THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Crl.P.No.2385 of 2015

ORDER :

This application is filed under Section 482 of Cr.P.C. challenging the order dt.06.03.2015 in Crl.M.P.No.59 of 2015 in Crime No.278 of 2014 of Bangarupalem P.S. (for short, 'the impugned order').

2. The petitioner herein is *de facto* complainant in the said case. He alleged that he was introduced by A.2 for exchanging currency notes printed prior to 2005 with new currency, and that if currency prior to 2005 is given, the petitioner would be given double the amount in exchange with new currency.

3. According to *de facto* complainant, he agreed to exchange Rs.24,00,000/- anticipating to get Rs.50,00,000/- from A.2; that on 17.12.2014, while *de facto* complainant was returning to Chittoor with Rs.24,00,000/-, A.1 met him on the way and took him to a Mango garden and there A.5. to A.10 impersonated themselves as Police, raided them and tried to pull the cash bag from the hands of *de facto* complainant; that when the *de facto* complainant resisted, all the six persons took out weapons like knives and robbed the cash bag from him. The *de facto* complainant then lodged a complaint to Sub-Inspector of Police and Crime

No.278/14 was registered in the above P.S. Thereafter, the *de facto* complainant filed Crl.M.P.No.59 of 2015 before III Additional Judicial First Class Magistrate, Chittoor for return of money invoking Section 451 of Cr.P.C. In the said application, the *de facto* complainant contended that since the above money belongs to him and he requires it to discharge his debts, the same may be returned to him. He also undertook to produce the money in the Court as and when necessary and he also offered to give sufficient security to the Court.

4. The Assistant Public Prosecutor endorsed on the said application that he is opposing the plea of petitioner on the ground of proof of ownership of currency, and that the amount would be required in the Sessions Court for marking.

5. By order dt.06.03.2015, the Court below dismissed the said Criminal M.P. stating that *de facto* complainant also may not be innocent and he also is to be blamed for the incident in question; that the seized amount being a very large amount of Rs.23,85,000/-, it is not safe to give it to him for interim custody; that he would definitely use it for purposes of his business or invest it; and that it would be necessary to preserve this property, since the matter is triable by a Sessions Court.

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

7. The learned counsel for petitioner would submit that the order passed by Court below is erroneous; that there is no dispute that the money seized belongs to petitioner; that petitioner is willing to give sufficient security for the money and has also undertaken to produce it as and when necessary by the Court; and no useful purpose would be served by keeping the amount in the custody of court because the trial may take considerable time.

8. The learned Public Prosecutor contended that this application under Section 482 Cr.P.C. is not maintainable. He further contended that the view taken by Court below is correct and did not warrant any interference by this Court.

9. It is not in dispute that petitioner initially presented this application as a Revision under Section 397 Cr.P.C., but the Registry objected to it on the ground that Revision petition is not maintainable since the order in question is an interlocutory order. Therefore, the petitioner then filed application under Section 482 Cr.P.C.

10. In my considered opinion, this application under Section 482 Cr.P.C. is maintainable, since the impugned order affects the rights of petitioner.

11. According to petitioner/*de facto* complainant, the amount seized is the amount belonging to him and it was on his complaint that Police arrested the accused and

recovered the amount in question from them. The Remand report filed by Inspector of Police, Gangavaram Circle also confirms this fact. Since there is no dispute about the ownership of money in question, I see no reason why the Court below should retain the money with itself and not return it to petitioner, particularly when petitioner is offering to give security for the said amount and has undertaken to produce it before the Court as and when necessary.

12. In this view of the matter, the impugned order is set aside. Crl.P.No.2385 of 2015 is allowed and the order dt.06.03.2015 in Crl.M.P.No.59 of 2015 in Crime No.278 of 2014 of Bangarupalem P.S. is set aside subject to condition that petitioner shall provide security for the said amount of Rs.23,85,000/- (whose interim custody he seeks) pending disposal of case; and also subject to condition that petitioner undertakes to produce the money before the Court as and when it directs him to do so.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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JUSTICE M.S.RAMACHANDRA RAO

Date: 08-04-2015
Ndr/*