**Asha Bhatnagar Vs. Cbi**

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**SooperKanoon Citation** : sooperkanoon.com/955155

**Court** : Delhi

**Decided On :** Mar-19-2013

**Judge** : Sunil Gaur

**Appellant** : Asha Bhatnagar

**Respondent** : Cbi

**Advocate for Pet/Ap.** : Mr. Narender Mann, Mr. Mr. Manoj Pant, Mr. S.K.Bahadur, Mr. Narender Mann, Mr. Manoj Pant

**Judgement** :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on: March 06, 2013 Pronounced on: March 19, 2013 + CRL.M.C. 3897/2011, Crl.M.A.Nos. 18362/2011, 31/2012 & 13165/2012 S K BAHADUR ..... Petitioner Through: Petitioner in person versus CBI ..... Respondent Through: + Mr. Narender Mann, Special Public Prosecutor with Mr. Mr. Manoj Pant, Advocate CRL.M.C. 4060/2011 ASHA BHATNAGAR Through: ..... Petitioner Mr. S.K.Bahadur (husband of petitioner) versus CBI ..... Respondent Through: Mr. Narender Mann, Special Public Prosecutor with Mr. Manoj Pant, Advocate CORAM: HON'BLE MR. JUSTICE SUNIL GAUR JUDGMENT 1 In the above captioned first petition, challenge is to impugned order of 8th September, 2011 (Annexure P-2) declining alteration of charge in a disproportionate assets case against petitioner- S. K. Bahadur, whereas in the above captioned second petition, his wife is seeking release of her seized cash, jewellery, etc. i.e. items in Group II and III as detailed in paragraph No.9 of Judgment dated 31st January, 2011 (Annexure P-1)

rendered by a Division Bench of this Court in petitioner-S.K.Bahadur's Income Tax matter.

2. At the hearing, petitioner- S. K. Bahadur had appeared in person on behalf of himself and his wife in the above captioned petitions and while tendering written submissions had requested this Court to decide these petitions on the basis of written submissions. On behalf of respondent also written submissions were tendered and in the brief oral submissions, it was urged by learned Special Public Prosecutor for respondent-CBI that impugned order does not suffer from any infirmity and so, these petitions ought to be dismissed.

3. Upon perusal of the written submissions placed on record and the decisions relied upon, I find that the impugned order briefly takes note of the factual background of this case which need not be reproduced herein. While noticing the decisions relied upon by both the sides and the submissions advanced as reiterated in the written arguments submitted herein, trial court has aptly dwelt upon it in impugned order in these words:

"8. The aforesaid items mentioned in Group I were not challenged before Hon'ble High Court as mentioned in para 12 of the said judgment. Notwithstanding the said fact, as far as this Court is concerned, the aforesaid judgment of Hon'ble Delhi High Court pertaining to items of Group II & III mentioned above is binding.

29. It is admitted on both counts that as per the aforesaid charge framed against the accused under Section 5(1)(e) r/w 5(2) of P.C. Act, 1947, during the course of the present trial accused would get an opportunity to offer satisfactory explanation for possession of disproportionate assets including these items mentioned in Group II and III above.

30. In view of the aforesaid facts and circumstances of the present case, there is no need to alter charge and I am not willing to exercise my power under Section 216 Cr PC, 1973. Needless to mention that accused would at liberty to rely upon the aforesaid judgment during the course of evidence to explain the disproportionate assets in his possession and effect thereof would be considered at the time of final arguments."

4. Pertinently, petitioner- Asha Bhatnagar has not sought release of her seized cash and jewellery from the trial court, which she ought to have done. In any case, it needs to be noted that the charge-sheet in this case was filed way back in the year 1986. However, the charge was framed by trial court only in the year 2005. Relevantly, application to alter the charge framed was filed by petitioner- S. K. Bahadur in February, 2011 after the decision (Annexure P-1) was rendered in Income Tax proceedings. As there are no interim orders in these petitions, so recording of evidence by the trial court is in progress and it transpires from written submissions of respondent that till February, 2013 deposition of 35 witnesses has been already recorded.

