2024:BHC-AS:5341

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 188 OF 2023

RAKESH ROSHAN ..PETITIONER
VS.
THE STATE (A.C.B./C.B.I) AND ORS. ..RESPONDENTS

Adv. Prassanna Bhangale a/w Ms. Madhur Gadodia, Mr. Shashank Trivedi and Ms. Bhagyashree Shukla i/b Naik Naik and Company for the Petitioner.

Mr. H.S. Venegavkar for Respondent-CBI.

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

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 1, 2024

ORAL JUDGMENT:

1. Heard Shri Prassanna Bhangale learned counsel for the petitioner, Shri Venegavkar learned counsel for the respondent-CBI and learned APP for the State. Shri Venegavkar opposed the petition.

2. Respondent No.1 - Central Bureau of Investigation (CBI) had registered the FIR pursuant to a complaint filed by the petitioner on 19/08/2011 against respondent Nos. 3 and 4 for the offence punishable under Sections 420, 120(B) of the Indian Penal Code and Sections 7, 8 and 13(1) of the Prevention of Corruption Act, 1988.

3. Briefly stated, it is alleged that respondent Nos. 3 and 4 in connivance with each other cheated the petitioner and induced him to pay an amount of Rs.50,00,000/- under the pretext and malafide representation that the petitioner would be arrested in some frivolous case and that respondent No.3 is determined to issue an arrest warrant against the petitioner if the petitioner does not meet with their demands. Respondent No.3 represented himself as a top-ranking CBI officer from Delhi. The respondent No.4 represented himself as an agent of respondent No.3.

4. The petitioner challenges the order dated 14/12/2021 passed in M.A. 812 of 2020 in FIR No. 29 of 2011 by the Sessions Court, Mumbai. The Sessions Court rejected the application of the petitioner for the refund/return of property i.e. amount of Rs.20,00,000/-. The application was rejected as not maintainable on the ground that the petitioner without challenging the order dated 09/11/2012, after 10 years filed the application for return of amount. While rejecting the application, it is further observed that by the said application the petitioner wants to seek review of the earlier order dated 09/11/2012 which has attained finality.

5. A reference to the order dated 09/11/2012 is necessary. The petitioner prayed for return of the amount of Rs.50,00,000/-. For the reasons mentioned in the order dated 09/11/2012, the Sessions Court had allowed the application partly and an amount of Rs.30,00,000/- out of Rs.50,00,000/- was directed to be returned to the petitioner. The petitioner was directed to furnish an indemnity bond of Rs.50,00,000/- with one or more solvent sureties in the like amount inter-alia as and when directed by the Court. In default, to pay the penalty of the compensation as the Court may then determine. It is submitted that the condition of furnishing surety was later relaxed.

6. The following are the reasons mentioned in the order dated 09/11/2012 for which the application was partly allowed only to the extent of Rs.30,00,000/-:-

> "9. At this stage the scope of enquiry is limited. The intricate question of title to the property would not be gone into. Prima facie assessment is done and the main consideration while ordering return of property is that the person to whom it is returned should be in a position to produce it as and when necessary.

10. The copy of the FIR. explains in detail the kind of representations made to the applicant and how he yielded to the pursuation. It also shows how in order to save himself from embarrassment. The applicant handed over hard cash of Rs.50,00,000/- to the accused. The applicant was involved in litigation in India and abroad with the Shahs. He has described that he wanted to avoid further harassments. Whether he was justified in paying such a huge amount is a question which can be gone into later on. But one can understand that he had found himself in a vulnerable position.

11. The applicant is a film personality and in the argument before the Court and his ability to pay such a huge amount is not disputed. He is stated to be solvent enough for that matter The learned advocate further submitted that the applicant would without difficulty produce the amount whenever ordered by the Court. She also submitted that the Court may impose any condition to ensure safety of the money when returned to the applicant.

12. Though the accused Mr. Sharma claimed the property to be his own hard earned money no one appeared on his behalf. He has filed documents on record they comprise of income tax returns in his name for 2008-09 to 2010-11 and in the name of his wife Meenakshi for 2008-09 and 2009-10. The returns are accompanied by balance sheets which do not bear any authentication, neither signature or seal of the Chartered Accountant or any Authority.

