IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CRIMINAL APPLICATION NO.1147 OF 2019
IN APEAL/514/2017 WITH APEAL/514/2017

SURESH S/O. EKNATH SHIMPI
VERSUS
THE STATE OF MAHARASHTRA

Mr.Vijay B. Patil, Advocate for the applicant.
Mr.S.W. Mundhe, APP for the respondent/State.

CORAM : KISHORE C. SANT, J.
DATED : 13.10.2022

PC :-

01. Heard learned Counsels for both the parties. By this application, the applicant is praying for allowing him to withdraw the amount, which he has deposited in the fixed deposit and also for return of property i.e. gold ornaments etc. which are belonging to him, as mentioned in his application Exh.15 in Special Case No.18 of 2015, Exh."A" to this application.

02. This application is filed by the applicant in pending appeal for return of property. The substantive appeal is arising out of judgment and order dated 22.09.2017 passed in Special A.C.B. Case No. 18 of 2015 by which he is convicted for the offences punishable under section 7, 13(1)(d)

read with section 13(2) of the Prevention of Corruption Act. There is not even charge of acquiring any disproportionate assets in the entire trial. There was no any element of disproportionate assets. The charge reads as under :-

> "That you on 13.5.2014 at about 14.40 hrs. in your cabin situated in the office of Dy. Engineer, Minor Irrigation Department, Sub Division, Jalgaon being a public servant working as Dy. Engineer, Minor Irrigation Department, Sub Division, Jalgaon, demanded and accepted Rs.11,000/- from the complainant namely Rajendra Dagdu Pawar r/o. Kawthal Tal. Dharangaon for yourself as a gratification other than legal remuneration as a motive to do official act in the exercise of your official function for releasing the remaining payment of the work done by complainant of "Sathwan Bandhara" at village Nimbhora & Dhar Tal. Dharangaon, and that you have thereby committed an offence punishable under section 7 of the prevention of Corruption Act, 1988 and within the cognizance of this Special Court.
>
> Secondly, on the aforesaid date, time and place you being public servant at the relevant time working as Dy. Engineer, Minor Irrigation Department, Sub Division, Jalgaon obtained Rs.11,000/- towards illegal & corrupt means abusing your position as a public servant without any public interest, and that you have thereby committed criminal misconduct, an offence punishable under Sec.13 (1)(d) r.w.S.13(2) of the Prevention of Corruption Act, 1988 and within the cognizance of this Special Court."

. However, in the judgment, the learned trial Court has made observations in para 44 as under :-

> "44] The accused has made application Exh.15 for return

> of these deposit receipts and property. But these facts being out of that may be the accused was habitual in accepting the money beyond his salary. So, that would be an aspect which goes against the accused. In any case, that application is disposed off with a direction to the prosecution to forward the seizure panchanama and the documents with it to the Income Tax Authority for carrying out the investigation as regards the payment of tax and collection of the tax which can be examined by the Income Tax Authority."

03. The applicant submits that it is only in view of para 44, he is not allowed to withdraw the amounts lying in the fixed deposits. The prosecution has also not released other properties mentioned in tabular form in Exh.15 before the Trial Court. He states that when there was no charge of acquiring disproportionate assets, there is no question of not allowing him to withdraw the amount or to deal with his own property. The prosecution has no authority or power to take any action only on the basis of observations made in para 44 of the impugned judgment. In the operative order also there is nothing to indicate that the learned Trial Court has passed any order regarding the properties and fixed deposits. He, therefore prays that the criminal application be allowed and he should be allowed to withdraw the amounts which are lying in the fixed deposits as is given in Exh.15 in Special Case No.18 of 2015 and Exh "A" to this petition. He also further prays for release of other properties as per Exh. "A" to this petition. He is ready to

furnish necessary undertaking and to give security to this Court.

04. The application is opposed by the learned APP by filing an affidavit. It is stated that the accused/applicant is habitual in accepting money beyond his salary. In view of para 44 of the judgment, the prosecution have given an intimation to the Income Tax authority. The income tax authority may be taking action against the applicant. However, he could not give any information about any action taken by the Income Tax Department. It is apprehended that if the property is disposed of, then the Income Tax department would not be in a position to take proper action. He also submitted that the Income Tax Department is a necessary party.

05. Considered the submissions. Learned Advocate for the applicant states that till today there is no notice received by him from the Income Tax Department. It is seen that the impugned order is dated 22.09.2017. Even the application filed before this Court is in the year 2019, to which affidavit is filed by the APP on 16.09.2019. Thus, in spite of passage of long period, no action appears to have been initiated and the amount is unnecessarily retained and property is not being released. Considering the submissions and

considering that the Income Tax Department can exercise its own powers under the relevant Act by using their own machinery. If the Income Tax Department wants to take any action, it has to follow due procedure, which would certainly include at least a notice to the applicant. There is nothing to indicate that any notice is received by the applicant. Though it is submitted that Income Tax Department is necessary party to this application, this Court is of the opinion that when Income Tax Department has not even issued notice and since it has its own independent powers, which are to be exercised independently without any aid of the prosecution, it is not necessary to add I.T. Dept. as party. However, it is necessary to impose some conditions upon the applicant to secure interest of the prosecution. Hence, following order is passed :-

ORDER

i) Criminal Application is allowed.

ii) The applicant is permitted to withdraw the amounts which are lying in the fixed deposit as given in the list Exh.15 in Special Case No.18 of 2015, which is Exh."A" of this application. The prosecution to release other ornaments and properties etc. as per the list in Exh. "A" of this application.

iii) The applicant to give an undertaking that in case the property is required for any purpose, he will produce the same without changing nature of the property especially gold ornaments etc. In case, the applicant withdraws the amount from the fixed deposit, he shall furnish sufficient security with an understanding that in-case the amount is required in future, he would re-deposit the said amount with the authority.

iv) The affidavit/undertaking will be furnished in the office of this Court within a period of four weeks from today.

v) This order to take effect after affidavit is filed before this Court within stipulated time and furnishing security.

[KISHORE C. SANT, J.]

snk/2022/OCT22/cria1147.19