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Court : Chennai

Decided On : Feb-03-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : Crl. RC .No.181 of 2016

Appellant : Dr. P. Vijayan and Another

Respondent : State Represented by Dy. Superintendent of Police, SPE:CBI:ACB

Judgement :

(This Criminal Revision Petitioner is preferred under Sections 397 and 401 of Criminal Procedure Code against the order of dismissal of petition for return of jewels which was seized by the respondent on 12.1.2011 at the petitioners house on 28.1.2016 in Crl.M.P.No.309 of 2016 in C.C.No.19 of 2014 on the file of III Additional Special Judge for CBI Cases, XIII Additional City Civil Court, Chennai.)

1. The spouses, who are being prosecuted in a disproportionate wealth case in C.C.No.19 of 2014 before the learned XIII Additional Special Judge, (CBI cases), City Civil Civil Court, Chennai, aggrieved by the dismissal of their Crl.M.P.No.309 of 2016 filed under Section 451 Cr.P.C. for interim custody of certain properties have directed this Criminal Revision.

2. In the course of investigation, prosecution had seized certain items of jewelleries from the lockers of the accused persons. They are now in the custody of the Court. In the calendar case P.W.1 has been examined. He is to be cross-examined by the petitioners.

3. Earlier, on the eve of marriage of their first daughter, petitioners have got interim custody of the said items for six weeks pursuant to the orders of this Court passed in CrI.R.C.No.313 of 2011 on 02.03.2011, wherein this Court has imposed several conditions and the jewels were returned back to the Court. Now, the marriage of their second daughter is to take place on 10.02.2016.

4. In the circumstances, petitioners have filed CrI.M.P.No.309 of 2016 for interim custody of the jewels in connection with the marriage of their second daughter for a limited period on humanitarian ground.

5. The details of the jewelleries as mentioned in the petition runs as under:-

GOLD ITEMS IN LOCKER NO.842 IN THE JOINT NAME OF SMT.ANITHA VIJAYAN and DR.P.VIJAYAN IN ICICI BANK, BESANT NAGAR BRANCH, CHENNAI:-

Sl.No.	Description of items	Gross Weight (gms)	Net	Year	Value (Rs.)
1.	1 golden hip jewel Ottiyanam with chain hangings (engraved with Dasavatharam) (approx Rs.575 per gm)	242.000	222.0	2002	1,27,650/-

2.	1 golden hip jewel Ottiyanam with chain hangings (engraved with Ashtalakshmi) (approx Rs.625 per gm)	242.800	222.0	2004	1,38,750/-
3.	1 set of golden haram with double strip (approx Rs.650 per gm)	250.500	225.0	2005	1,46,250/-
4.	1 pair of golden ear stud	23.800	23.0	2005	14,950/-
5.	1 golden necklace	43.650	39.8	2005	25,870/-
6.	1 golden flat necklace (satha attigai)	113.200	103.0	2005	66,950/-
7.	1 golden forehead jewel (nethichutti)	12.150	11.0	2005	7,150/-
8.	1 golden kaasu maala (approx Rs.275 per gm)	80.150	72.0	1998	19,800/-
9.	2 numbers of golden haram (1 big and 1 small)	382.450	350.0	2005	2,27,500/-

10.	1 pair of golden ear studs	24.000	22.0	2005	14,300/-
11.	2 ruby golden necklaceS (1 big and 1 small)	134.450	100.0	1995	40,000/-
14.	1 gold square coin	10.000	10.000	2005	6,500/-
15.	2 long chains with stone dolors	89.3000	70.000	1995	28,000/-
16.	1 no. 2 stripped golden haram with enamel	51.250	46.000	1995	1,84,000/-
17.	1 golden necklace (attigai)	54.500	49.000	1995	19,600/-
18.	1 gold long chain with blue stone dolor	36.900	30.000	1980	5,400/-
19.	1 gold long chain with double strip	66.600	60.000	1995	24,000/-
	Total	1134.95	1004.000		6,47,850/-

6. The petition was dismissed by the Trial Court since the jewels comes under the check period and relates to the alleged acquisition. The learned Judge distinguished the earlier order passed by this Court in CrI.R.C.No.313 of 2011 by referring to the stage of the case then and now.

7. As stated, at the out set, aggrieved, the spouses are before us also on humanitarian ground.

8. The learned Senior Counsel for the petitioners would renew the request on humanitarian ground. He would submit that only for a limited period of 12 days the jewels are needed for the purpose of marriage of their 2nd daughter and well within the time, as may be granted by this Court, they will be duly returned to the Court.

9. C.B.I. filed counter. The learned Special Public Prosecutor, CBI reiterated the very same contentions which were placed before the Trial Court.

10. The learned Special Public Prosecutor also submitted that as the jewels are coming within the check period and ultimately if any adverse order is passed by the Trial Court, they are liable to be confiscated, thus, there is apprehension that either they may not be returned to the Court custody or they may be returned with some changes to suit the defence convenience, more specifically, change the composition of the metals content, description, weight etc.