13. In the return for 2008-09 the total income of the accused Mr. Sharma is shown at Rs.206,052/- in the next year it is shown at Rs.286,549/- and in-2010-11 it is shown at Rs.346,398/-. The income of his wife during 2008-09 is shown at Rs.51,62,49/- and in the next year at 671,592/-. Neither in the reply nor in the returns the nature of business conducted by the accused and his wife is disclosed.

> Nevertheless it becomes clear that their annual income till 2009-10, taken together was around Rs.9 to 10 lakhs.
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> 14. Though the accused Mr. Sharma has claimed the property to be his own, the co-accused Rajesh Ranjan has endorsed no objection for returning the property. In the above circumstances, mere claim of the accused is not sufficient prima facie there is no material to support his claim. When assets comprising of 22 immovable properties, gold weighing around 33 kgs and cash of around 2.94 crores is seized from the accused his mere claim that it belongs to him is not sufficient. The tax returns, against the above property appear to be of a very poor person. The claim of the accused should not be allowed to be use as a lever to force the complainant and a person aggrieved to settle the dispute out of Court. Therefore, I do not find any substance in the claim by the accused.
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> 15. In the sister application this Court has already directed return of part of the property including a cash of Rs.1 crore. In the circumstances, it would be just and proper to partly allow this application and order a return of Rs.30,00,000/- to the applicant. That can be subject to certain conditions."

7. It is true that the aforesaid order dated 09/11/2012 was not challenged immediately. By the application on which the impugned order dated 14/12/2021 came to be passed, the petitioner sought refund of the remaining amount of Rs.20,00,000/- which came to be rejected on the grounds aforementioned. The order dated 09/11/2012 is now challenged.

8. This Court vide order dated 25/09/2023 recorded that there is no requirement to issue fresh notice to respondent No.4 as he had not contested the application before the trial Court. So far as respondent No.3 is concerned, the office remark indicates that respondent No.3 is duly served.

9. In my opinion, the delay in challenging the order dated 09/11/2012 should not be a factor to deprive the petitioner of the relief of return of the balance amount of Rs.20,00,000/- as in any case the trial was pending. Moreover, from the reasons mentioned in the order dated 09/11/2012, it is seen that it was the stand of the respondent No.3 that the property seized by CBI was respondent No.3's own hard-earned money. Certain documents were filed by respondent No.3 to establish the claim. The trial Court recorded a finding that though respondent No.3 has claimed the property to be his own, the co-accused Rajesh Ranjan i.e respondent No.4 has endorsed no objection for returning the property. The trial Court further recorded that the mere claim of respondent No.3 that the property is his own is not sufficient, as *prima facie* there is no material to support this contention. After perusal of the documents produced by respondent No.3, the trial Court came to the conclusion that the claim of respondent No.3 should not be allowed to be used as a lever to force the complainant to settle the dispute out of Court.

10. Further, the trial Court in paragraph No.5 has taken into consideration the stand taken by the CBI in its reply that from the amount of Rs.50,00,000/- which was collected by respondent No.4 from the petitioner, he retained Rs.20,00,000/- and paid Rs.30,00,000/- to respondent No.3. When the respondent No.4 is not contesting the claim of the petitioner having endorsed his no objection for returning the property, there was no reason for the trial Court to have partly allowed the application. Having allowed the application to the extent of Rs.30,00,000/-, which amount of Rs.30,00,000/- was the subject matter of contest, there was no reason to deprive the claim of the petitioner to return of Rs.20,00,000/- over which there was no contest. In fact, the respondent No.4 had endorsed his no objection for returning this amount.

11. Though Shri Venegavkar argued in support of the impugned order, however, taking an overall view of the matter, in my opinion, even the balance amount of Rs.20,00,000/- can be returned to the petitioner on certain terms and conditions.

12. In this view of the matter, the impugned order dated 09/11/2012 is set aside to the extent that the claim of return of the amount of Rs.20,00,000/- has been refused. Accordingly, the present petition is allowed. The amount of Rs.20,00,000/- be returned to the petitioner.

13. The petitioner shall furnish an indemnity bond for Rs.20,00,000/- with one or more solvent sureties in the like amount inter-alia undertaking to produce the same as and when directed by the Court. In default, to pay the penalty or the compensation as the Court may then determine.

14. The writ petition stands disposed of in the above terms.

(M. S. KARNIK, J.)