



PMB

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

WRIT PETITION NO.5131 OF 2019

1. GITANJALI RAVIKANT SHARMA
2. RAVIKANT SHARMA ..PETITIONERS
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO.4560 OF 2023
IN
WRIT PETITION NO.5131 OF 2019**

DIRECTORATE OF ENFORCEMENT ..APPLICANT

IN THE MATTER OF

1. GITANJALI RAVIKANT SHARMA
2. RAVIKANT SHARMA ..PETITIONERS
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Siddhesh Bhole a/w Adv. Nikhil Ghate a/w Adv. Kartik Pillay for the petitioners.

Adv. Shreeram Shirsat, SPP a/w Adv. Tanvi Mate a/w Adv. Shekhar V. Mane for intervener-ED.

Mr. S. H. Yadav, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : MARCH 20, 2024

P.C. :

1. Heard Mr. Bhole, learned counsel for the petitioners,
Mr. S. H. Yadav, learned APP for the State and Mr. Shirsat,

learned counsel for the intervener-Directorate of Enforcement (hereafter "ED", for short).

2. I am not referring to the facts and submissions of learned counsel in detail considering the order that I propose to pass. An application was made by the petitioners before the trial Court for return of the property viz. gold ornaments. The trial Court, on an objection raised by the ED through a communication addressed to the Court, vide the impugned order dated 16.05.2019 rejected the application.

3. It is the submission of learned counsel for the petitioners that in respect of an offence registered by the Anti Corruption Bureau (hereafter "ACB", for short) which was thoroughly investigated by the ACB, so far as the property of which the return is sought, the ED has no locus to oppose the application. It is submitted that ED has not proceeded against the said property in accordance with the provisions of law and hence such objection is not tenable. It is submitted that the intervention application filed by the ED in this petition is also not maintainable.

4. A reading of paragraph 8 of the impugned order passed by the trial Court indicates that on the basis of the communication dated 04.04.2019 of the ED which was also separately investigating the source of income of the accused, the trial Court formed an opinion that it will not be appropriate to release the above mentioned property of the applicants.

5. The ED has by filing the intervention application in the present proceedings raised several contentions as to why the property should not be returned. Such contentions were not raised before the trial Court and it is only on the basis of the objection raised by the ED vide the aforesaid communication that the application for return of the property came to be rejected. In my opinion, it would be appropriate if the contentions raised before this Court for the first time by the ED are permitted to be raised before the trial Court in the first instance on the basis of which it would be appropriate for trial Court to decide the application for return of property. All contentions of learned counsel for the petitioners, the State and ED are kept open

to be decided by the trial Court. That the objection to the maintainability of the intervention at the behest of the ED is also kept open to be dealt with by the trial Court in accordance with law. Previously the matter was tried by Additional Sessions Judge-1, Raigad-Alibag. The trial is now pending before the District Judge-3, Raigad-Alibag. Mr. Shirsat, learned counsel for the intervener-ED submits that a detailed intervention application will be filed before the trial Court on behalf of ED in opposition to the application Exhibit-36 within a period of two weeks from the date when this order is placed for consideration of the trial Court. Either of the parties may produce the copy of this order before the trial Court on or before 27.03.2024. The trial Court is requested to decide the application Exhibit-36 afresh and preferably within a period of six weeks from the date of filing of the intervention application by the ED.

6. All contentions are kept open. I have not made any observations on merits of the rival contentions or maintainability of the intervention application. The impugned order is set aside.

- 7.** The writ petition is disposed of.
- 8.** The interim application is also disposed of.

(M. S. KARNIK, J.)