

Telangana High Court

Vaidya Aditya vs The State Acb on 17 March, 2021

Bench: G Sri Devi

THE HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL No. 544 of 2020

JUDGMENT :

This Criminal Appeal is filed by the appellant, under Section 11 of the Criminal Law Amendment Ordinance 1944, being aggrieved by the order of interim attachment of his properties, dated 04.01.2020, passed by the I-Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad, in Crl.M.P.No.20 of 2020 arising out of Cr.No.25/RCA-CR-2/2018 of ACB, City Range - 2, Hyderabad. The said Crime is registered against V.Vara Prasad, the then Additional District Judge, who is the father of the appellant.

During the course of investigation, the respondent herein filed Crl.M.P.No.20 of 2020 seeking ad-interim order attaching movable and immovable properties of the Accused Officer and his family members as per Annexure-I to V of G.O.Ms.No.21, dated 10.04.2019 of Law (LA&J, Spl.B) Department, T.S., Hyderabad. By an order, dated 04.01.2020, the learned I-Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad, while issuing notice to the Accused Officer, his wife and brother, ordered issuance of ad-interim attachment of the property in Annexure I to V appended to G.O.Ms.No.21, Law (LA&J, Spl.B) Department, dated 10.04.2019.

It is the submission of the appellant that when the property of the appellant was attached, the appellant moved an application before the Special Judge claiming that the said property belongs to him and his father/Accused Officer has not contributed any part of consideration while purchasing the said property, but however, the Special Judge orally observed that such claim will be considered during the course of trial. As such, he filed the present appeal to set aside the impugned order in respect of attachment of his properties mentioned in Annexure-III of G.O.Ms.No.21, dated 10.04.2019.

In the grounds of appeal, the appellant contends that there is documentary evidence in the shape of bank accounts to show that he has contributed the entire consideration for the acquisition of the property. It is submitted that the appellant is an earning member, working in USA and while studying abroad, he was remitting his salary income to his Bank Account in USA from which it was transferred to his Bank Account in India, and from that account only the consideration is paid to the vendor.

It is further submitted that when the father of the appellant (Accused Officer) applied for permission for acquisition of the property by his son, the Additional Special Judge replied that because the appellant is not dependent on the accused, no such permission is necessary for purchase of the property. It is, therefore, submitted that the Special Judge, without applying his mind to the material on record, simply refused to exercise his jurisdiction to adjudicate upon the claim of the appellant and committed irregularity. To substantiate such contention, the learned Counsel for the

appellant placed reliance on the judgement of this Court in K. Somasekhara Reddy & others vs. The State represented by its SHO, Inspector of Police, Kadapa.

The learned Special Public Prosecutor for ACB, while supporting the orders of the Special Judge, strenuously contended that all the documents produced by the appellant to show that the consideration was paid by him and that accused has not contributed anything for acquisition of property, have to be considered at the time of trial of the case on the charge of his possessing assets disproportionate to his known sources of income. He argued that without evidence relating to documents, it is not desirable to lift the interim attachment order on the property and hence he urged to dismiss the appeal.

Having heard the arguments of both the learned Counsel, I have considered the documents filed along with the appeal. The facts of the case appearing from the arguments and the documents are required to be referred for appreciation of the case of both sides.

The facts of the case are that, respondent officials registered a case in Cr.No.25/RCA-CR-2/2018 of ACB, City Range-2, against 2015 (3) ALT (Cr) 32 father of the appellant herein by name V.Vara Prasad, the then Additional District Judge Under Sections 13 (1)(b) and Section 13 (2) of Prevention of Corruption Act, alleging that, he possessed 'disproportionate assets' worth of Rs.74,44,460/- and issued FIR dated 13.11.2018. Subsequently, the Director General, Anti Corruption Bureau of Telangana State submitted a proposal to the Government seeking authorisation to file an application before the I-Additional Special Judge, for SPE & ACB Cases, Hyderabad, in the above crime vide Letter in RC.No.122/RCA-CR.2/2018-S.2, dated 12.02.2019, for attachment of certain properties stood in the name of Vaidya Vara Prasad and his family members. Accordingly, the State Government issued G.O.Ms.No.21, Law (LA&J,Spl.B) Department, dated 10.04.2019 authorizing respondent herein to file the petition for attachment of properties of Vaidya Vara Prasad and his family members worth of Rs,1,28,56,042/- as described in Annexure - I to Annexure - V, under section 3 of Criminal Law Amendment Ordinance, 1944. Pursuant to the said G.O., the respondent filed petition in CrI.M.P.No.20 of 2020, under section 3 and 4 Criminal Law Amendment ordinance, 1944 before the I-Additional Special Judge for SPE & ACB Cases, Hyderabad (Document No.3). Accordingly, the learned I-Additional Special Judge for SPE&ACB Cases, Hyderabad passed orders of interim attachment, in respect of properties mentioned in Annexure - I to V appended to G.O.Ms.No.21 dated 10.04.2019.

