

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.09.2016
Pronounced on : 09.09.2016

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Crl.R.C.No.639 of 2015

Alex C. Joseph

... Petitioner/Accused-2

V.

State by Inspector of Police,
CBI/ACB/Chennai
Chennai.

(RC 12(A)/2013-CBI/ACB/Chennai). ... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397 and 401 of the Code of Criminal Procedure, 1973 to call for the records of the learned Principal Special Judge for CBI Cases, Chennai and set aside the order passed by the learned Judge made in Crl.M.P.No.2364 of 2015 dated 27.05.2015 and order return of the documents which are seized by the respondent herein concerned in Crime No.RC/12(A)/2013/CBI/ACB/Chennai on the file of the Inspector of Police, CBI/ACB/Chennai to the custody of the petitioner herein.

For Petitioner : Mr.S.Ramachandran
For Respondent : Mr.B.Mohan
Special Public Prosecutor
for CBI cases

ORDER

The Petitioner has preferred the instant Criminal Revision Petition before this Court as against the order dated 27.05.2015 in Crl.M.P.No.2364 of 2015 (in RC.12(A)/2013-CBI/ACB) passed by the Learned Principal Sub Judge for CBI Cases, Chennai.

2.The Learned Principal Sessions Judge for CBI Cases, Chennai, in Crl.M.P.No.2364 of 2015 in RC.12(A)/2013-CBI/ACB, at paragraph 8, had observed the following:

"8.In view of the contention of the learned Public Prosecutor that the investigation is still pending with regard to the remaining vehicles and the two charge sheets were filed only relating to two imported vehicles, the request of the petitioner for originals could not be considered at this stage. However, considering the

circumstances of the case, the respondent is directed to furnish photocopies of all the documents including visiting cards to the petitioner. Thus, the point is answered accordingly."

and resultantly, allowed the petition in part and directed the Respondent to furnish photocopies of all the documents including visiting cards to the petitioner.

3.The Learned Counsel for the Petitioner urges before this Court that the impugned order of the trial Court dated 27.05.2015 in Crl.M.P.No.2364 of 2015 partly allowing the Miscellaneous Petition and further directing the respondent to furnish photocopies of all the documents including the visiting cards to the petitioner is against law, unjust and had resulted in miscarriage of justice.

4.The Learned Counsel for the Petitioner submits that the trial Court failed to take note of the fact that the documents which were seized are family photographs, visiting cards and other persona documents of the Petitioner. Furthermore, it is represented on behalf of the Petitioner that the visiting cards are utilised for business purpose and because of the seizure, the Petitioner is very much handicapped and there was no relevance to the seizure of the family photographs in the instant case.

5.Advancing his arguments, the Learned Counsel for the Petitioner projects a plea that even if the Respondent/Complainant is in need of any document(s) for any purpose, it can retain the xerox copies of the same and return the originals to the petitioner. However, in the case on hand, the Respondent/Complainant had retained original documents and the trial Court had committed an error in directing the Respondent to furnish photocopies of the said document instead of directing the Respondent/Complainant to return all the original documents to the Petitioner. Furthermore, because of the order passed by the trial Court in partly allowing the Crl.M.P.No.2364 of 2015 dated 27.05.2015, the grievance of the Petitioner is that he is put to untold hardships, sufferings and mental agony.

6.Finally, it is the submission of the Learned Counsel for the Petitioner that the Petitioner on earlier occasion filed Crl.M.P.No.2967 of 2014 before the trial Court praying for return of cell phone and Rolex Watch and the Miscellaneous Petition was allowed in part with a condition to return the watch and further a direction was issued to the Respondent/Complainant to complete investigation within two months. Moreover, the Petitioner was given the liberty to file a petition for return of cell phone. After the expiry of the said

period, the Petitioner filed another Crl.M.P.No.6153 of 2014 and the same was dismissed by the trial Court with a direction to the Respondent/Complainant to complete the investigation within two months and liberty was granted to renew the request for return of the property.

7.In response, the Learned Special Public Prosecutor for the Respondent/Complainant submits that a regular case No.RC MA1 2013-A-0012 was registered by the Respondent on 20.03.2013 against Senior Intelligence Officer, DRI, Chennai (A-1), Shri Alex Joseph of Kerala (Petitioner A-2), unknown public servants and unknown private individuals under Section 120-B IPC, 420, 467, 468 r/w. Section 471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

8.The Learned Special Public Prosecutor for the Respondent brings it to the notice of this Court that the allegation in brief in the First information Report is that during the year 2008 to 2012, the Petitioner/Accused Shri Alex Joseph (A2) imported luxury vehicles from abroad through Indian Sea Ports & Airports in the names of NRIs returning to India using them as conduits and sold the said vehicles by violating pre and post-import provisions and evading customs duty.

9.The Learned Special Public Prosecutor for the Respondent proceeds to state that the Petitioner had submitted forged/under valued invoices and also tampered the Chassis No. and Engine No. of these vehicles to evade actual customs duty. Furthermore, it is represented on behalf of the Respondent that the purchasers in India had purchased these imported vehicles for lesser rate knowing fully well that those vehicles were imported illegally by violating the pre and post-import provisions.

10.According to the Learned Special Public Prosecutor for the Respondent, in the year 2008, the Department of Revenue Intelligence, Chennai received information/inputs as regards the import of 30 luxury vehicles by A2 by violating pre and post-import provisions and the investigation on the said import was entrusted to Shri Muruganantham, Senior Intelligence Officer, DRI, Chennai (A-1). That apart, during the DRI investigation, the aforesaid A-1 identified/ spotted the vehicles, but A-1 with the connivance of the Petitioner/A-2 had not taken any steps to seize the vehicles despite having specific information about the present owners and place where the vehicles are kept. In fact, pursuant to the conspiracy, A-1 (Muruganantham), by abusing his official position, suppressed the facts which were revealed during the course inspection conducted by him and submitted a false report to the higher authorities and obtained/conferred undue pecuniary advantage to the Revision Petitioner/A-2 and the vehicle owners and thereby caused wrongful loss to the Government of India to an extent of Rs.48.40 Crores.