5. In the aforesaid view of this matter, this Court is not inclined to invoke its inherent jurisdiction to implicitly rely upon the judgment (Annexure P-1) to quash the criminal proceedings amidst trial, especially when the trial is at fairly advanced stage. It would be indeed premature for this Court to consider the probative value of the Judgment (Annexure P-1) at this stage of the trial and so, without considering the relevance and applicability of the decisions in State of Andhra Pradesh v. Commercial Tax Officer & Anr. 1988 (68) STC 177.Haripada Dey v. The State of West Bengal & Anr. (1956) 1SCR639; Sree Meenakshi Mills Ltd., Madurai v. Commissioner of Income Tax, Madras AIR 195.SC 49.East India Commercial Co. Ltd., Calcutta v. Collector of Customs, Calcutta 1983 E.L.T1342(S.C.); RBF Rig Corporation, Mumbai v. Commissioner of Customs (Imports), Mumbai (2011)3SCC573; S. Nagaraj & Ors. v. State of Karnataka & Anr. 1993 Supp(4) SCC 595.Daryao & Ors. v. State of UP & Ors. AIR 196.SC1457; Commissioner of Income Tax v. S. Murugappa Chettiar (1992) 197 ITR 575.Traders & Traders & Ors. v. Ramnarayan Bhattad 1995 Supp(2) SCC661; Commissioner of Income Tax v. M/s. Sun Engineering Works P. Ltd AIR 199.SC 43.State v. Gian Chand Jain & Ors. 2010 III AD (Delhi) 559; Gulab Chand Sharma v. Sh. H.P. Sharma etc. ILR(1974)I Delhi 190; Naresh Shridhar Mirajkar & Ors. v. State of Maharashtra & Anr. (1996)3SCR744; Kishan Singh v. Gurpal Singh & Ors. 2010(8)SCC775; State of NCT of Delhi v. Ajay Kumar Tyagi 2012(8)SCALE424; Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr. 2005SCC(Cri.)1101; M.S. Sheriff v. State of Madras AIR 195.SC 39.and K.G. Premshanker v. Inspector of Police & Anr. (2002)8SCC87, it is left open for the

trial court to consider it at the final stage. Such a course is being adopted because the alternate argument taken by petitioner- S. K. Bahadur in Income Tax proceedings was that since criminal case is pending under the Prevention of Corruption Act, 1988, Income Tax Authorities had no jurisdiction to pass assessment orders.

6. It appears that the seized cash and jewellery etc. of petitioner- Asha Bhatnagar is the case property of the criminal case of disproportionate assets against petitioner- S. K. Bahadur and so instead of considering release of seized jewellery of petitioner- Asha Bhatnagar to her on superdari, it is deemed appropriate to direct expeditious conclusion of the trial, which is pending since the year 1999. Incidentally, impugned order notes that this is the oldest case pending for trial.

7. Infact, in the garb of seeking alteration of charge, petitioner- S. K. Bahadur in effect seeks his discharge in this criminal case which is now at fairly advanced stage of trial. It would be indeed inappropriate for this Court to prejudge the probative value of Judgment (Annexure P-1) to stifle the trial of this case which is at fairly advanced stage.

8. In light of the aforesaid, finding no palpable error in the impugned order (Annexure P-2) and no justification to order release of seized cash and jewellery of petitioner- Asha Bhatnagar at this stage of trial, both these petitions are disposed of while leaving it to the trial court to give due weightage to Judgment (Annexure P-1) relied upon by petitioner. Trial court shall make all the endeavours to expedite the trial of this old case and to conclude it within this calendar year.

9. With the aforesaid directions, these two petitions and the pending applications stand disposed of. (SUNIL GAUR) JUDGE MARCH 19 2013 S