BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON: 11.01.2016

ORDERS DELIVERED ON: 21.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.R.C.(MD).No.547 of 2015

Rock Fort Money Changers
Private Limited,
Rep. By its Director,
P.Muruganandam : Petitioner/Petitioner

Vs.

1.The Superintendent of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
Shastri Bhavan, Chennai.
(Crime No.RC MA1 2015 A 0015)

2.The Deputy Superintendent of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
Shastri Bhavan, Chennai.

3.The State Rep. by
Inspector of Police,
Central Bureau of Investigation,
Anti corruption Branch, Shastri Bhavan,
Chennai.
:Respondents/Respondents

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the order dated 27.10.2015 in Crl.M.P.No.1304 of 2015 on the file of the II Additional District Judge for CBI Cases, Madurai in R.C-Ma1-2015A-0015 on the file of the first Respondent and set aside the same.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel for
M/s.Ajmal Associates

For Respondents : Mr.S.Jeyakumar
Special Public Prosecutor for
CBI Cases

ORDER

The Revision Petitioner/Petitioner has filed the present Criminal Revision Petition before this Court, praying for passing of an order by this Court to call for the records relating to the order, dated 27.10.2015, in Crl.M.P.No.1304 of 2015, passed by the Learned II Additional District Judge for CBI Cases, Madurai in R.C-Ma1-2015A-0015 on the file of the first Respondent and to set aside the same.

2.The Learned II Additional District Judge for CBI Cases, Madurai, while passing the impugned order, dated 27.10.2015, in Crl.M.P.No.1304 of 2015 (filed by the Revision Petitioner/Petitioner) in R.C-Ma1-2015A-0015, at paragraph Nos.11 and 12, had observed the following:-

> "11.The Learned Senior Public Prosecutor for CBI argues that substantial amount of unaccounted foreign currency of various countries were seized with documents from the Petitioner company in which the appellant, P.Muruganandham also another person namely, Manikandan are the Directors of the Petitioner Company, but is said to have been associated with one Sri.Jaffar whose residential premise was searched and incriminating documents were also seized and hence, there is some reasonable belief and possibility on his being in connivance with the said Jaffar. It is further argued that the investigation is in progress, but not yet completed. The Learned Senior Public Prosecutor further argues that the encashment certificates with proof of the customers are false and fabricated for the purpose of justifying the prosecution in foreign currency and seeks permission of this Court to probe about the genuineness of the said document also. The Petitioner also relies those documents for his genuine transaction. Hence, this Court also considers the request of the Learned Senior Public Prosecutor for CBI and granted permission to probe about the genuineness of the documents/encashment certificates with the proof of customers produced by the Petitioner during enquiry of this application.
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> 12.Considering the above facts and circumstances of the case and also alleged nature of foreign currency of various countries as contended by the Respondent/prosecution and the fact that the investigation in respect of missing of seizing various currency of various countries also as per the complaint dated:02.05.2015, is still in progress and pending, this Court is not inclined to return the seized documents and foreign currency under Seizure memo dated:31.07.2015 from the Petitioner Company, as prayed for."

and resultantly dismissed the petition.

3.Assailing the correctness, validity and legality of the order of dismissal, dated 27.10.2015, in Crl.M.P.No.1304 of 2015 in R.C-Ma1-2015A-0015, passed by the trial Court, the Learned Senior Counsel for the Revision Petitioner, submits that the order of the trial Court is contrary to Law, weight of evidence and against all probabilities of the case.

4.The Learned Senior Counsel for the Revision Petitioner urges before this Court that the Revision Petitioner is not an accused in the case registered by the Respondent/CBI and that the currency notes seized from the Petitioner is no way connected with the offence alleged in the crime. As such, the Revision Petitioner is entitled to get back the money and documents seized from it.

5.Advancing his arguments, the Learned Senior Counsel for the Revision Petitioner contends that the trial Court had passed the order of dismissal in Crl.M.P.no.1304 of 2015 based on assumption and presumption and further, that the trial Court held erroneously that there is a possibility of involving Manikandan, who is the Director of M/s.Rock Fort Money Changers Private Limited and as such, the impugned order of the trial Court is liable to be set aside.