The grievance of the appellant herein is that, his exclusive property i.e. Item No.1 and 2 of Annexure - III of the GO Ms. No. 21 referred supra, was brought under interim attachment. The grounds of appeal show the following:

(a) Appellant completed his Engineering Education, in Hyderabad. Later, he left for U.S.A. in August 2012 to study M.S. While he was a student, he was offered internship with his employer (Thomson Routers) and he was earning and sending money to his parents. Copy of employment letter, dated 01.05.2013 is filed, in proof of the same.

(b) Appellant, after completion of his M.S. education, in U.S.A., joined as Software Engineer (Oracle PL/SQL Developer), in 'Tech Leaders INC Company', situated at Plano, Texas, U.S.A. w.e.f 09.02.2015.

(c) The employer used to deposit pay/salary into his two bank accounts, in U.S.A. i.e. (i) Bank of America with Account bearing No.29013308100 (ii).DCU Bank (Digital Federal Credit Union), Marlborough, with Account No.18496935. These account particulars are made available.

(d) On 27-12-2013 appellant entered into an Agreement of Sale to purchase Flat No.B-608, Aditya Sunshine Apartments, Kondapur, Hyderabad, for a sale consideration of Rs.53 Lakhs. His grandfather Sri. Uma Shanker, who is a practicing Advocate paid Rs.3 Lakhs towards advance to the vendor in two instalments i.e.Rs.1,50,000/- each as indicated by Document No.10 and 11. Subsequently, appellant obtained the executed registered sale deed No.5942/2017, dated 08-06-2017 (Document No.14) by paying balance of Rs.50 Lakhs through 5 (Five) Cheques each worth of Rs.10 Lakhs (Cheques Number 464922, 464923, 464925, 464926, 464927 drawn on Canara Bank, Kundanbagh Branch, Hyderabad. It is the contention of the Appellant that, he used to send his savings from his DCU Bank Account, U.S.A., to his SB Account No.1179101024044 of Canara Bank, Kundanbagh, Hyderabad. To support this contention, the Appellant submitted his yearly earning statements and Bank Statements of DCU Bank, U.S.A. The said amount of Rs.50 Lakhs was debited from the Account of Appellant and Credited into the Account of his Vendor Sudershan. Both accounts statements are submitted, in proof of the same as Documents No.18 and 16.

(e) Appellant submits that, he purchased Flat No.B-608, Aditya Sunshine Apartments, Kondapur, with his own funds. He also availed hand loan from his sister's husband Ravishankar Siddapuram, family friend Sri. D. Raj Kumar through account transfers. He repaid the said hand loan of D. Raj Kumar and part of hand loan to his brother-in-law Ravi Shankar Siddapuram through account transfers much prior to registration of the case against his father. The said transactions are reflected in Canara Bank Statement of Appellant (Document No.18) and Bank Statements of Rajkumar (Document No.24). Basing on these documents, it is submitted by the appellant that his father-the accused in the case, is in no way concerned with the said property. His father has not contributed any money to purchase the said Flat No.B-608.

(f) While inviting my attention to the above documents, the learned Counsel for the Appellant argued that the appellant is not dependent on his father at the time of acquiring the subject attached property, as per Document No.23 and, therefore, he cannot be considered as 'member of the family' for the purpose of this case.

(g) As rightly pointed out by the learned Counsel for the appellant, the word 'family member' is clearly defined in Section 2

(v) of AP Civil Service (Conduct) Rules 1964 as follows:

"Member of the Family" in relation to a Government employee, includes the spouse, son, daughter, step-son or step-daughter of such employee, whether residing with, such employee or not, and any other person related to, and residing with such employee and wholly dependent on such employee, but does not include a spouse legally separated from such employee, or a son, daughter, step-son, or step-daughter who is no longer in any way dependent upon such employee, or of whose custody such employee is deprived by law;"

Inasmuch as the documents produced by the appellant before the Special Judge and also before this Court abundantly proves that he is the salaried person and has independent income in USA, and is not dependant on his father-the accused, as such the above items of properties of appellant should not have been added to the assets of his father.

