

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

I.A. Nos.6484 & 10722 of 2018 and 58055 of 2021
IN
SPECIAL LEAVE PETITION (CRL.) NO. 10244/2015

RITIKA AWASTY

...Petitioner(s)

VERSUS

STATE OF U.P. & ORS.

...Respondent(s)

J U D G M E N T

SANJAY KAROL, J.

1. The prayers made in the instant Interlocutory Applications are;
in I.A.No.6484 of 2018 - vacation/ modification of the Order
dated 15.12.2017 so far as it reflects the properties of the
applicants therein, namely, Mr. Virender Awasty, Mrs. Veena
Awasty and Mrs. Urmil Tewari alleged to be owned by the
petitioner in the special leave petition, namely Ms. Ritika Awasty

and/or her husband, namely, Mr. Virkaran Awasty; I.A. No.10720 of 2018 is for impleadment of Mrs. Manju Awasty as owner to enable her to file a detailed affidavit in respect of the very same property, which is essential for the adjudication of the present *lis*; in I.A. No.58055 of 2021- vacation of the restriction on the applicant namely Mrs. Monica Gogia to transfer another property “C-1/2, Vasant Vihar, New Delhi” alleged to be owned by Ms. Ritika Awasty and her husband.

2. Prior to dealing with the subject I.A.s it is important to appreciate the history of the properties which are the reasons for origin for the present interlocutory applications.

Property – 5/1, Vasant Vihar, New Delhi

3. The property subject matter of IA No.6484 of 2018 and 10722 of 2018 was purchased by Late Mr. Haridas Awasty in the year 1966 who later created an HUF making instant property i.e. 5/1, Vasant Vihar, New Delhi, a part thereof. However, subsequently in the year 1990, the same was dissolved and the property partitioned vide a deed dated 1.4.1990, into four parts. The partition was affected to the following effect:

PORTION OF THE DEMISED PROPERTY	NAME OF THE RECEIVER
Ground Floor (Front Portion)	Major General (Retd.) Virender Awasty
First Floor (Front Portion)	Shri Vinay Kumar Awasty
Second Floor (Front Portion)	Late Shri Hari Das Awasty
Rear Portion (Double-storied structure measuring 2670 sq. ft.)	Shri Vijay Kumar Awasty

The Portion belonging to Late Shri Haridas Awasty was bequeathed to his daughter Smt. Urmil Tewari and after his death in October, 1990 and the death of his wife Smt. Satyawati Awasty in July, 1999, the property stood mutated in favour of Mr. Virender Awasty, Mr. Vinay Kumar Awasty, Shri Vijay Kumar Awasty and Mrs. Urmil Tewari. After the passing away of Mr. Vijay Kumar Awasty and Mr. Vinay Kumar Awasty, their respective portions went to Mrs. Manju Awasty and Mrs. Veena Awasty and currently the ownership of the property stands as under:

PORTION OF THE DEMISED PROPERTY	NAME OF THE PRESENT LEGAL OCCUPANT
Ground Floor (Front Portion)	Major General (Retd.) Virender Awasty
First Floor (Front Portion)	Shri Veena Awasty (widow of Late Shri Vinay Kumar Awasty)

Second Floor (Front Portion)	Smt. Urmil Tewari (daughter of Late Hari Das Awasty)
Rear Portion (Double-storied structure measuring 2670 sq. ft.)	Smt. Manju Awasty (widow of Late Shri Vijay Kumar Awasty)

Property – C 1/2, Vasant Vihar, New Delhi

4. The above captioned property is the subject matter of IA No.58055 of 2021 filed by one Mrs. Monica Gogia in respect of vacation of the stay upon the right of transferring the property vide order dated 15.12.2017.
5. The background of this property measuring 600 sq. yards coming to rest in the hands of the applicants is that she had purchased the property from Mr. Virkaran Awasty and Mrs. Ritika Awasty for a consideration of rupees Forty Crores Eighty Lakhs vide a sale deed dated 31.7.2015. The seller had purchased the property from the erstwhile owners, namely Smt. Drinko Tsentso Pureval, Sh. Shivinder Singh and Smt. Pradeep Dhillon, vide a settlement deed dated 8.5.2013.

Background of the case:

6. Allegedly, in the year 2015 Ms. Ritika Awasty and her husband procured goods, i.e., food grains from M/s. Bush Foods

Overseas Pvt. Ltd., Bahalgarh. Alleging fraud, cheating and dishonesty, certain FIRs in relation to the said transactions were registered against Ms. Ritika Awasty, who preferred petitions before different fora in which certain orders were passed, including the order dated 26.10.2015 passed in CRMWP No.25356 of 2015 titled as Ritika Awasty Vs. State of U.P. & Ors., subject matter of the present SLP(Crl.)No.10244/2015. During the pendency of the present petition, several orders including order dated 15.12.2017, which is extracted hereunder, was passed :

“It is stated by Ms. Aishwarya Bhati, learned Additional Advocate General for the State of U.P. that they are going to take necessary steps under Section 82 of the Code of Criminal Procedure before the concerned Magistrate for issuance of the appropriate warrant. Let it be done as expeditiously as possible.

We have considered the affidavit filed by Dr. Rajeev Ranjan, Under Secretary (Extradition) in the Ministry of External Affairs. In the affidavit, various steps which have already been taken are pointed out. It has been assured that they are considering various steps that may be taken to bring the petitioner back to India in accordance with law. Mr. K.K. Venugopal, learned Attorney General submits to this Court that for declaring the petitioner as proclaimed offender, proceedings should be initiated and a proposal has already been made to attach the following properties in the name of the petitioner and her husband:-

“(1) 5/10 Shanti Niketan, New Delhi Mr. Vir Karan Awasthy (Husband)

(2) C-1/2 Vasant Vihar, New Delhi The said property was purchased by Mr. Vir Karan Awasthy (husband of the petitioner) vide sale deed dated 30.6.2011. The same was sold by him to Mrs. Monica Gogia vide registered sale deed dated 5.8.2015.