6.Expatiating his contention, the Learned Senior Counsel for the Revision Petitioner takes a plea that the Respondents have no evidence to show that the Revision Petitioner/Petitioner was involved in the alleged occurrence and added further, without any evidence, the currency notes and documents were seized from the Revision Petitioner's premises by the Respondents.

7.The Learned Senior Counsel for the Revision Petitioner submits that the Revision Petitioner is not an accused and it is only a Money Exchanger recognised by the Reserve Bank of India and the Revision Petitioner is prepared to offer security in regard to the seizure documents and currency notes of different denominations from it.

8.The Learned Senior Counsel for the Revision Petitioner proceeds to take a plea that in the course of business of the Petitioner, if the Respondents seized the currency notes from the office of the Revision Petitioner, then, the Revision Petitioner cannot close his account. Further, the Petitioner Company is to submit its account on the 31st of every Month to the Reserve Bank of India.

9.The Learned Senior Counsel for the Revision Petitioner contends that the Revision Petitioner, after obtaining requisite licence from the Reserve Bank of India, is operating the business of money/currency exchange in the name and style of Rock Fort Money Changers Private Limited at Trichy for the period extending from January 2014 to 2017 and the account of transaction is settled on the last day of the Month and because of the raid conducted by the Central Bureau of Investigation, documents and currency notes of various denominations were seized from it.

10.It is represented on behalf of the Revision Petitioner that the raid was conducted in connection with the stolen gold from the custody of the Customs Godown at Trichy and the unaccounted currencies were only with regard to the same date as that of seizure, that the accounts of currencies were settled at the end of day and not during the business transactions/hours and that the currencies seized, were duly submitted to Reserve Bank of India on 31.07.2015.

11.Besides the above, the Learned Senior Counsel for the Revision Petitioner forcefully contends that the Revision Petitioner had submitted the accounts to the Reserve Bank of India, on the last working day of every Month and in any event, the Respondents are not supposed to retain the documents and currency notes at their Godown.

12.The Learned Senior Counsel for the Revision Petitioner refers to the counter to Crl.M.P.No.1304 of 2015 filed by the second Respondent/ Deputy Superintendent of Police, Central Bureau of Investigation, Anti Corruption Branch, Shastri Bhavan, Chennai and submits that in the counter, the second Respondent had stated that the case under investigation with the Respondent/complainant does not relate to theft/missing of gold alone from the Customs Godown, Trichy, the Investigation is also being conducted into theft/misappropriation of substantial amount of foreign currency of various countries in various denominations etc.

13.At this stage, the Learned Senior Counsel for the Revision Petitioner refers to the counter to Crl.R.C.(MD)No.547 of 2015 filed by the first Respondent/The Superintendent of Police, Central Bureau of Investigation, Anti Corruption Branch, Shastri Bhavan, Chennai, wherein it was *inter alia* mentioned that '... since *prima facie* it appeared that one of the Directors of M/s.Rock Fort Money Changers, Shri Manikandan was found to be in collusion with one of the suspects who was believed to have played a vital role in the disposal of the stolen gold and was also dealing in unauthorized and illegal transactions of foreign exchange etc.,' and in short, the second Respondent's counter to the revision petition filed is different from the counter to Cr.M.P.No.1304 of 2015 filed before the trial Court .

14.The Learned Senior Counsel for the Revision Petitioner submits that Muruganantham, Director of the Revision Petitioner is authorised to file Crl.M.P.No.1304 of 2015 before the trail Court and that it does not matter that Manikandan (one of the Directors of the Revision Petitioner) had not filed the Crl.M.P.No.1304 of

2015 praying for passing of an order by the trial Court to order release of goods by the second Respondent from the Petitioner.

