IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 267 OF 2023

Nandita Chakraborty .. Applicant
Versus
Union of India & Anr .. Respondents
…

Adv. H.G. Dharmadhikari, Harshika Arunkumar, Jeffry Caleb, Sneha Keni for the applicant.
Adv. Amit Munde Spl. PP for UOI a/w Mr. Jai Vohra, for respondent no.1.

CORAM: BHARATI DANGRE, J.
DATED : 9th OCTOBER, 2023

P.C:-

1 The Revision Application is filed by the applicant, being aggrieved by the order dated 6/07/2023, passed by the C.B.I. Special Judge, City Civil and Sessions Court, Greater Mumbai, rejecting the application filed by the applicant seeking return of property seized by CBI from her possession.

The application was premised on the ground that since she was discharged by the Court on 5/08/2017, and as the trial stands concluded against her, the property, i.e. Jewellery and documents seized by the CBI from her possession, be returned to her.

2 Heard the learned Advocate. H.G.Dharmadhikari along with Advocate Harshika Arunkumar for the applicant and the learned Special PP Mr. Munde for the respondent, ACB, CBI

Mumbai.

The CBI filed a charge-sheet before the Special Judge on 14/09/2009, alleging that husband of the applicant, working as Assistant Commissioner in the Department of Customs (accused no.1) being the public servant acquired movable and immovable property in his name and in the name of his family members, which is disproportionate to his own source of income and thereby he has committed an offence under Section 13(1)(e) of the Prevention of Corruption Act,1988.

The charge-sheet allege that the applicant, his wife was trading in shares and also had additional income from private tuition classes, whereas his father had retired as office Superintendent and he died in the year 1997.

3 The specific charge levelled against the accused no.1 read as under:

> *2 "That, it is alleged that during the period from 23.08.1989 to 05.10.2006 Shri. T.K. Chakraborty being a public servant, as detailed above, acquired immovable and movable assets to the tune of Rs. 3,23,87,237/- in his name and in the names of his family members, against his likely saving to the tune of Rs. 1,20,99,615/-. Thus, as on 05.10.2006. Shri T.K. Chakraborty and his family member were was found in possession of assets worth Rs. 2,02,87,622/- which is disproportionate to his/their known source of income and not satisfactorily account for.*
>
> *3 That, investigation disclosed that as on 23.08.1989 Shri T.K. Chakraborty was in possession of NIL assets either in his name or in the names of his family members".*

The charge-sheet comprise of list of assets in the name of accused no.1 at the end of the check period i.e.

5/10/2006 and list of assets in the name of his wife, the applicant.

The charge-sheet also comprise of list of assets in joint names of the husband and wife at the end of the check period and this include the following items, amongst others:-

Sr. No.	*Description of asset*	*Date*	*Amount Proved Rs.*
45	*Valuation of Jewellery found in the Locker No.34 with Allahabad Bank Konnagar Branch (WB) in name of T.N. Chakraborty, Smt. Binita Chakraborty, T.K. Chakraborty & Nandita Chakraborty*	*9.01.2007*	*686,236/-*
46	*Valuation of Jewellery found in the Locker No. B 68 (WB) with Uco Bank, Serampore Branch in name of Smt. Binita Chakraborty, T.K. Chakraborty & Nandita Chakraborty*	*10.01.2007*	*464,347/-*
47	*Valuation of Jewellery found in Locker No.486 A of Mr. Tapan Kr. Chakraborty & Nandita Chakraborty in Bank of India, Gandhi Market Br.*	*9.10.2006*	*154,804/-*
48	*Valuation of Gold Biscuits and Jewellery, found in Locker No.119 of Mr. T.K. Chakraborty & Nandita Chakraborty in Federal bank, dadar T.T. Mumbai.*	*7.10.2006*	*1,636,967/-*

4 The applicant, being arraigned as accused no.2 filed an application for discharge before the Special Judge (CBI), by submitting that she was having independent source of income and possessed gold jewellery in form of *Streedhan* and she had additional income from private tuition classes. It was also argued that she was filing Income Tax returns and she belonged to a family, which was affluent and the gold jewellery was gifted to her by her relatives. She specifically urged that her earning is

separate and she cannot be treated as a person holding property on behalf of the accused no.1, her husband.

