IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1160 OF 2015

Narendra Dejoo Shetty
Age 75 years, Resident of 12/B,
Balmoral Hall, 7 Mount Mary Road,
Bandra (West),
Mumbai 400050 .. Applicant

Versus

1 Saumyalata Shyama Shetty
Indian Inhabitant, Residing at
A/504, Kanishk, The Great
Eastern Links, Ram Mandir Road
Goregaon (W),
Mumbai 400 104.

2 The State of Maharashtra
(Through EOW Crime Branch,
Mumbai .. Respondents

…

Mr. Pranav Bhadeka i/b Prashant B. Pawar and Niranjan Pachupate for the applicant.
Mr.Girish Kulkarni I/b Ms.Mrunal Kulkarni with Mr.K.N. Pandey for Respondent No.1.
Mr.Ajay Patil, APP for the State.

CORAM: BHARATI DANGRE, J.

RESERVED ON : 11th OCTOBER, 2019

PRONOUNCED ON: 14th FEBRUARY 2020.

JUDGMENT :

1 Criminal Application filed by the applicant, an Executive Chairman of Haldyn Glass Limited and Managing Director of Haldyn Corporation Limited which is engaged in the business of manufacturing glass containers pose a challenge to a common judgment dated 16th October 2015 passed by the Addl. Sessions Judge in two Criminal Revision Applications, one being instituted by him.

2 At the instance of the applicant, FIR No. 716/PW/2012 was registered which contain an allegation that two of its employees including one Soumyalata Shama Shetty holding the post of General Manager – Finance and Commerce cum Chief Financial Officer of Haldyn Glass Limited with common intention being shared by another employee personally forged documents and used the same as genuine documents to siphon off money from the Company. On investigation, charge-sheet came to be filed in the Court of Metropolitan Magistrate, Mumbai by the Economic Offences Wing. She was charged with offences punishable under Section 465, 467, 468, 471 of the IPC being responsible for operating the bank accounts of the Company in the capacity of General Manager and being entrusted with and having dominion over the funds of the Company. She was also charged with offences under Section 408,

420 read with Section 34 of the IPC for fraudulently issuing the cheques from the bank account of the Company in favour of the son of accused Vilas Shembekar and thereby fraudulently misappropriating the funds of the Company.

3 We are not concerned with the proceedings relating to her arrest in the present case and therefore by merely recording that the Bail Application filed by her came to be rejected by the Addl. Sessions Judge, the necessary facts are to be further noted.

4 Application under Section 451 of the Code of Criminal Procedure came to be filed by the present applicant seeking return of property seized during investigation. In the said application, it was alleged that during the inquiry in connection with the FIR registered on the basis of the complaint from the applicant, certain articles in form of gold bars, coins, gold/diamond jewellery were recovered from three lockers. The said property was seized as proceeds of crime, in the backdrop of the allegation that the said property was acquired by misappropriating the funds of the company. The application stated that the articles seized are valuable in monetary terms and since they are acquired by siphoning the funds of the company, the possession and custody of the articles mentioned in the list appended to the application along with the cash be transmitted to the applicant pending trial and disposal of the Criminal

Application. Another application was moved by the Respondent accused Soumyalata Shama Shetty who was arraigned as an accused on 1st December 2012. In the said application, she also sought a direction to release and return the gold ornaments seized from Locker No. 15 in her name in the Vijaya Bank, Saki Naka, Mumbai which was mentioned in panchnama drawn on 3rd May 2012. She also made a prayer in relation to Locker No. 209 in Vijaya Bank, Goregaon Branch, Mumbai and sought direction to release and return the foreign currency notes and two share certificates seized from the said locker. Further relief was also sought for release and return of a Mercedes Benz E-350 Model car with registration No. MH-02-CH-5500 and the documents pertaining to its registration which was seized vide panchnama dated 16th July 2012 as the alleged proceeds of crime.

5 The Addl. Chief Metropolitan Magistrate dealt with four applications, two filed by the respondent accused, one filed by the complainant and fourth filed by the Tata Capital Limited seeking return of the property seized during investigation of C.R. No. 42 of 2012 wherein the charge-sheet was filed. Application filed by Tata Capital Limited related to the Motor Vehicle whereas the other three applications pertained to the property contained in the three lockers. The property was seized from Bank Locker No. 15, 209 locker No.12. Locker No.15 was in the name of the accused and it was her contention that the gold

ornaments which were found in the said locker belong to her. Another Locker No. 12 was also in the name of the accused. The third locker that was involved was Locker No. 209 which contained foreign currency. The inventory of the contents of both the lockers was prepared and the properties contained therein were seized by the Investigating Agency during investigation of the offence. There was no dispute between the parties that the lockers were in the name of the accused but the parties were at variance on the point that the said jewellery was acquired through the money misappropriated while she was working as an employee with the Company. As far as the jewellery contained in Locker No. 15 which was valued at Rs.1,69,55,888/-, the Metropolitan Magistrate returned a finding that the accused was not able to substantiate her claim that the jewellery belonged to her by producing any documents and on the other hand, the evidence that has surfaced during investigation point out that the said valuables are acquired by the accused from the funds of the complainant company and therefore, held that the accused was not entitled for release of the contents of Locker No. 15 in her favour.

