THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Criminal Petition No.886 of 2015

ORDER:

This application under Section 482 Cr.P.C is filed challenging the order dated 26.11.2014 in Crl.R.P. No.30 of 2013 of the Principal Sessions Judge, Medak at Sangareddy confirming the orders dated 02.05.2013 in Crl.M.P. No.440 of 2013 in Crime No.80 of 2011 on the file of the Additional Judicial First Class Magistrate at Sangareddy.

2. The petitioner contended that he paid a sum of Rs.20,00,000/- to the accused and the accused promised to sell him gold for the lesser price of Rs.3,000/- on the market value; the accused gave a receipt on 25.04.2011 acknowledging the receipt of the said amount; and that the accused informed him on phone that he got ready the gold and silver articles, but the accused had been arrested in Crime No.88 of 2011 on the ground that he had cheated several persons and was handed over to CID. He contended that the articles described in the Section 161 Cr.P.C statement of the petitioner and the articles described in the confession allegedly made by the accused and recovery panchanama are one and the same. Therefore, the petitioner is entitled for said articles

under Section 451 Cr.P.C.

3. The counsel for the accused opposed the said application and contended that the accused never approached the petitioner nor represented that he will sell the gold for lesser price than the market value; that the petitioner never placed any order as per the list mentioned in the petition; that only with an intention to grab the property which belongs to accused, this application has been filed. The accused denied the receipt of Rs.20,00,000/- as alleged by the petitioner and contended that the said receipt is invented, concocted and forged.

4. The prosecution also filed a counter stating that the accused had confessed in the presence of mediators about the gold biscuits, ornaments weighing about 447 grams, silver articles weighing about 1291 grams, Swift Dezire car bearing No.AP 5 BJ 9391 and a motor cycle bearing No.TR AP 5 TX 1653. They also stated that the property recovered by the CID from the possession of the accused was deposited in the Court and in all, the accused had collected a sum of Rs.2,00,55,000/- from about 64 people; that the ownership of the property recovered from the possession of the accused was not clearly established; and therefore, this petition should be dismissed.

5. By order dated 02.05.2013, the Additional

Judicial First Class Magistrate at Sangareddy dismissed the said application stating that the petitioner is only one of the victims; he had no receipts in respect of each of the articles which he claims to be belong to him; and that it was premature to decide to whom the property belongs since no charge sheet has been filed as the investigation is not yet completed. He also held that there is no iota of evidence to establish before that Court that the property claimed by petitioner in fact belongs to the petitioner and during trial, the Court can come to a conclusion to whom the property belongs.

6. The petitioner questioned the same by way of Revision before the Principal Sessions Judge, Medak at Sangareddy District in Criminal Revision Petition No.30 of 2013.

7. By order dated 26.11.2014, the said revision was also dismissed. The Revisional Court rejected the contention of the petitioner holding that on the basis of 161 Cr.P.C statement and confession of the accused, the property cannot be delivered to the petitioner as none of them would constitute legal evidence. It also held that the petitioner had failed to adduce any reliable proof of evidence to show that the property belonged to him and he alone was entitled to it.

8. Challenging the same, this application under Section 482 Cr.P.C is filed.

9. The counsel for the petitioner contended that on the basis of the confession of the accused, the Section 161 Cr.P.C statement of the accused and the original receipt given by the petitioner to the accused for a sum of Rs.20 lakhs, he is entitled for release of property and that the Courts below have erroneously rejected his application for return of the articles.

10. I am unable to agree with the said submission.

11. The question whether the petitioner did pay a sum of Rs.20 lakhs to the accused as alleged has to be proved in the trial.

12. It is the case of the prosecution that the accused has cheated 64 persons and collected an amount of Rs.2,00,55,000/- from the victims including the petitioner, but however, only 65 lakhs in cash and the articles in question, were found.

13. It is not the case of the petitioner that he is the owner of the articles in question and that he had given these articles to the accused. It is his case that he gave cash of Rs.20 lakhs to the accused with which the accused bought the articles in question. These facts need to be established during trial. Admittedly no charge sheet has been filed since investigation is not yet completed.

14. Therefore, I am of the opinion that the Court below did not commit any error in holding that the application of the petitioner for return of articles, is premature.

15. Therefore, I do not find any merits in the petition and the same is accordingly dismissed. However this will not preclude the petitioner from moving an appropriate application at appropriate time seeking recovery of the amount of Rs.20,00,000/- in cash, which he claims to have given to the accused. It is made clear that this Court has not made any expression on the merits of the case of the petitioner either way.

16. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

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JUSTICE M.S.RAMACHANDRA RAO

Date:19.02.2015
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THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

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