

(2024) 04 KL CK 0132

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition Nos.523, 550 Of 2020 & 9082 Of 2023

Sajitha V.P

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 12-04-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 451

Prevention of Corruption Act, 1988 — Section 13(1)(b), 13(1)(e), 13(2), 18A

Citation : (2024) 04 KL CK 0132

Hon'ble Judges : K.Babu, J.

Bench : Single Bench

Advocate : K.Anand, Benny Antony Parel, T.M.Muhamed Hafees, A Rajesh

Final Decision : Dismissed

Judgement

K.Babu, J.

1. The petitioners are claim petitioners in V.C.No.01/2019/SCE on the file of Court of the Enquiry Commissioner and Special Judge, Thrissur. One Shri Hamza, a former Deputy Superintendent of Police is the accused in the above case. On 09.07.2019, the Vigilance registered FIR alleging offences punishable under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 13(2) r/w 13(1)(b) of Prevention of Corruption (Amendment) Act, 2018. On 11.07.2019, the Investigating Officer searched the residence of the accused after obtaining search warrant from the Special Court. 60 articles were seized from the residence of Shri. Hamza. The investigating agency also seized Rs.9.65,365/- in hard currency and 188.4 gms of gold ornaments.

2. The petitioner in CrI.M.C. No.550 of 2020 is the wife of Shri. Hamza, the accused. The petitioner in CrI.M.C. No.523 of 2020 is his son. The petitioner in CrI.M.C.No.9082 of 2023 is a close relative of the accused.

Pleadings

Crl.M.C.550/2023

3. The petitioner is the wife of the accused. Their son Mohammed Raoof is a medical student. In order to meet the educational expenses of their son, the petitioner entered into an agreement to sell a landed property belonged to her to one Shri. Rafi. As per the agreement for sale, Shri. Rafi had given Rs.5,00,000/- towards advance sale consideration on 02.09.2018. On 09.05.2019, he gave her Rs.3,00,000/- towards advance. On the request of the petitioner, Rafi gave an amount of Rs.2,00,000/- as advance sale consideration on 10.07.2019. Out of this amount, a sum of Rs.2,70,000/- was seized by the Investigating Officer from her residence. The Investigating agency also seized gold ornaments that belonged to the petitioner. She is entitled to the custody of the money and gold ornaments.

Crl.M.C.No.523 of 2020

4. The petitioner is the son of the accused. He is studying for MBBS course in Osh State University, Kyrgyzstan. The Vigilance seized a sum of Rs.2,00,000/- given to the petitioner by the brother of his father Shri. Muhammedali to meet his educational expenses. Sakeena W/o Shri. Muhammedali had obtained a loan for an amount of Rs.3,00,000/- from the Kerala State Backward Class Development Corporation Ltd and it was out of that amount availed by way of loan, the sum of Rs.2,00,000/- was given to the petitioner by Muhammedali. Another sum of Rs.1,00,000/- given by Smt. Sayeedha, the sister of his mother was also seized by the investigating agency from his residence. The petitioner seeks the interim custody of Rs.3,00,000/-.

Crl.M.C.No.9082 of 2023

5. The petitioner was residing in a rented house. Her son is studying for MBBS Course. On 09.06.2019, the petitioner had to unexpectedly rush to Tamil Nadu in connection with the marriage of her sister's son. Due to lack of security, she had entrusted Rs.3,50,000/- and 10 sovereigns of gold ornaments at the residence of the accused. She is the absolute owner of those properties. The Vigilance recovered the money and gold ornaments in a search conducted at the residence of the accused. She is entitled to the interim custody of the properties.

