

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-34779-2022 (O&M)
Date of Decision:- 27.1.2023

Shweta Gupta

.... Petitioner

Versus

Union Territory, Chandigarh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Arshdeep Singh Bhullar, Advocate, for the petitioner.

Mr. Rajiv Anand, APP, U.T. Chandigarh.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 7.5.2022 (Annexure P-7) passed by Additional Sessions Judge, Chandigarh, vide which an application filed by the petitioner seeking release of certain articles i.e. cash, jewellery etc. which had been taken into possession by the police during course of investigation pertaining to case FIR No.5, dated 24.2.2016, Police Station Vigilance Chandigarh, under Sections 7, 8, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, has been declined.
2. A few facts necessary to notice for disposal of the instant petition are that the aforesaid FIR was lodged against Aman Singhal and Hanish Gupta (husband of the petitioner) with the allegations that the

petitioner's husband had demanded illegal gratification from the complainant. During the course of investigation of said case, the following articles were recovered from the house of accused Hanish Gupta (husband of the petitioner):

- "a) (INR) (Rs.1000x87=Rs.87,000/-
- b) (INR) (Rs.500x1078=Rs.5,39,000/-
- c) (INR) (Rs.100x81=Rs.8100/-

Total Cash = Rs.6,34,100/-

Out of this above noted amount, a sum of Rs.50,000/- was returned back to the applicant on humanitarian grounds for her personal use and the remaining amount of Rs.5,84,100/- is lying with the police officials of police Station Vigilance, Chandigarh.

- d) Gold/Diamond jeweller-04 gold/diamond rings weighing 33.740 grams.
- e) small items of silver total weighing 164.68 grams.
- f) silver items i.e. 05 small bricks, coins and utensils total weight 8.576 kgs.

Currency notes referred above have been got exchanged by the IO as per the order of the Court"

3. Upon recovery of the aforesaid valuables, petitioner's husband Hanish Gupta was also proceeded against with the allegation that he had amassed assets disproportionate to his known-sources of income. The entire matter was investigated by the police, but since sanction was not accorded by the competent authority for prosecuting

petitioner's husband, therefore, challan was presented only against co-accused i.e. Aman Singhal.

4. While State/investigating agency did not challenge the order vide which sanction for prosecuting Hanish Gupta had been declined by the competent authority, the complainant namely Satbir Sharma preferred Writ Petition in this Court i.e. CWP-2330-2021, so as to challenge the order vide which sanction had been declined. The said writ petition is still pending.
5. Learned counsel for the petitioner submits that the articles in question, as a matter of fact are part of Istri Dhan of the petitioner, but had been taken into possession by the police, during the course of investigation in case FIR No.5, dated 24.2.2016, Police Station Vigilance Chandigarh, lodged against husband of petitioner wherein the State has taken a final decision not to prosecute petitioner's husband inasmuch as after the sanction to prosecute petitioner's husband was declined, the State did not chose to challenge the said decision. It has thus been submitted that in these circumstances no useful purpose would be served by keeping the aforesaid articles in the *malkhana* particularly when the currency notes have also lost validity, on account of demonetization.
6. On the other hand, learned counsel representing respondent-U.T. Chandigarh, has opposed the petition and has submitted that since, the matter pertaining to grant of sanction to prosecute Hanish Gupta (husband of petitioner) is still under adjudication inasmuch as a writ petition has been filed in this Court by the complainant Satbir

Sharma, the articles taken into possession by the police during investigation ought not to be returned as the same constitute case property and in case the writ petition is accepted and sanction is accorded for prosecuting Hanish Gupta, the case of the prosecution will suffer for want of the aforesaid case property i.e. the valuables recovered from the house of petitioner's husband.

7. At this stage, learned counsel appearing on behalf of the petitioner has submitted that he has instructions from his client i.e. petitioner and her husband to the effect that in case the aforesaid articles are released to the petitioner, the petitioner or her husband would not dispute the factum of recovery of the same and also the quantity or quality of the articles recovered particularly as regards the purity of the gold, diamond and silver ornaments etc.
8. This Court has considered the rival submissions.
9. While, it is correct that husband of the petitioner was arrayed as an accused in FIR No.5, dated 24.2.2016, Police Station Vigilance Chandigarh, but having regard to the fact that the competent authority had declined to accord sanction for prosecuting petitioner's husband, he cannot be prosecuted as previous sanction of the competent authority is mandatory under Section 19 of Prevention of Corruption Act, 1988. As a matter of fact, the U.T. Chandigarh has not even chosen to challenge the said order declining sanction, passed by the competent authority. The FIR was registered way back in the year 2016. The articles recovered are in the nature of currency notes and some gold, diamond and silver jewellery as well as gold

and silver bricks, coins and utensils etc. Though, this Court is fully conscious of the fact that in a case pertaining to “disproportionate assets” the value of the valuables, recovered is the very foundation of such case, but having regard to the fact that learned counsel has today stated before this Court that he shall not dispute the quantity and quality of the articles recovered, this Court is of the opinion that there should not be any impediment in release of the aforesaid articles to the petitioner who is none else but wife of accused Hanish Gupta. The petition, as such, is accepted and impugned order dated 7.5.2022 (Annexure P-7) is hereby set aside and application i.e. Annexure P-5 filed on behalf of the petitioner is accepted.

10. Respondent No.2-The Director, Vigilance Department, Chandigarh, is directed to get the needful done for release of the aforesaid articles to the petitioner. However, the aforesaid articles shall be released pursuant to the petitioner as well as her husband furnishing an undertaking before the Special Judge, Chandigarh to the effect that the petitioner or her husband shall not dispute the factum of recovery of such articles or the quantity or quality of the articles recovered and being released, in case at a later stage the petitioner’s husband is sought to be prosecuted in respect of case FIR No.5, dated 24.2.2016, Police Station Vigilance Chandigarh. It shall be open to the petitioner and her husband to move an appropriate application before the Special Judge, concerned, for the purpose of furnishing such undertakings. As and when any such application is moved, the Special Judge, Chandigarh, shall do the needful at the earliest, subject to its convenience. Upon furnishing and acceptance of such

undertakings, the petitioner shall furnish a copy of such undertakings as well as the zimni order as may be recorded by learned Special Judge, concerned, regarding acceptance of the same to the office of respondent No.2 for the purpose of seeking release of the articles concerned.

11. Since, it has been informed that the currency notes which had been taken into possession have already lost their validity on account of demonetization and would not be accepted as a valid tender, therefore, it shall be open to the petitioner/her husband to move an appropriate application to Reserve Bank of India to get the said currency notes exchanged. Upon receipt of any such application, the Reserve Bank of India shall do the needful for exchange of old/invalid currency notes (Rs.5,84,100/-) exchanged in accordance with notification dated 12.5.2017 or any other rules as applicable. The petition stands accepted accordingly.

27.1.2023
Mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No