5. Learned advocate for Respondent No.3 submitted that the respondent No.3 is entitled to intervene as victim or aggrieved party as mentioned in proviso to section 372 of Code of Criminal Procedure. He sought permission to intervene in the said appeal being elder son of deceased Narendra singh and Bhanuprakashni whose gold bonds were forged by original accused No. 1 and 2 and

42 Kg of pure gold was collected fraudulently from Reserve Bank of India. It is submitted that the intervenor seeks to place the facts of the case which led to the appellant's conviction. It is submitted that in 1965 six gold bonds each were purchased by Narendra Singh and his wife Mrs. Bhanuprakashini Singh against their gold ornaments. Narendra Singh is the elder brother of accused No.1. Mahendra Singh since deceased. On 14th February, 1990, the bond holders Narendra Singh and his wife Bhanuprakashini Singh died in air crash at Bangalore. At that time of time, the accused hatched criminal conspiracy. The accused No.1 fabricated the letter of authority dated 12th July, 1991 addressed to the Manager, Reserve Bank of India, whereby Smt. Bhanuprakashini Singh had purportedly authorized the bearer of that letter whose signature was appended below to collect delivery orders, cheques of interest warrants and gold. On this letter accused No.1 forged the signature of Smt. Bhanuprakashini. Accused No.1 also forged the signature of Narendra Singh on the reverse of six gold bonds and also on the six gold bonds of Bahuprakashini singh. The accused No.1 or 2 did not disclose to the RBI Officers that the holder of this bond had died in air crash. Thus, the gold was dishonestly and fraudulently collected by the accused No.1 and 2 on 2nd July, 1991

and 1st October, 1991. The respondent No.3 / intervenor is the son of Narendra Singh and Bhanuprakashini and thus is clearly victim as mentioned in proviso to Section 372 of Code of Criminal Procedure. It is submitted that there is no illegality in the order dated 16th January, 2017 passed by the Sessions Court. It is submitted that the Court has merely permitted the respondent No.3 to assist the Special public Prosecutor who represent the CBI through his advocate. It is further submitted that Mr. Parikh had appeared for the CBI as a Special Public Prosecutor but the said fact would not cause any impediment in representing the cause of the Respondent No.3. It is also submitted that in the event the Court find that Mr. Parikh should not represent Respondent No.3, this Court may allow any other lawyer to represent Respondent No.3 in the said proceedings.

6. The case was registered on the basis of a complaint received from the RBI regarding fraudulent encashment of 12 National Defence Gold Bond 1980 relating to 41.222 kgs of gold in the name of deceased Narendra Singh and his wife Bhanuprakashini by the accused. After completing the investigation, chargesheet was filed for the offences punishable under Sections 120(B) read with 419, 420, 467, 468, 471 and 404 of Indian Penal Code

against the petitioner and accused Mahendra Singh (now deceased). The prosecution case is that the accused had forged the signatures of Narendra Singh and his wife Smt. Bhanuprakashini on the gold bonds. The role played by the accused is narrated herein above while dealing with the submissions made at the instance of Respondent No.3. The petitioner was convicted vide Judgement and order dated 30th September, 2010 by Additional Chief Metropolitan Magistrate, 19th Court Esplande Bombay for the aforesaid offences. He is sentenced to suffer imprisonment for one year on each count and to pay fine of Rs.5000/- for each offence. The petitioner has preferred Criminal Appeal No.564 of 2010 challenging the judgment of conviction which is pending before the Court of Sessions. The Respondent No.3 preferred an application for intervention in the said appeal on 24th October, 2016. In the said application, the Respondent No3 has contended as to how he is an aggrieved person or victim. He has drawn support of Section 372 of Code of Criminal Procedure, 1973 to submit that he would fall under the category of victim / aggrieved party. It is pointed by Respondent No.3 that the accused have committed the acts of forgery in relation to gold bonds belonging to his parents. The accused were

closely related to Respondent No.3, the accused No.1 is the cousin of Respondent No.3 and the accused No.2 (deceased) was the younger brother of the father of Respondent no.3. According to Respondent No.3, accused No.1 had cheated the Reserve Bank of India by pretending to be deceased Narendra Singh and representing himself as Narendra Singh and thereby dishonestly induced the delivery of gold and committed the offences. Accused No.2 pretended himself to be an agent duly authorized by Bhanuprakashini Singh to collect the gold bonds and interest warrants when he knew that there was no such authorisation which was given or could have been given by Smt. Bhanuprakashini Singh on 12th July, 1991 as she was already death on 14th February, 1991. It was contended in the application by Respondent No.3 that he seeks permission to allow him to intervene in the hearing of the appeal through his advocate Shri Virendra Himmatlal Parikh. It is also stated that Mr. Parikh was a Special public Prosecutor who conducted the trial and secured the conviction of the appellant. He was appointed to conduct the appeal before this Court. However, due to certain circumstances, he was constrained to withdraw his appearance from the appeal. Mr. Parikh had conducted the entire trial and is acquainted with

the facts of the case and thus will be able to assist the Court to appreciate the voluminous evidence and documents which were duly proved and thereupon marked as Exhibits. It was submitted that the present objection be treated as an appeal provided under Section 372 of Code of Criminal Procedure.

7. The learned Sessions Judge allowed the application and permitted the Respondent No.3 to assist the Special Public Prosecutor, CBI through lawyer.