11.The Learned Special Public Prosecutor for the Respondent submits that during the course of investigation of the aforesaid case, after obtaining the search warrant from the Learned Principal Sessions Judge Court for CBI Cases, Chennai, a search was conducted on the residential premises of the Petitioner/Accused at D-27, South Extension, Part-II, New Delhi on 29.04.2013 and certain documents, as mentioned in the petition, were seized from there and these seized documents were later on produced before the CBI Court and the same were received back by the Investigating Officer for the purpose of investigation.

12.The core contention advanced on behalf of the Petitioner is that the investigation in the present case is in progress and two separate charge sheets pertaining to two imported vehicles involved in the instant case were already filed, in which the Revision Petitioner was A-1 in both these cases. In these charge sheets, the apprehension was made about the further investigation under Section 173(8) Cr.P.C. being continued with regard to the already charge sheeted vehicles and remaining vehicles. Furthermore, the investigation of a large number of remaining vehicles involved in the present case are not yet completed and it is in progress. Besides these, after finalisation of the investigation about the entire vehicles, few more charge sheets are likely to be filed in due course.

13.At this juncture, the Learned Special Public Prosecutor for the Respondent draws the attention of this Court to the fact that the Respondent/Complainant had addressed a Letter of Interrogatories to the concerned authority in Dubai etc. and that the Respondent/ Complainant is at the mercy of information to be obtained from abroad and furthermore, the investigation is taking place. Also that, it is the stand of the Respondent that in FIR, 33 cars were involved in the year 2013 and really speaking, the Petitioner had not shown any valid reason as to how he was prejudiced in view of the supply/furnishing of seized xerox copies of documents to him, as directed by the trial Court. Indeed, the xerox copies of seized documents/photocopies of the same were furnished to the Revision Petitioner as per order passed by the trial Court in CrI.M.P.No.2364 of 2015 dated 27.05.2015.

14.It is to be borne in mind that the term 'Inquiry' or 'Trial' does not signify the stage of investigation by the police as per decision Mohar Singh V. State, 1979 Cr.L.J. 216, p.218 (H.P.). As a matter of fact, the explanation to Section 451 Cr.P.C. mentions that the 'Property' shall include 'Document' which is produced before the Court or which in its custody. It cannot be gainsaid that the definition of 'Property'

also applies to the orders passed under Section 457 Cr.P.C., as opined by this Court. Apart from that, the orders passed under Sections 451 and 457 of Cr.P.C. are during the pendency of trial and inquiry.

15. It is to be noted that Section 62 of the Indian Evidence Act, 1872 speaks of 'Primary Evidence'. Section 63 of the Indian Evidence Act deals with 'Secondary Evidence'. In reality, as per Section 63(2) and (3) of the Evidence Act, Secondary Evidence means and includes,

"(2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original."

16. At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in Ram Prakash Sharma V. State of Haryana, reported in AIR 1978 Supreme Court 1282, whereby and whereunder, it is observed and held as under:

"Though the court has power to dispose of property seized by the police but not yet produced before the court it does not mean that the Special Judge must always release such property to the person from whom the property has been recovered, especially when the stage of the case is in suspension, the investigation is not over and charge-sheet has not yet been laid. The court has to be circumspect in such a situation before releasing the property. The question of release has to be decided on its own merits in each case and the discretion of the court has to be exercised after due consideration of the interests of justice including the prospective necessity of the production of the seized articles at the time of the trial. If the release of the property seized will, in any manner, affect or prejudice the course of justice at the time of the trial, it will be a wise discretion to reject the claim for return. If the Judge is of the opinion that the property seized is required to be retained with the police or in the court for future use at the time of the inquiry or trial, the property shall not be released. If, on the other hand, the property is not needed in any manner in the later stages of

the inquiry or trial, it will be proper for the court to release the property on the claimant furnishing adequate security. Cri.Misc.No.4723-M of 1977, D/- 7-10-1977 (Punj & Har), Reversed; AIR 1977 SC 1749, Ref."

17.In view of the fact that the Revision Petitioner was supplied with the photocopies/xerox copies (taken by a mechanical process) of the documents in issue, he cannot said to be prejudiced in any fashion. In fact, no hardship or inconvenience is caused to him, as opined by this Court.

18.Be that as it may, considering the fact that the investigation in the present case is in progress and not yet completed, after finalisation of the investigation about the entire vehicles few more charge sheets are likely to be filed in due course (as informed on the side of the Respondent) and also this Court taking note of the attendant facts and circumstances of the present case in a conspectus fashion, comes to a conclusion that the plea of the Petitioner seeking for a direction to return the petition mentioned documents/articles to him in CrI.M.P.No.2364 of 2015 is not acceded to by this Court. Furthermore, on going through the impugned order dated 27.05.2015 passed by the trial Court, this Court is of the considered view that the same does not suffer from any infirmity or legal flaw. Resultantly, the Revision fails.

19.In fine, the Criminal Revision Petition is dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Sgl
To

- 1.The Inspector of Police,
CBI/ACB/Chennai, Chennai.
- 2.The Special Public Prosecutor,
High Court, Madras.

+1cc to Mr.S. Ramachandran, Advocate, S.R.No.51968

SR(CO)
EU(30/09/2016)

CrI.R.C.No.639 of 2015