(3) 5/1 Vasant Vihar, New Delhi

Rear Units		Front Units	
GF	Manju Awasthy, mother of Vir	GF	Virender Awasthy
FF	Karan Awasthy (husband of	FF	Veena Awasthy
SF	petitioner	SF	Mrs. Urmil Tewari”

At this stage, we deem it appropriate to attach the property mentioned at Sl.No.1 and 3.

Issue notice to Mrs. Monica Gogia, the occupants of property at Sl.No.2 at C-1/2 Vasant Vihar, New Delhi who had purchased the property vide sale deed dated 5th August, 2015 to show cause why property be not attached. The respondent Mrs. Monica Gogia and other concerned are restrained from transferring the property at C-1/2 Vasant Vihar, New Delhi until further orders.”

I.A. No.6484 of 2018

7. The present Interlocutory Application is filed seeking modification/vacation of order dated 15.12.2017 in SLP (Crl.) 10244 of 2015 by which this court permitted the attachment of properties “in the name of the petitioner and her husband”, the details of which are as under-

(1) *S/ 10 Shanti Niketan, New Delhi*

(2) *5/ 1 Vasant Vihar, New Delhi.*

8. It was submitted that the applicants are of distinguished age, have been law abiding citizens and such attachment of property, which does not belong to the petitioner or her husband, has caused grave prejudice to the absolute rights of the applicants, the rights over which, they have enjoyed for over twenty five years. It was further submitted that the applicants have no relation to or knowledge of the activities of the petitioner. It was in the above facts that attachment of the above stated property was prayed to be vacated.

I.A. No.10720 of 2018

9. The instant Interlocutory Application has been filed by one Mrs Manju Awasty, for impleadment in the proceedings by special leave bearing number SLP (Crl) 10244 of 2015. She submits that her property at *5/1 Vasant Vihar, New Delhi.*, rear portion thereof, a double storeyed structure of 2670 sq ft., has been attached by this court vide order dated 15.12.2017. She had received this property from her husband as a life estate and it now rests in her name at the Municipal Corporation of Delhi.
10. The applicant has no relation to the present case, and it is essential that attachment against the said property is

necessarily to be vacated in the interest of justice. Further, prayer has been made to allow the impleadment, enabling her to file a detailed reply in respect of her property, which, it is submitted is crucial to the present case being adjudicated.

I.A. No.58055/2021

11. This Interlocutory Application has been filed by one Mrs Monica Gogia to vacate the stay order issued on 15.12.2017, by which she has been enjoined from transferring the property C-1/2 Vasant Vihar, New Delhi.
12. This property, with the above mentioned particulars was, as it appears from perusal of records of the case, one of the three properties proposed to be attached, as submitted by the Learned Attorney General and recorded in the order dated 15.12.2017. However, attachment was not directed therefor.
13. The application of the present applicant, Mrs. Monica Gogia also explains, along with documentary evidence, how the property of the abovesaid particulars came to rest with the petitioner and then eventually with her. It is submitted that in the absence of vacation of stay, grave harm would befall the applicant.

Conclusion:

14. The ownership of 5/1, Vasant Vihar, New Delhi resting with the applicants in IA No.6484 of 2018 is not a disputed position of fact. The assertion that the applicants therein do not have anything to do with/or are not in any way connected to the business dealing of petitioner – Ms. Ritika Awasty or her husband Mr. Virkaran Awasty also cannot be denied or disputed. Also the transfer of the property in the name of the present owners could not be linked to the transaction, subject matter of criminal investigation.

15. In respect of the second property i.e. C 1/2, Vasant Vihar, New Delhi, it could not be pointed out from the material placed on record that it was a “sham” transaction. We may also notice that the sale deed in respect of this property was dated 31.7.2015 by way of which the rights of the applicant have solidified prior to the registration of FIRs in connection with unpaid dues of the company in which the petitioner was a promoter. With the *bona fide* ownership of Mrs. Monica Gogia being established at least *prima facie*, and in the absence of any link prior or present of such *bona fide* owner with the business dealing of the petitioner or her husband, the continued operation of the Order dated

15.12.2017 is prejudicially affecting the rights of ownership which the applicant in IA No.58055 of 2021 undoubtedly enjoys.

16. The Interlocutory Applications, for the reasons recorded hereinabove, and also for the particular reason that *prima facie* no proximate link could be established to justify the attachment of property of the relatives of the petitioner herein, or the purchaser of her property, to compensate for the defaults that may account to her or her husband; are allowed. Consequently;

(1) The entire property 5/1 Vasant Vihar, New Delhi, is de-attached. The order dated 15.12.2017 is modified to such extent;

(2) The application for impleadement filed by Mrs. Manju Awasty is disposed of;

(3) The restriction imposed on Mrs. Monica Gogia, bona fide buyer and owner of C-1/2 Vasant Vihar, New Delhi from transferring the property as captioned, is vacated.

17. It stands clarified that this order is only limited to the reliefs as indicated in the instant applications and shall in no way come in the way of any other investigations/ proceedings connected with the main matter, not least the extradition proceedings that

have been duly approved and are underway or any other proceedings indicated under the fiscal/penal laws of the land.

18. The main matter be listed once the extradition proceedings against Ms. Ritika Awasty and/or her husband Mr. Virkaran Awasty reach their logical and lawful conclusion.

19. The Interlocutory Applications are disposed of accordingly.

.....J.
(**KRISHNA MURARI**)

.....J.
(**SANJAY KAROL**)

Dated : 17th April, 2023

Place : New Delhi.