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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.749 of 2016

Nisar Khatri Petitioner

Versus

The State of Maharashtra and ors Respondents

Mr. Prashant G. Pandey for the Petitioner.
Mrs. A.S.Pai, APP for the respondent State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 24TH FEBRUARY 2016.

P.C. :

1. Heard learned for the petitioner and learned APP.
2. By this petition, the original accused No.1 is challenging the order passed by the Additional Sessions Judge, Thane on 30th January, 2016 thereby rejecting the application moved by the petitioner for return of the property and the documents which were seized by Anti Corruption Bureau in C.R.No.123 of 2015, vide panchnama dated 25th August 2015.
3. Submission of learned counsel for petitioner is that all these documents which are seized by ACB are essential for the purpose of his business. It is submitted that even the Hard Disc and the Computer Software in the office of petitioner is also seized which is essential for the

petitioner to generate the bills of his other businesses. It is urged that the petitioner has undertaken several projects including Balganga Dam and the documents relating to those projects are also seized by the A.C.B. Unless and until these documents are provided to him, his other business activities will also come to standstill. As per learned counsel for the petitioner, the police unnecessarily dragging their feet in carrying out further investigation. Even the chargesheet is not filed within the prescribed period. Since last more than a year investigation is in progress, documents were seized on 25th August, 2015 and even after lapse of more than 5 to 6 months, documents and other property seized is not being returned as a result of which the petitioner is suffering loss of crores of rupees.

4. Secondly, it is urged that ACB has not followed proper procedure while conducting seizure. As per section 102(3) of the Code of Criminal Procedure, police had to forthwith report the seizure of the documents and property to the Magistrate having jurisdiction. In the present case no such report is made to the Magistrate and hence on this count also seizure being illegal, property is required to be released from the seizure and be returned to the petitioner forthwith.

5. In support of his submission, learned counsel for the petitioner has relied upon various authorities. At the outset it has to be

stated that whatever is laid down therein pertains to the particular facts of the case. Conversely whether retention of the seized article is absolutely necessary or not always depends on the facts and circumstances of each case and there cannot be any straight jacket formula as such.

6. Learned APP has opposed this application before the trial Court and also before this Court and rightly so. The perusal of the impugned order passed by the learned Magistrate reveals that the petitioner is involved in huge scam of crores of rupees. The offences alleged against him are under Section 420, 465, 467,, 468, 471, 120(B) of the Indian penal Code read with Section 13(1)(c), 13(1) (d), 13(2) of the Prevention of Corruption Act, 1988. Huge sum is siphoned off and the Government is duped. It is also urged that around 35000 documents are seized by the police. There are in all 11 accused, out of which five accused are from the family of the petitioner and remaining six accused are Government servants. It is urged that in addition to the scam in the project of Balganga dam, police are also in the process of conducting enquiry or investigation in respect of the scam in Kondane Dam Project. According to learned APP, these documents are essential for the purpose of investigation. There is always apprehension that if the documents returned, then those may be tampered with and it will create hindrance in the course of investigation.

7. On the perusal of impugned order, therefore, in the light of submissions made by learned APP, it cannot be said that the learned Magistrate has committed any illegality or impropriety, much less any perversity in rejecting the petitioner's application for return of these documents or other property seized under panchnama in the course of investigation on 25.8.2015.

8. As regards the grievance of petitioner that provisions of Section 102(3) of Code of Criminal Procedure were not complied with as the seizure of documents was not forthwith reported to the Magistrate; the learned APP submits that in the remand application filed before the learned Magistrate, seizure of documents was reported forthwith. In view thereof, this grievance also cannot be entertained.

9. As a result, this writ petition holds no merit, hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]