

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2135 OF 2015

Mr. Vikash Singh s/o. Prakash Singh....	Petitioner
vs.	
The State of Maharashtra	Respondents
....	

Mr. P.V.Dhopatkar i/b. Mr. Santosh S. Vhatkar, Advocate for the petitioner.
Ms.A.A.Mane, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 9th August, 2016.

P.C.

1. Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioner happens to be the original complainant in Crime No.285 of 2012 dated 20.7.2012, wherein he had initiated criminal proceedings against the accused for the offence punishable under Sections 406, 420, 120B read with Section 34 of the Indian Penal Code. The accused therein had filed an application under Section 438 of Cr.P.C. which was allowed by this Court vide order dated 3.8.2012.

At the time of granting pre-arrest bail, this Court had directed the accused to be enlarged on bail on furnishing P.R. Bond in the sum of Rs.1,00,000/- with one or more solvent sureties in the same amount. The accused was further directed to deposit a sum of Rs.52,00,000/- in the Court of Metropolitan Magistrate, 26th court, Borivli within a period of four weeks. The learned Magistrate was directed to invest the said amount in the interest earning deposit schemes in the State Bank of India and was further directed to deal with the same at the end of the trial as per the result of the trial.

3. Pursuant to the said order, the accused had deposited an amount of Rs.52,00,000/- in the Court of the Metropolitan Magistrate. The complainant herein had filed an application under Section 451 of Cr.P.C., being C.C. No.1631/PW/2013, contending that the petitioner was cheated for an amount of Rs.22,49,500/-. He had sought return of the said property i.e. the cash amount of Rs.22,49,500/-. The said application was rejected by the Metropolitan magistrate by an order dated 25.9.2014. The learned Magistrate had rightly observed that there are specific directions from the Hon'ble High Court that the said issue shall be dealt with in accordance with law at the end of the trial.

The learned Magistrate has rightly considered that the said amount, which is being solicited to be returned, is neither an incriminating article which was seized in the course of investigation nor it is recovered at the instance of the accused.

4. Upon a query made by this Court as to how the application under Section 451 of Cr.P.C. would be maintainable. The learned counsel for the petitioner makes a statement that since the property is in the custody of the Magistrate, the application would be maintainable under Section 451 of Cr.P.C. Section 451 of Cr.P.C. reads as follows :-

“451. Order for custody and disposal of property pending trial in certain cases. When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.”

The opening line of Section 451 is “when any property is produced before any Criminal Court”. In the present case, the property was not

recovered nor discovered nor seized at the best of the accused and not produced before the trial Court by the Investigating agency. The property was deposited in the custody of the Magistrate pursuant to an order passed by this Court while granting an application under Section 438 of Cr.P.C. and there was a specific order that the said amount be dealt with in accordance with law at the conclusion of the trial.

5. In view of the above observations, the petition being sans merits, deserves to be dismissed. Petition stands dismissed. Rule is discharged.

(SMT. SADHANA S.JADHAV, J.)