Counter

Crl.M.C.550/2023

6. The petitioner, the wife of the accused, has been residing with him and their children at House No.36/87(2a), Thumbilimedu, Palakkad. When the search team arrived at the residence of the accused, the petitioner and other members of the family, except her husband, were present. The petitioner has given a wrong address in the affidavit sworn to by her. The gold ornaments noted as items 1 to 9 in the search list were returned to the petitioner on proper acknowledgment on the date of search itself. The contention of the petitioner that one Shri. Rafi gave a sum of Rs.2,00,000/- under a sale agreement in respect of a landed property is

false. The case of the petitioner is that on the day immediately prior to the search, she had entered into an agreement for sale is false. The petitioner is not cooperating with the investigating team. The accused, during the search, had raised a claim that the properties including the private car, Indian currency and gold ornaments belonged to his relatives and friends.

Crl M.C.No.523 of 2020

7. The claim of the petitioner that a sum of Rs.3,00,000/- recovered from the residence of the accused belonged to her and the same was gifted by his relatives to meet his educational expenses is false. The investigating agency verified the bank account statements and found no material to support the case of the petitioner. The claim of the petitioner is false.

Crl.M.C.No.9082/2023

8. According to the petitioner, 10 sovereigns of gold ornaments and a sum of Rs.3,50,000/- recovered from the residence of the accused belong to her. Her claim is that she sold her landed property and invested some amount in a co-operative bank and withdrew the fixed deposit in February, 2019. Her further claim is that she entrusted a sum of Rs.3,50,000/- including the amount withdrawn from the fixed deposit account and 10 sovereigns of gold ornaments with Shri. Muhammed Raoof, the son of the accused, for safe custody on 09.06.2019. This contention cannot be accepted at any rate as she had kept the money and gold ornaments with her right from February 2019. The petitioner has also failed to establish any material to prove the ownership of the gold ornaments. The 'estimates' produced by her purportedly issued from the Josco Jewellery and Akshaya Jewellery do not match with the gold ornaments seized from the house of the accused.

9. The properties recovered from the residence of the accused are liable to be proceeded against and prosecuted under the provisions of the Criminal Law Amendment Ordinance 1944 as provided in Section 18A of the PC Act.

10. After appreciating the rival contentions, the Special Court rejected the applications filed by the petitioners essentially on the following grounds:-

(a)The petitioner failed to prima facie establish that the properties seized from the residence of the accused belonged to them.

(b)The properties are laible to be prosecuted against as provided in Section 18A of the PC Act.

11. In the search conducted at the residence of the accused, the Investigating Agency seized Rs.9,65,365/- in hard currency and 188.4gms of gold ornaments. All the gold ornaments seized were returned to Sajitha, the petitioner in Crl.M.C.No.550 of 2020.

12. The seized Indian Currency worth Rs.9,65,330/-was recovered from various places and from separate bags and covers kept in the bed room of the accused,

the details of which are given below:-

Sl	Places	where	the	amount	was	recovered
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No

1	Travel bag	Recovered	from	a	travel bag	which was Rs.5000.00
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kept in the bed room

2	Travel bag	Recovered	from	a	brown cover	kept in a Rs.24,000.00
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travel bag

3	Wooden	Recovered	from	a	purse	kept in a wooden Rs.9,330.00
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Cupboard cupboard

4	Suitcase	Recovered	from	a	black bag	kept in suit Rs.27,000.00
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which was case

hidden inside

a closet under

the wooden

cot

5	do	Recovered	from	the	suitcase	which was Rs.2,00,000.00
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covered with old newspaper

6.	Do	Recovered	from	a	cover with printed	Rs.50,000.00
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letters such as "Hotel Gopalapuram

International"

7	Do	Recovered	from	an	envelope having letters	Rs.1,00,000.00
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namely "Methil Vijayan"

8	Do	Recovered	from	another	brwon envelope	Rs.2,00,000.00
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9	Do	Recovered	from	a	brown envelope having	Rs.2,00,000.00
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letters namely "Cheif Minister"

10	Do	Recovered	from	a	small brown envelope	Rs.50,000.00
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11 Do Recovered from another envelope having Rs.2,00,000.00
letters namely "Krishnankutty"

TOTAL Rs.9,65,330.00

13. The case of the petitioner in CrI.M.C.No. 550 of 2020 is that she had received a sum of Rs.3,00,000/- under an agreement for sale in respect of a property from one Shri. Rafi for meeting the expenses of the education of her son. It is strange to note that the sale agreement stated to have been executed by her was on 10.07.2019, the day immediately prior to the search. The investigating agency pleaded that she is not cooperating with the investigation. She could not be questioned so far. There are no convincing material to show that the petitioner had received money as per the agreement for sale.