15.The Learned Senior Counsel for the Revision Petitioner by adverting to the First Information Report, dated 21.04.2015 submits that the First Information Report lodged by the Superintendent of Police, CBI/ACB, Chennai, mentions the name of the complainant as Shri K.C.Johny and that the suspected unknown accused are (1) Shri Mohd.Farook, Superintendent, Customs, Trichy and (2)Shri Senthilkumar, Inspector, Customs, Trichy and that the First Information Report speaks of Section 120 B r/w 420, 380 and 409 IPC and Sections 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act, 1988. As a matter of fact, in the First Information Report, it was mentioned that the suspected offence relates to Criminal Conspiracy, Criminal Breach of Trust, Cheating, Misappropriation and Criminal Misconduct during the period from 2014 - 2015.

16.The Learned Senior Counsel for the Revision Petitioner relies on the decision of the Hon'ble Supreme Court in ***SUNDERBHAI AMBALAL DESAI v. STATE OF GUJARAT*** reported in ***2002 (10) SCC 283***, whereby and where under in paragraph Nos.11 and 12, it is observed and held as follows:-

> "11.With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.
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> 12.For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:
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> > (1)preparing detailed proper panchnama of such articles;
> >
> > (2)taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
> >
> > (3)after taking proper security."

17.He also cites the Judgement of the High Court of Delhi in ***Crl.M.C.No.4485 of 2013 and Crl.M.A.No.16055 of 2013***, dated 10.09.2014 between ***MANJIT SINGH v. STATE***, Wherein at paragraph No.65 under the head 'currency notes', it is observed and held as follows:-

> 65.The currency notes seized by the police may be released to the person who, in the opinion of the Court,

is lawfully entitled to claim after preparing detailed panchnama of the currency notes with their numbers or denomination; taking photographs of the currency notes; and taking a security bond."

18.In response, the Learned Special Public Prosecutor for the Respondents submits that the allegation in brief as mentioned in the First Information Report was that the seized goods Godown office is situated in the Ground Floor of Customs and Central Excise Building at No.1, Williams Road, Cantonment, Trichy, was opened on 18.04.2015 on the request of Directorate of Revenue Intelligence, as they were required to produce the Gold seized by them under OR No.F.No.DRI/CZU/TTN/48/14/INT-1/2004, dated 14.11.2014, which was deposited under WHR No.163/2014(V), before the Learned Judicial Magistrate, Tiruvarur on 18.04.2015, for pre-trial disposal proceedings. Further, it is represented on behalf of the Respondents that around 10.30 hours on 18.04.2015, the DRI Officers Shri S.Jesu Chandra Bose, Sr.Intelligence Officer, DRI and Shri A.Murali, Intelligence Officer, DRI came to the Godown and Shri Mohammed Farook, Superintendent in charge of Seized Goods Godown and Shri.Senthilkumar, Inspector (Seized Goods Godown) opened the Strong Room and took out the package said to contain the seized Gold.

19.Moreover, on visual inspection of the package, the package appeared to have been tampered with and the same was not possessing the requisite weight of 18512.500 gms as declared in the deposit memo and thereafter, the said package was weighed and it was found that it weighed only 3580 gms (inclusive of the packaging material).

20.The Learned Special Public Prosecutor for the Respondents contends that in the First Information Report, it was alleged that the strong room is under double lock key system and one part of the first set of keys (three keys) was in the possession of Shri.Mohamed Farook, Superintendent and the remaining part of the set (two keys) was in possession of Senthil Kumar (Inspector) and that the strong room could be opened only with the help of these two sets of keys (in all five keys) kept by the aforesaid two officers. Furthermore, no visible signs of tampering of the locks of the strong room or forceful entry into the strong room were noticed.

21.The Learned Special Public Prosecutor brings it to the notice of this Court that through a further communication dated 02.05.2015, the Commissioner of Customs, Trichy informed about the further loss/theft of two more consignments of gold weighing about 7227.100 gms and 14082.900 gms of seized gold deposited with the Seized Goods Godown at Trichy. Also, through this complaint, it was also indicated that foreign currency of various denominations relating to various countries to the tune of Rs.17.51 lakhs was also noticed to be missing/stolen. As such, the instances relating to additional loss of gold weighing about 7227.100 gms and 14082.900 gms and also theft of foreign currencies of various countries in various denominations to the tune of Rs.17.51 lakhs were also taken note of and are being investigated within the ambit of the present case.