One more circumstance that is lost sight of by the authorities as also the learned Special Judge is that the Memo No.623/SPL.C/A1/2008-1 of GAD Government of Andhra Pradesh dated 15.10.2008 which clearly states that, "...the properties of kith and kin of the Accused Officer should not automatically be added to the properties.

Proper analysis of the sources of such assets of Kith and kin and friends should be undertaken before arriving at a decision to include the same in the properties of the accused officer."

Therefore, as rightly submitted by the learned Counsel for the appellant, there is no document produced by the Respondent to show that in compliance of the mandate of the above G.O, the authorities have conducted proper analysis of sources of income of the appellant. This mandate is obviously intended to protect innocent kith and kin of the accused and prevent the authorities to abuse the power given to them by the Ordinance, to attach the property, which is believed to be belonging to the accused/public servant. This rule is evidently given a go-bye by the Respondent authorities.

The arguments of the learned Special Prosecutor, as also pleaded in the counter, are that, as per the 'Bank Transactions' a total amount of Rs.38,84,683/- was received from U.S.A. and Credited to the Bank Account No.1179101024044 of Canara Bank, Kundanbagh Branch from 03.02.2016 to 07.11.2018 which stands in the name of appellant Aditya Vaidya (Para 4 of Counter). Respondent denied about payment of Rs.3 Lakhs advance by grandfather of appellant. Respondent contended that, grandfather of appellant by name Sri. Uma Shankar, Advocate has no financial capacity to pay the said amount of Rs.3 Lakhs. However, it is striking from page 8 of the Counter filed by the Respondent in this appeal (vide Para 6) where it is stated that, "as per the instructions of Vaidya Vara Prasad, Davalji Rajkumar transferred Rs.12,34,000/- in two transactions to the Canara Bank, Kundanbagh Branch account stands in the name of appellant Aditya Vaidya".

In page 15 of the Counter again it is stated that, "Ravishankar Siddapuram brother-in-law of appellant transferred Rs.10 Lakhs on 22.05.2017 to Canara Bank Account of appellant".

It is the contention of the Respondent that there are illegal transactions between appellant's father, Rajkumar and Ravishankar Siddapuram. Respondent further contended that, appellant's father paid entire sale consideration of Rs.53 Lakhs to the Vendor of appellant (Accused No.2) and subsequently the said Vendor repaid the said amount to father of appellant i.e. after getting the registered sale deed by appellant, in the year 2017 and, therefore, requested to dismiss the appeal.

The arguments of the learned Special Public Prosecutor are not convincing as they are based on assumptions and short of any prima facie evidence. The copy of agreement of sale shows that the appellant entered into registered agreement of sale, dated 27.12.2013 with his father's friend Sudharshan Patipaka, in respect of said Flat No.B-608. Appellant's grandfather Sri.Uma Shakar (Senior Advocate) paid advance of sale consideration of Rs.3,00,000/- (Rs.3 Lakhs), in cash and obtained receipts which is evident from the document Nos.10 and 11.

It is not in dispute that the appellant has got SB Account No.1179101024044, at Canara Bank, Kundanbagh Branch, Hyderabad. As per document No.19, it is clear that the appellant joined as 'Software Employee' in 'TEK LEADERS' Company, in U.S.A., in February 2015. Appellant filed his bank statements showing that, he was getting his salary amount deposited into two banks of U.S.A., i.e., Bank of America (A/c.No.291013308100) and DCU Bank, (A/c.No.18496935). It is not in dispute that, document No.21 proves that the appellant used to transfer his savings from DCU Bank, U.S.A. to his SB Account of Canara Bank, Hyderabad through money transfer agency 'Remitly'. As admitted in Para- 4 of the counter that, in total appellant transferred an amount of Rs.38,84,683/- from U.S.A to Hyderabad.

Bank statements of D.Rajkumar and Canara Bank Statement of Appellant (documents annexed to the appeal memorandum) clearly show that, appellant availed hand loan of Rs.12,34,000/- from his family friend D.Rajkumar and repaid the said hand loan long prior to this case, through account transfer only. The Canara Bank statement of appellant also proves that, the appellant availed hand loan of Rs.15,34,000/- from his sister's husband Ravi Shankar Siddapuram through account transfer, but subsequently appellant repaid an amount of Rs.6,50,000/- through account transfer on 23.10.2018.