14. The case of the petitioner in CrI.M.C.No.523 of 2020 that she had received a sum of Rs.3,00,000/- from her relatives to meet educational expenses is also not substantiated by any convincing materials. The plea raised by the petitioner in CrI.M.C.No.9082 of 2023 that she had kept the money and gold ornaments at the residence of the accused for keeping it in safe custody is not prima facie believable. It is pertinent to note that she had been keeping this amount right from February, 2019 whereas the alleged search occurred on 11.07.2019. It is the case of the petitioner that she entrusted the money and gold ornaments at the residence of the accused immediately prior to the search as she had to attend a marriage in Tamil Nadu. The major portion of the cash was recovered from suit cases and bags hidden inside a closet under a wooden cot. This itself indicates that prima facie the money does not belong to the petitioners herein and it is the proceeds of the crime. The major contention of the prosecution is that the attempt of the petitioners is to torpedo the investigation. The prosecution could prima facie establish that the valuables seized from the possession of the accused are the proceeds of the crime. As per Section 18A of the PC Act, the provisions of Criminal Law Amendment Ordinance, 1944 which deal with attachment and confiscation of money or other valuable property by means of an offence under the PC Act are applicable. Section 451 of the Cr.P.C. enables the Courts to pass orders for the interim custody and disposal of the property during the enquiry or trial essentially to see that the owner of the article would not suffer because of its remaining unused or by its misappropriation. The Indian currency notes recovered from the possession of the accused have been remitted in the Government Treasury. There is no question of any prejudice to be caused to the petitioners.

15. The petitioners would not suffer any prejudice as the currency notes have been deposited in the Government Treasury. The case of the prosecution that the properties seized are liable to be proceeded under the Criminal Law Amendment Ordinance 1944 r/w Section 18A of PC Act.

16. It is important to note that the accused had earlier filed CrI.M.C.No.5275 of 2019 before this Court challenging the credibility of the investigation which this

Court dismissed holding that there is nothing apparent to indicate that the Investigation is anyway affected with any malafides. It is also pertinent to note that the petitioner in Crl.M.C.No.550 of 2020 and three others had filed W.P. (C) No.27177 of 2019 before this Court seeking a direction to ascertain whether the properties belong to her which was also dismissed by this Court as per judgment dated 08.07.2021.

17. The learned Counsel for the petitioners Shri. Anand relied on Suresh Serve V. v. State of Kerala [2020 (3) KHC 41] and Sunderbhai Ambalal Desai v. State of Gujarat [(2002) 10 SCC 283] to substantiate his contentions.

18. In Sunderbhai Ambalal Desai (Supra), the Supreme Court directed the disposal of the properties in case where the material on record indicates that the articles including currency belong to the claim petitioners or the complainant at whose house theft, recovery or dacoity has taken place be handed over to them. In Suresh Serve (Supra) a Division of Bench of this Court following Sunderbhai Ambalal Desai (Supra) held that currency notes could be returned to the claimants if they could establish a prima facie right to get them. The facts in the present case are distinguishable from the facts considered in Sunderbhai Ambalal Desai and Suresh Serve.

19. The Crl.M.C.s fail on the following grounds:-

(a)The prosecution could prima facie establish that the valuables were recovered from the possession of the accused.

(b)The prosecution could prima facie establish that the valuables are the proceeds of crime.

(c)The petitioners failed to establish that they have any right over the valuables seized from the possession of the accused.

(d)Prosecution could further prima facie establish that the petitioners who are the close relatives of the accused are trying to torpedo the investigation with intent to save the accused.

The Crl.M.Cs stand dismissed.