

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.196 OF 2018

Mrs. Hansa Ramesh Batavia

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

.....

Mr.Mohd. Umar Kazi a/w. Mr.Ammar I. Nizami, Advocate for the Applicant.

Mr.Arfa Sait, APP for the Respondent No.1–State.

Mr.S.R. Borulkar a/w. Mr.N.N. Toshnival, Mr.Piyushh Toshnival i/b.Mr.Ashish Pawar, Advocate for Respondent No.2.

PSI N.B. Kavde, Crime Branch Unit III, Kalyan, District– Thane, present

.....

CORAM : PRAKASH D. NAIK J.

DATE : 14th July 2022.

P.C. :

1. This is an Application challenging order dated 13.11.2017 passed by the Sessions Court in Criminal Revision Application No. 63 of 2012 and order dated 16.04.2012 passed by the Court of learned Judicial Magistrate First Class, Kalyan partly rejecting the Application for returned of property. CR No. I-175 of 2011 was registered with Bazarpeth, Police Station on 03.11.2022 for the offences under Sections 420, 406 read with Section 34 of the Indian Penal Code.

2. The case of the prosecution is that accused Ramesh Batavia, Smt. Hansa Batavia, Dharmesh Batavia and Sagar Batavia are

residents of Vasai, District-Thane. They approached complainant in 2017 and informed that they are in the business of sale/purchase of clothes. The complainant was induced to sell the clothes material on credit. The accused assured that the payment towards the sale would be made from October, 2007 to June, 2008. The accused misappropriated amount was of Rs.1,91,83,556/-. The accused admitted the liability in writing. In spite of delivery of clothes, the accused did not pay the consideration and cheated the complainant for an amount of Rs. 1,91,83,556/-.

3. During the course of investigation, the investigating officer seized various articles and conducted panchanama of seizure.

4. Learned Advocate for the Applicant submitted that the articles seized has no connection with the crime. The learned Magistrate partly allowed the Application. There was no reason to reject the prayer for return of the other articles. The articles belongs to the Applicant and her family. The prosecution has not shown any connection of the articles with the crime.

5. Learned APP, submitted that the articles are seized during the investigation. The learned Magistrate and learned Sessions Judge

has rejected the claim of the applicant in respect of some of the articles by assigning reason. He relied upon in the following decision **Nevda Properties Limited V/s. State of Maharashtra & Another, (2019) 20 SCC 119** and another decision in the case of **Teesta Atul Setalvad V/s. State of Gujarat, (2018) 2 SCC 372**.

6. Learned Advocate for the Respondent No.2 opposed the prayers in this application. It is submitted that the amount has connection with the crime, the accused had cheated the complainant. He has relied upon the following decisions:-

- I. Nevada Properties Private Limited through its Directors V/s. State of Maharashtra and another. (supra)*
- II. State of Maharashtra V/s. Tapas D. Neogy, (1999) AIR (SCW) 3389*
- III. Adarsh Co-operative Housing Society Limited v/s. Union of India & Ors. 2011 All. M.R. (Cri) 2849*
- IV. Vinoshkumar Rachmchandran Valluvar v/s. State of Maharashtra & Anr, 2011 (3) AIR Bom R 203.*

7. During the course of investigation, the police have seized several articles. The list of the articles have provided in the Panchnama dated 11.11.2011. The Articles which was sold to the accused of cloth materials. The articles have no connection with the crime. The Judicial Magistrate First Class by order dated 16.04.2012 has observed that except serial Nos. 7, 8 and 9, all other articles i.e. saving certificate and receipt are after the date of commission of offences. Hence, the

possibility cannot be ruled out. All these articles could not have been purchased from the misappropriated amount by the accused. The learned Magistrate directed that the articles at Serial No. 7, 8 and 9 of the panchnama were purchased by the applicant before the Commission of crime and the same can be returned to her.

8. It is pertinent to note that merely on the ground that articles were purchased after commission of crime, it cannot be inferred that the same was purchased from the proceed of crime. Prima facie, no link is established between the articles and the crime.

9. Thus, there is no impediment in allowing the articles claimed in OMA No. 8 of 2012 to be given to Applicant. Hence, I pass following order :

ORDER

- (i) The Application is allowed, and, stands disposed of accordingly;
- (ii) Order dated 16th April, 2012, passed below Exhibit-1 in OMA No.8 of 2012, passed by 6th Joint C.J.J.D. & J.M.F.C., Kalyan, to the extent of partly rejecting application of applicant and order dated 13th November, 2017, passed by Sessions Court is set aside;

(iii) The Articles claimed in OMA No.8 of 2012 (Exhibit-1) preferred before Court of 6th Joint C.J.J.D. & J.M.F.C., Kalyan, which were not directed to be returned to the applicant, be returned to the applicant on bond of Rs. 30,000/- to be executed before trial Court.

(PRAKASH D.NAIK,J.)