8. The objection of the petitioner allowing Mr. Parikh to represent Respondent No.3 in the proceedings pending before the Sessions Court is required to be accepted. It is pertinent to note that Mr. Parikh had represented the CBI as a Special Public Prosecutor during the course of trial and even after the appeal was preferred by the petitioner accused before the Sessions Court, apparently he had appeared on few occasions for CBI and thereafter he withdrawn his appearance for CBI. The intervenor / respondent No.3 thereafter preferred an application in which it was prayed that Mr. Parikh knows the matter and being the Special Public Prosecutor he be permitted to represent Respondent No.3. In the application itself, it is mentioned by the Respondent No.3 that Mr. Parikh was Special Public Prosecutor

who secured conviction of the appellant and he was also appointed to conduct the appeal before the Sessions Court and due to certain circumstances he was constrained to withdraw his appearance from the appeal. Mr. Parikh has represented the CBI in the prosecution which was initiated on the complaint filed by Reserve Bank of India and he was apparently privy to the instructions and documents provided by the CBI during the trial. Mr. Parikh who has represented CBI in the trial as well as on some occasions before the appellate Court cannot be permitted to change his side and allowed to represent Respondent No.3. As submitted by the counsel for the petitioner it was clearly conflict of interest. In the circumstances, Mr. Parikh cannot be allowed to represent Respondent No.3 in the said appeal proceedings pending before the Sessions Court. However, the Respondent No.3 will be at liberty to appoint any other advocate in consonance with order dated 16th January, 2017 to assist the Special Public Prosecutor before the Sessions Court. The other submissions advanced by the learned counsel for the petitioner are devoid of merits. The Respondent No.3 had preferred an application for intervention in the appeal preferred by the petitioner before the Sessions Court and the Court has merely permitted him to assist Special Public

Prosecutor through lawyer. From the tenor of order dated 16th January, 2017 it cannot be said that the learned Sessions Judge has treated the application for intervention preferred by Respondent No.3 as an appeal under Section 372 of Code of Criminal Procedure. The Respondent No.3 had drawn support from the definition of victim as defined in Code of Criminal Procedure. In paragraph 23 of the application the Respondent No.3 had stated that the objection be treated as an appeal provided under Section 372 of Code of Criminal Procedure. However, the prayers were for permitting him to intervene in the appeal through his advocate and the other prayers was to hear and decide the appeal at the earliest possible convenience of the Court. It is pertinent to note that the Sessions Court has in no manner treated the application as an appeal under Section 372 of Code of Criminal Procedure. It is to be noted that the petitioner had preferred an appeal against the conviction. The CBI had not preferred an appeal for enhancement of sentence and therefore in any case the application cannot be treated as an appeal under Section 372 of Code of Criminal Procedure which provides remedy to the aggrieved person or the victim against any order passed by the Court acquitting the accused or convicting for a lesser offence

or imposing inadequate compensation. From the factual matrix, it is clear that the respondent No.3 is the son of Narendra Singh and Bhanuprakashini Singh who was the parents of Respondent No.3. They died on 14th February, 1990. The allegations against the accused is that they had forged the signatures of the parents of the Respondent No.3. In this circumstance being aggrieved person, the respondent No.3 had preferred an application only to intervene in the appeal. The Court took into consideration the factual aspects and only permitted the Respondent No.3 to assist Special Public Prosecutor through lawyer. The Court did not allow respondent No.3 to intervene in the appeal preferred by the petitioner in any other manner. The CBI has filed the counter affidavit in this proceedings. In the said affidavit reply it is stated that as per the definition under Section 2(wa) of Code of Criminal Procedure the Respondent No.3 is legal heir / elder son of deceased Narendra Singh and Bhanuprakashini Singh whose signature were forged after their death on gold bonds by the accused and about 42 kg of pure gold was collected fraudulently from the Reserve Bank of India. Hence, according to CBI, Respondent No.3 may be the victim in accordance with the definition contained under Section 2(wa) of Code of Criminal

Procedure. The CBI has supported the order passed by the Sessions Court. It is also stated that Mr. Parikh had acted as a Special Public Prosecutor for CBI and has received the remuneration from CBI. Now, he can appear only for victim as his no longer Special Public Prosecutor for CBI which is not against the principle of natural justice and they have no objection regarding appointment of Mr. Parikh to represent Respondent No.3 and to assist the Respondent No.1 in Criminal Appeal No. 564 of 2010. As far as the appointment of Mr. Parikh, it is already made clear herein above that he cannot be permitted to represent the Respondent No.3. However, in sum and substance the CBI has submitted that the Respondent No.3 is victim or aggrieved person as the matter relates to gold bonds of his parents which were fraudulently encashed by the accused. The Sessions Court has allowed the Respondent No.3 to assist Special Public Prosecutor CBI through lawyer. I do not find that there is any infirmity in the said impugned order. Although, the Respondent No.3 had prayed that the objection be treated as an appeal under Section 372 of Code of Criminal Procedure, the prayers in the application were to permit him to intervene in the appeal through his advocate. Being son of deceased persons who were holding

Gold Bonds he is interest in out come of appeal against conviction. Limited relief is granted to him. In the circumstances, the Respondent No.3 is permitted to assist Special Public Prosecutor CBI through any lawyer other than Mr. Virendra Parikh who had presented the CBI in the said proceedings as a Special Public Prosecutor. Hence, I pass the following order.

ORDER

- i. Petition is partly allowed;
- ii. Respondent No.3 is permitted to assist the Special Public Prosecutor, Central Bureau of Investigation in Criminal Appeal No. 564 of 2010 through any lawyer except advocate Mr. Parikh who conducted the trial as Special Public Prosecutor.
- iii. The Criminal Writ Petition stands disposed off.

(PRAKASH D. NAIK, J.)