IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.539 OF 2017
IN
WRIT PETITION NO.973 OF 2015

Roshani Ashish Kapila ... **Applicant**

In the Matter in Between :
Ashish Rajinder Kapila ... **Petitioner**
V/s.
The State of Maharashtra & Anr. ... **Respondent**

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Mr.Subhash Jha with Mr.Siddharth Jha i/b. Law Global Advocates, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent No.1/State.

Mr.Santosh S. Musale, Advocate for the Respondent No.2.

Mr.Suresh Kumar, Advocate for the Respondent No.3.

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CORAM : A.M.BADAR J.

DATED : 9th MARCH 2018.

P.C. :

1 This is an application by one of the claimant of the seized cash. The application is moved by Roshani Ashish Kapila. By this Application, she is claiming modification of the Order dated 25/09/2017 passed by this Court in Criminal Writ Petition No.973 of 2015 to the extent that seized cash amounting to

Rs.62.50 Lakh along with interest, if any, be returned to her instead returning the same to the petitioner i.e. her father.

2 Heard the learned Advocates appearing for the applicant, original petitioner, original respondents, including the learned Advocate appearing for the Income-tax Department. The learned Advocate for the applicant submitted that right from beginning, the seized cash is shown to be belonging to the petitioner as well as his family members including the present applicant. Therefore, that part of the seized cash which is belonging to the present applicant namely Roshani Ashish Kapila needs to be handed over to her after conclusion of the issues by disposal of the Writ Petition. The learned Additional Public Prosecutor submitted that this Court has observed in the final Order passed in the petition that the petitioner has placed on record affidavit of present applicant Roshani Kapila stating that she has no objection if seized cash is handed over to the petitioner, who is her father. The learned Advocate for the Income-tax Department submitted that minor's income needs to be clubbed with the parents' income and this was not done. Therefore, any modification would amount to review of the Order and, therefore application needs to be rejected.

3 It is crystal clear that the final Order passed in the Writ Petition is not challenged by any of the parties.

4 On 28/12/2010, a cash amounting to Rs.Eighty Lakh came to be seized from respondent Nos.2 and 3 to the petition. They were arrested in exercise of powers under Section 41(d) of the Code of Criminal Procedure. Ultimately, they came to be prosecuted for the offence punishable under Section 124 of the Maharashtra Police Act. During pendency of the prosecution, on two occasions, the petitioner, who is father of the present applicant has applied for return of the seized cash claiming that he as well as his family members are rightful owner of the seized cash. The Revisional Order rejecting his prayer was the subject matter of the petition. However, during pendency of the petition, it was found that the Criminal Case bearing No.3116/PS/2011 pending on the file of the learned Metropolitan Magistrate, 65th Court, Andheri came to be closed in exercise of powers under Section 258 of the Code of Criminal Procedure by the learned Metropolitan Magistrate. While stopping the proceedings of that case, it appears that after passing the final order hand written sentence to the effect that unclaimed seized cash is forfeited to the State is added. All these aspects were dealt with by this Court while deciding the Writ Petition on merit.

5 The seized cash was not proved to be the stolen property or property fraudulently obtained, though such was the claim of the prosecution. The learned Metropolitan Magistrate

was required to stop the proceedings probably because inaction of the prosecuting agency. As such, natural consequence which ought to have followed is refund of the seized cash to the original owner. This was not done and, therefore, even the final Order passed by the learned Metropolitan Magistrate so far as it relates to confiscation of the seized cash to the State came to be made the subject matter of challenge in the petition.

6 The petition was filed by Ashish Kapila as the Head of the family. The petition itself was based on certificate of the Charted Accountant firm namely Sanghavi & Sancheti. The certificate annexed to the petition dated 28/12/2010 i.e. issued on the date when the cash was seized is to the effect that out of the seized amount, an amount of Rs.62.50 Lakh belongs to Roshani Ashish Kapila and names of rest of the owners of seized cash are also mentioned in the said certificate. This Court has dealt with the said certificate as well as statement of petitioner recorded under Section 161 of the Code of Criminal Procedure while deciding the main petition.

7 The only technical problem is to the effect that the petition was filed by father of the present applicant claiming the seized cash which was owned by him as well as his daughter and wife. Now the application is moved by the daughter claiming that the cash to which she is entitled be handed over to her instead paying it to the petitioner, who is her father. As ultimately, the

prosecution has failed to prove that the seized cash was stolen property or property fraudulently obtained by the party to the litigation, the seized cash needs to be released in favour of the rightful claimant and while deciding the petition itself, it was held that the applicant Roshani Kapila is entitled for Rs.62.50 Lakhs out of amount seized by police. Even this Court, at the time of disposal of the petition had directed the parties to file affidavit of Roshani Kapila. In her earlier affidavit, applicant Roshani Kapila had stated that she has no objection if the seized cash owned by her is paid to the petitioner. Therefore, while deciding the petition, the seized cash was directed to be handed over to the petitioner i.e. the father of the applicant. In this view of the matter, this being Writ Petition, technicality of law should not come in the way of the rightful claimant of the seized cash in the wake of no finding by the competent Court regarding cash being the stolen property or property fraudulently obtained. Needless to state that even while deciding the writ petition, this Court has taken care of the interest of the Income-tax Department which were not concerned with the cash at the time of its seizure. This Court has stated in the operative portion of the Order that the proceedings initiated before the concerned authorities of the Income-tax Department are not interfered with by this Court.

8 In this view of the matter, the application deserves to be allowed with the following Order :

ORDER

(i) The application is allowed.

(ii) The Judgment and Order dated 25/09/2017 passed by this Court in the instant Petition is modified by directing that out of seized cash, the cash amounting to Rs.62.50 Lakh along with the accrued interest, if any, thereon be paid to applicant Roshani Ashish Kapila under her receipt.

(iii) The application is accordingly disposed of.

(iv) Parties to act on authenticated copy of this Order.

(A.M.BADAR J.)