11. In reply, the learned Senior Counsel would submit that the jewelleries will be returned to the Court in the condition in which they were handed over to them.

12. I have considered the rival submissions, perused the affidavit of the petitioners, counter of the C.B.I, the impugned order, the earlier order dated 2.3.2011 and the other materials on record.

13. Several items of gold jewelleries are locked up in a Bank locker under the orders of the Trial Court in connection with the present case. Those items are anxiously awaiting the verdict of the Trial Court as to their genesis, in other words, acquisition, which is to be decided by the Trial Court in the disproportionate wealth case.

14. Now, in the petition filed under Section 451 Cr.P.C for interim custody has been asked for on humanitarian ground. In the facts and circumstances, stage of the case it is not necessary to go into the merits aspects relating to acquisition aspects of those jewels, when especially trial is pending.

15. Earlier, for an happy occasion, namely, the marriage of their first daughter, the very same petitioners have approached this Court in Crl.R.C.No.313 of 2011. My

esteemed brother Hon'ble Mr.Justice K.N.Basha, now, Hon'ble Chairman,Intellectual Property Appellate Board, Chennai passed orders on 02.03.2011, wherein, the learned Judge had referred to the oft quoted judgment of the Hon'ble Apex Court in Sunderbhai Ambalal Desai case {2003 SCC (Cr.) 1943} and ordered as under:-

1. The respondent police herein is hereby directed to return the keys of the two lockers, viz., locker Nos.80 and 842 respectively, to the petitioner for the purpose of taking the following jeweleries to perform the petitioner's daughter's marriage as per the list furnished in the proceedings of Joint Inspection of Locker Nos.80 and 842 at ICICI Bank, Besant Nagar Branch, Chennai, dated 14.01.2011 [The items of jewels are listed out].

2. The keys should be handed over to the petitioner in the presence of the ICICI Bank Branch Manager, Besant Nagar Branch, Chennai and the respondent police.

3. The respondent police shall take the photographs of the respective jeweleries and the cost of engaging a photographer and taking photographs shall be borne by the petitioner herein.

4. The petitioner shall execute a personal bond for a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) to the satisfaction of the learned Principal Special Judge for CBI Cases, Chennai and the petitioner need not furnish any immovable property security.

5. The Petitioner shall file an undertaking before the learned Principal Special Judge for CBI Cases, Chennai to return the said jeweleries and the locker keys of the 2 lockers bearing nos.80 and 842 respectively kept in the ICICI Bank, Besant Nagar Branch, Chennai, within a period of six weeks from the date of receipt of the locker keys and the jeweleries.

16. The contention of the prosecution is that earlier when order was passed in CrI.R.C.313 of 2011, investigation was pending, now, the case is at the trial stage, would not make any difference because earlier interim custody was sought on

humanitarian ground and now also it is sought on similar ground.

17. But, the most pivotal point is if interim custody of the jewels is given, their safe return to the Court without any change in its composition as to metals content, description, weight. To which, the learned Senior Counsel at the bar made a solemn statement and assured that as it was done earlier with reference to orders of the Court in Crl.R.C.No.313 of 2011, the jewels will be returned as it is and the petitioners will not stoop to any maneuvering and undertaking also will be given. The learned Senior Counsel would also submit that their conduct with reference to the earlier order of this Court in the said Crl.R.C. also would vouchsafe their conduct and behaviour in complying their undertaking to the Court.

18. Considering all the above aspects, I am inclined to grant them interim custody of the jewels on the following terms and conditions:

(1) The respondent police is directed to obtain from the Court concerned the locker key of Locker No.842 in the joint name of petitioners and the jewels as described in para-5 of this order shall be taken out from the said locker in ICICI Bank, Besant Nagar Branch, Chennai;

(2) An approved appraiser shall appraise the quality of the jewels and weigh them in the presence of the petitioners, Investigation Officer and the Bank Manager and their details shall be recorded and signed by all and the same shall be submitted to the Trial Court forthwith;

(3) Thereafter the respondent police shall take photographs of the said jeweleries;

(4) Thereafter the said jewelleries shall be handed over to the petitioners in the presence of the Manager, ICICI Bank, Besant Nagar Branch, Chennai and the respondent police; (5) The petitioners shall execute personal bonds for Rs.5,00,000/- (Rupees Five Lakhs Only) each to the satisfaction of the Trial Court and they need not furnish any immovable property security;

(6) The Petitioners shall file joint undertaking before the Trial Court to return all the jeweleries within 12 days from the date of their receiving the jewels;

(7) In the presence of the Bank Manager, the respondent police and the petitioners the returned jewelleries should be verified and again kept in the said Bank locker and locker key shall be handed over to the Trial Court along with a Report;

(8) The Appraiser's Fee and the Photographer's Fee shall be borne by the petitioners;

(9) The respondent police shall handover the jewelleries on or before 8.2.2016. 19. Accordingly this Criminal Revision is disposed of.

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