6 On being satisfied with the application of the present applicant/complainant who had placed on record various documents in support of the claim for return of the said property, which included the statement of account of Kundan Jewellers

maintained with the complainant company and payments made to the said jewellers and even receipts of ornaments and remittance for purchases from Kundan Jewellers revealing that the various ornaments were purchased from Kundan Jewellers in the name of the Company; the learned Metropolitan Magistrate was *prima facie* satisfied that the said ornaments were purchased by using the funds of the Company but they were used by the accused for her own benefit and treated the same as her property. Various receipts, tax invoices were placed on record along with statement of account of the Company with State Bank of India to pay the amounts towards purchase of jewellery and gold coins. Accepting the principle that it is not the stage to ascertain the title of the property but the concern being only *prima facie* entitlement for the purpose of interim custody, the learned Magistrate on recording a finding that it is the original complainant who is entitled to interim custody of the articles found in Locker No. 15 of the Bank, allowed the application to that effect. However, as far as the contents of bank Locker No. 209 which included shares and foreign currency notes, since no *prima facie* material was produced by the applicant/complainant for custody of the contents of the said locker, the said muddemal was directed to be preserved with the prosecution.

7 Apart from the applicant and the respondent, there was one more claimant to it i.e. the Financer. On the claim that

the car was hypothecated with the Financer and there was a default in repayment of EMI towards loan and since it was noted that the complainant company was neither the owner nor fund raising entity towards the purchase of the said car though the loan was sanctioned through it. In light of the fact that the vehicle cannot remain in junk condition and would deteriorate in its value, the Metropolitan Magistrate granted permission to sale subject to a detail panchnama being drawn and the insurer to submit an undertaking to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that at the time of final adjudication it is found the right to ownership of the vehicle does not vest with the insurer, it shall remit the proceeds of auction/sale to the person entitled.

In light of the finding recorded, the Metropolitan Magistrate granted the claim of the applicant in respect of the contents of Locker No. 15 and the claim of the accused was rejected. The claim of the accused about detachment of flat which was sealed was also allowed. The interim custody of the valuables seized from Locker No. 12 and 15 were made over to the applicant subject to execution of an indemnity bond and certain other conditions imposed.

8 Being aggrieved by the said order, two Criminal Revision Applications were preferred by the respective parties which were disposed of by common judgment dated 16th October

2015. The order passed by the Addl. Chief Metropolitan Magistrate as regards the release of the ornaments/valuables contained in Locker No. 15 in favour of the complainant was found to be not sustainable and the Revisional Court modified the said order by directing the interim custody of Muddemal/article found in Locker No. 15 to be handed over to the respondent/accused on executing indemnity bond of Rs.2 crore. The conditions which were sought to be imposed while releasing the said articles in favour of the applicant by the Metropolitan Magistrate by and large came to be retained by the Addl. Sessions Judge, Mumbai while modifying the order. The reason cited in varying the order in relation to the contents in Locker No. 15 is concerned, the Revisional Court recorded that there is no dispute about the ownership of the gold ornaments contained in Locker No. 15. However, it is the allegation that the said valuables have been purchased after siphoning off the money of the Company and this fact would have to be proved at the time of trial. Recording that declaration of assets by the accused which do not include the gold ornaments seized from her locker cannot be conclusively held against the accused that they are purchased from the siphoned off amount. On the reasoning that the case of fraud as alleged by the complainant has to be proved during the trial by leading cogent evidence and it is not a proper stage to consider the source of income of the accused and hold that the property in the locker is purchased from the siphoned amount, the Addl. Sessions Judge found an error in rejecting the application of the accused seeking interim custody of gold ornaments found in Locker No. 15.

9 The pronouncement by the Metropolitan Magistrate on the contents of Locker No. 209 and as regards the vehicle was found to be justiciable and was not interfered with.

10 It is this order which is challenged by the applicant/ complainant. Perusal of the impugned order would disclose that the reasoning recorded by the Sessions Judge in rebutting the claim of the application for the jewellery contained in Locker No. 15 was only a presumption that it is purchased from the siphoned money. The exercise of power or interim custody vested in the Magistrate under Section 457 of the Code of Criminal Procedure permits the Magistrate to pass an order disposing of said property or delivering the same to the person entitled to possession thereof by way of an interim custody. Since the Magistrate had clearly recorded that there was no dispute that Locker No. 15 stood in the name of the accused and this contained various gold/diamond and silver items and since the Magistrate was only concerned with the interim custody pending the trial, and unless it was proved in the trial on meeting the charges that there was defalcation of amount at the hands of the accused and the ornaments therein were purchased from the said money siphoned off from the

company, the Addl. Sessions Judge is justified in reversing the order passed by the Metropolitan Magistrate on the principle that the exercise of the power by the Metropolitan Magistrate is only a tentative arrangement without going to the entitlement or source from which the property is purchased which can be determined during trial. No illegality can be found in the order passed by the learned Addl. Sessions Judge, calling for interference at the instance of this Court.

11 Criminal Application No.1160 of 2015 thus deserves a dismissal and is accordingly dismissed.

SMT. BHARATI DANGRE, J

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