The above documents filed by appellant clearly demonstrate that the appellant purchased schedule item of property i.e., Flat No.B-608, with his own funds. There is no record to show that the father of appellant has contributed any amount to purchase the said property. The respondent should not have brought the said property of appellant for interim attachment without making any exercise to analyze the income sources of the appellant, as per the mandate given in the G.O referred in the above paragraphs. In the sale deed of the said property i.e. Document No.16 the mode of payment of sale consideration of said Flat is clearly recited stating that the balance of sale consideration of Rs.50 Lakhs was paid by appellant himself through his account. Appellant also filed Axis Bank Account Statement of his Vendor (Document No.18) to prove that the said sale consideration of Rs.50 Lakhs was credited into the account of the Vendor. The contents of the above documents prove that, the said property was acquired by appellant with his own funds. Appellant being major and independent earning member, in U.S.A., in order to purchase the said Flat, need not seek any prior permission from the High Court, which is evident from the letter addressed by the Registrar

(Administration), to the then District Judge, Medak at Sangareddy (document No.25).

The contention of the respondent that, father of the appellant paid entire sale consideration of Rs.53 Lakhs to purchase Flat No.B- 608 to its Vendor, in the year 2013 itself and subsequently, the said Vendor repaid the said sale consideration to the father of appellant, subsequent to the registration of the sale deed, in the year 2017, is not based on any documentary evidence. The allegations that the father of appellant has got illegal money transactions with his family friend Dawalji Rajkumar and with brother-in-law of appellant is also not based on any documentary or admissible evidence or any evidence to rebut the testimonial value of the documents relied upon by the appellant.

The contention of the Respondents is that there is confession of Sudersan-the vendor of the appellant. At this stage, this Court is not inclined to examine the legal intricacies of the admission or the confession of an accused against a person, who is not party to the proceedings, so as to affect his right to property.

Had these documents been considered by the learned Special Judge, he would have given a reasoned order raising the interim attachment. The oral observation of the learned Special Judge that the claim of the appellant will be considered with the main case, is legally not a sound proposition. This Court in K. Somasekhara Reddy (supra), in similar set of circumstances held thus:

"8. Although the petitioners herein had filed objections on 26-09-2012 along with supporting material, the Special Court in its order dt.06-06- 2014 in Crl.M.P.No.173 of 2014 took the view that the points raised in the objections can only be effectively considered after full trial and after examining the witnesses and documents.

49. In my opinion, in doing so, the Court below had abdicated its responsibility to decide the objections and acted contrary to the mandate of sub Section (2) of Section 5 of the Ordinance by refusing the investigating objections. Also in Crl.M.P.No.124 of 2014, when extension of the ad interim attachment was sought under Section 10

(a) of the Ordinance by the respondents, that too with a delay of 464 days, it directed extension of the attachment for a period of one year from 06- 06-2014 without assigning any reasons therefor.

50. This shows the casual manner with which the Special Court is conducting the proceedings against the petitioners." (Emphasis added by me) Applying the observations made in the aforesaid judgement to the facts of the present case, this Court finally holds that there is abundant documentary evidence filed by appellant, which proves that the said Flat No.B-608, Aditya Sunshine Apartments, Kondapur, Hyderabad was purchased by the appellant with his own earnings. On the other hand, there is no record placed by the respondent to prove that the father of the appellant i.e., Accused Officer contributed any amount to purchase the said Flat No.B-608 or that he has paid the entire sale consideration in the year 2013 itself and that the vendor has repaid the entire amount to the father of the appellant. The contents of the documents filed by appellant clearly prove that, the said Flat No.B-608 is acquired by appellant with his own funds and it is exclusive property of the

appellant. Respondent should have adhered to the contents of Government Memo No.623/SPL.C/A1/2008-1, dated 15.10.2008 (Document No.7) and should not have added the said asset of the appellant to the assets of his father.

For the foregoing reasons, the appeal is allowed and the interim attachment in respect of Item No.1 and Item No.2 of Annexure - III of G.O.Ms.No.21, Law (LA&J, Spl.B) Department, dated 10.04.2019 i.e., Flat No.B-608, Aditya Sunshine Apartments, Kondapur village, Serilingampally Mandal, Hyderabad, worth of Rs.53 Lakhs, is raised and the interim attachment order dated 04-01-2020 in CrI.M.P.No. 20 of 2020 in Cr.No.25/RCA-CR-2/2018 of ACB, City Range-2, Hyderabad on the file of I-Additional Special Judge for SPE & ACB Cases, Hyderabad, to the extent of aforesaid items, is set aside.

Miscellaneous petitions, if any, pending, shall stand closed.

_____ JUSTICE G.SRI DEVI 17.03.2021 Gsn/gkv