Apart from this, her grievance was that she was not afforded an opportunity to offer any explanation as regards the said property and therefore she deserve a discharge.

She placed reliance upon the decision of the Apex Court in case of *Akhilesh Yadav vs.Vishwanath Chaturvedi and ors (2013) 2 SCC 1*, in support of her contention that she was not holding any government post and was essentially a private person and merely because she happens to be the wife of the main accused, unless and until opportunity is afforded to her to explain the source of income, she could not have been framed as a co-accused.,

The application was vehemently opposed by the CBI by contending that she is an abettor.

5 The learned Judge considered the rival contentions and referred to the statement of the witnesses, which revealed that the accused no.2 had separate source of income and she was in possession of a *Streedhan*. Reference was made to statement of PW 68, who had given the family background to show that the family was very affluent and during marriage, gold jewellery was received by accused no.2.

Based upon the evidence the learned Judge concluded as under:

> *"19 From the statement of prosecution witnesses cited supra it revealed that the accused no.2 had separate and independent source of income and the oral and documentary*

evidence filed by the prosecution supports this fact. There is no evidence on record to show that the accused no.2 was holding the assets on behalf of accused no.1.

20 As the accused no.2 was having independent source of income, the investigating officer ought to have given opportunity to accused no.2 for submitting explanation in writing and such explanation in writing ought to have been included in chargesheet. From perusal of chargesheet it appears that no such opportunity was offered by the investigating officer to accused no.2. The accused no.2 is recognized by the tax authorities as separate assessee and the accused no.2 is having independent source of income and the chargesheet goes to show that no opportunity was given to the accused for submitting explanation in respect of the property held by her. Considering the above material on record and the ratio of the case law cited by the accused in Mrs. Pramila Virendra Agarwal Vs. The State of Maharashtra in Criminal Revision No.284 of 2013 decided on 14/12/2015, is spurely applicable to the case in hand. Therefore, the charge of the abetement become groundless against the accused no.2 on the basis of chargesheet itself."

The operative part of the order read thus:

"1. Application for discharge Exh.29 is allowed.

2. Accused no.2 Mrs. Nandita T. Chakraborty is discharged of the offence punishable u/sec.109 of IPC."

6 With the aforesaid finding rendered in the application filed by the applicant seeking discharge, when an application under Section 452 came to be filed by the applicant, I see no reason to return the property, as perusal of the specific items reflected in the list of the assets in joint names, is the jewellery found in the joint account i.e. from Item No.45 to Item No.48. The order of discharge clearly reflected the items of jewellery claimed by the applicant/the accused no.2, to be given to her as a gift in marriage and when it is attributed a status '*Streedhan*', there is no reason to label the same as proceeds of

crime.

The learned counsel Mr. Dharmadhikari has placed on record, the income tax returns of the applicant from the Assessment Year 1997-1998 to 2005-2006, which clearly reflect her independent income as she was a tax payee. The application preferred by her for return of the gold jewelleries to the tune of 255.96 gms, was rejected by the Special Judge by reasoning that nowhere it is mentioned that it was purchased by her from her independent source of income and on the contrary, it is shown to be gift in marriage.

The learned Judge also took note of the factum of her discharge but held it to be on another ground, that being no opportunity of furnishing explanation in respect of the property held by her was given and therefore he derived a conclusion that it do not mean that she is the absolute owner of the property.

One fail to understand, that once a finding is rendered by the competent court that the jewellery found in the joint account is *Streedhan*, merely because the trial is ongoing, can be no reason not to return the property under Section 452 of the Code.

By setting aside the order dated 6/07/2023, the Revision Application is allowed, as the applicant is already discharged from the accusations, with a finding about her having independent source of income.

(SMT. BHARATI DANGRE, J.)

Ashish