

VRJ

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

CRIMINAL REVISION APPLICATION NO.242 OF 2022

Central Bureau of Investigation	... Applicant
V/s.	
Ashok Sharma & Anr.	... Respondents

Mr. Kuldeep S. Patil for the applicant/CBI.

Mr. Amir Arsiwala a/w Mr. Omprakash Jha & Nupur
Shah i/by Law Point for the respondent No.1.

Mr. A.R. Patil, APP for the respondent No.2/State.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 9, 2022

RC.:

1. The petition is directed against the order dated 22nd February, 2022 passed by the learned special Judge (CBI Greater Mumbai) in Miscellaneous Application No.1388 of 2021 allowing application under section 457 of the Code of Criminal Procedure filed by respondent No. 1 here.

2. The investigating agency has challenged the order mainly on the ground that section 18-A of the Prevention of Corruption Act, 1988 has no applicability in the facts of the case. As per the case of investigating agency, the lockers seized is not a property procured by means of an offence under the provision of Prevention of Corruption Act, 1988. According to the prosecution agency *qua* respondent No.1, there are allegations of offences under the

provisions of Indian Penal Code.

3. Per contra, the learned advocate for the respondent No.1 submitted that the case of prosecution is that the accused have committed offences under the provisions of Prevention of Corruption Act, 1988 along with other accused and, therefore, provisions of section 18-A of the Prevention of Corruption Act, 1988 would apply.

4. Having considered the submissions made on behalf of both the sides and having carefully scrutinized the impugned order, it appears that the learned Special Judge has not adjudicated as to whether “property in locker has been procured by means of offences under the Act”. Unless the learned Special Court records a finding that the property in the locker has been procured by means of offence under the provisions of Prevention of Corruption Act, 1988, the investigating agency has power under section 102 of the Code of Criminal Procedure, 1973 to seize the said property. It is, therefore, necessary that the learned Special Court should adjudicate upon the issue as to whether property in the locker seized by the investigating agency has been procured by means of offence under the provisions of Prevention of Corruption Act, 1988.

5. Hence, following order:

- a) The impugned order dated 22nd February, 2022 in Miscellaneous Application No.1388 of 2021 is quashed and set aside;
- b) The proceeding is remanded back to the learned Special

Court for deciding Miscellaneous Application No.1388 of 2021 as to whether the property in the locker has been procured by means of offence under the provisions of Prevention of Corruption Act, 1988;

c) Considering the pendency of the application, the learned Special Court shall decide the Miscellaneous Application No.1388 of 2021 as expeditiously as possible within eight (8) weeks from today.

6. The revision application stands disposed of in above terms. No costs.

7. All contentions of the parties are kept open.

(AMIT BORKAR, J.)