

INTERIM APPLICATION NO.1727 OF 2019
IN
CRIMINAL APPEAL NO.1138 OF 2018

Bhimsingh Panwar and another	Applicants
versus	
The State of Maharashtra and another	Respondents

Mr.Chaitanya Pendse, Advocate for applicants.
Mr.H.S.Venegavkar, Special Public Prosecutor, for Union of India.
Ms.PN.Dabholkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th April 2022

PC :

1. The applicant no.1 is convicted for the offence punishable under Section 13(2) r/w Section 13(1)(e) of Prevention of Corruption Act, 1988. Applicant nos.1 and 2 are convicted for the offence u/s.120-B of Indian Penal Code r/w Section 13(1)(e) of Prevention of Corruption Act. The applicant no.2 is wife of applicant no.1.

2. The judgment of conviction dated 18th August 2018 passed by Special Judge, Daman in Special Case No.8 of 2006 has been challenged by the applicants by preferring Criminal Appeal No.1138 of 2018. The appeal has been admitted and sentence of imprisonment has been suspended.

3. The applicants have prayed for return of property viz gold and silver ornaments mentioned in panchanama dated 6th March 1999 and cash of Rs.50,000/- and Rs.2,00,000/- seized from office of

applicant no.1 and house of applicants vide panchanama dated 3rd March 1999.

4. Learned advocate for applicants submitted that gold ornaments and cash seized during investigation do not form part of the check period viz 1993 to 1999. The sanction order refers to the fact that in the statement of applicant no.1 recorded by Investigation Officer, it is stated that the ornaments were received as stridhan by his wife at the time of marriage in 1964. The cash amount of Rs.2,50,000/- is seized from office of applicant no.1 and residence of applicants. The amount do not constitute part of prosecution case. The sanctioning authority in the evidence has stated that only those assets mentioned in paragraph no.7 of sanction order are assets relating to period prior to check period 1993 to 1999. The judgment of Trial Court is silent on the aspect of disposal of the gold and silver ornaments seized by respondents during investigation. While convicting the applicants the Trial Court did not direct confiscation of gold/silver ornaments. The charge framed against applicants does not include cash and ornaments. The ornaments and cash seized does not fall within the purview of check period of 1993-1999 considered by the prosecution while prosecuting the applicants. Hence the cash amount as well as ornaments be returned to applicants as they have no connection to the prosecution case.

5. Learned counsel for respondent no.1 submitted that ornaments as well as cash amount seized at the instance of applicants during the course of investigation are connected with prosecution case. The applicants are convicted for the offences under Prevention of Corruption Act read with charge of conspiracy. The judgment of Trial

Court refers to confiscation of cash amount seized during the investigation. Appeal challenging the judgment of conviction is pending and hence relief sought in this application may not be granted.

6. Applicant no.1 was a public servant at the relevant time. He was working in the administration of Union Territories of Daman & Diu and Dadra & Nagar Haveli in various capacities during the period from 1993 to 1999. He was posted as Assistant Director-Tourism since 22th October 2002 and thereafter as General Manager, District Industries Centre, Daman & Diu from 5th September 1995 till the registration of FIR. CR No.39 of 1999 was registered on 3rd September 1999 under Section 13(1) r/w 13(1)(e) r/w 120-B of Indian Penal Code and under Section 201 of IPC. During the course of investigation the gold ornaments and cash of Rs.2,50,000/- was seized by investigating agency Panchanama in that regard was recorded. The sanctioning authority has granted sanction on 5th August 2002. The sanctioning authority has been examined as PW-1. I have perused the charge and sanction order. Vide judgment and order dated 18th August 2019 the applicants were convicted for the aforesaid offences. The operative part of judgment indicate that cash amount seized during investigation, Indira Vikas Patra, Kisan Vikas Patra and Fixed Deposit Receipts were directed to be confiscated and credited to Government after appeal period is over. There is no specific direction to confiscate gold ornaments seized during the course of investigation. From the evidence of sanctioning authority it can be seen that sanctioning authority has stated that property referred in paragraph 7 was purchased prior to check period. Thus, it is not the case of prosecution that gold ornaments were purchased

by way of disproportionate assets to the known source of income by misusing position by accused no.1. However, as far as cash amount is concerned, the Trial Court while convicting the applicants has directed that the amount be confiscated. The appeal challenging the impugned judgment and order is yet to be decided and it is pending for final disposal. However, there is no impediment in allowing return of the gold/silver ornaments mentioned in panchanama dated 6th March 1999.

ORDER

- (i) Interim Application No.1727 of 2019 is partly allowed and disposed of;
- (ii) The gold and silver ornaments seized vide panchanama dated 6th March 1999 at Annexure-A to the application be returned to the applicants within four weeks from today.

(PRAKASH D. NAIK, J.)

MST