22.The Learned Special Public Prosecutor for the Respondents contends that during the course of investigation, a specific intelligence input was received through sources to the effect that Shri Jaffar Ali and Abdul Kalam Azad in connivance with Zahir Hussain were instrumental and responsible for transporting the stolen gold and foreign currency for disposal/sale. Accordingly, searches at the residential premises of said Jaffar Ali, Abdul Kalam Azad, Zahir Hussain and others was carried out in terms of Section 165 of Cr.P.C. and that the unaccounted cash to the tune of Rs.85 lakhs approximately was found in the residential premises of Jaffar Ali and his brother during the course of such searches.

23.The Learned Special Public Prosecutor proceeds to submit that along with the unaccounted cash of Rs.85 lakhs, some incriminating documents relating to transaction was also recovered and seized. Furthermore, it is represented on behalf of the Respondents that the enquiries revealed that one Manikandan, Director of M/s.Rock Fort Money Changers Private Limited, Trichy (An RBI licensed money changer) was connected with such incriminating documents pertaining to the transaction in substantial quantity of gold and the money so recovered was directly connected with the illegal gold transactions. Apart from that, after completion of the search process, the CBI team visited the business premises of M/s.Rock Fort Money Changers at Trichy, where it was noticed that Manikandan (Director) was not only conducting any unauthorised gold transactions but was also indulging in illegal and unauthorised sale/purchase of foreign currency contrary to RBI guidelines and in violation of Foreign Exchange Management Act (FEMA). Added further, the said Manikandan (Director of M/s.Rock Fort Money Changers Private Limited) was also resorting to forgery by creating false and fictitious documents in the name of non-existing persons for justifying the sale/purchase of illegal and unauthorised foreign exchange transactions.

24.Besides that, since 31.07.2015 co-incided with the last day of the month on which RBI lincenced Money Changers were mandatorily required to submit a statement of available foreign currency as on such date to the RBI, enquiries were made with the said Manikandan, who produced a copy of return furnished to RBI on that day, after business hours in which the available balance of foreign currency was shown as 'Nil'.

25.The Learned Special Public Prosecutor for the Respondents further contends that it was noticed to the effect that substantial unaccounted foreign currency to an extent of about Rs.20 lakhs approximately was available with the Revision Petitioner, for which, neither Manikandan nor Muruganandham, the other Director could furnish any satisfactory reply. Further, since the case under investigation also pertains to the theft of substantial quantity of foreign currency to an extent of about Rs.17.51 lakhs approximately and atleast six of the seven currencies that were stolen including Srilankan currency was found available with the Revision Petitioner (M/s.Rock Fort Money Changers Private Limited).

26.The Learned Special Public Prosecutor for the Respondents submits that since it appeared that the Petitioner was indulging in an unauthorised sale and purchase of foreign currencies contrary to the RBI guidelines and the possibility of the stolen foreign currencies having reached them on the strength of forged and fictitious documents not being ruled out for carrying out a deeper probe, the same were seized and the seized documents (both Indian and Foreign currencies) were produced before the Learned Special Judge for CBI Cases and the same were remanded.

27.The primordial stand of the Respondents is that prima facie it appeared that one of the Directors of M/s.Rock Fort Money Changers (Revision Petitioner) was found to be in collusion with one of the suspects, who was believed to have played an essential role in the disposal of stolen gold and was also dealing in an unauthorised and illegal transactions of foreign exchange and also not having any satisfactory explanation for possessing of substantial unaccounted foreign currency and they were seized for conducting a detailed investigation in the subject matter in issue.

28.This Court has heard the Learned Senior Counsel for the Revision Petitioner and also the Special Public Prosecutor for the Respondent and noticed their contentions.

29.At this stage, this Court very significantly points out that the Court can pass an order regarding custody under Section 457 of Cr.P.C., even though the case was under investigation as per decision ***GHAFFOR BHAI NABU BHAI TAWAR v. MOTIRAM KESHAORAO BONGIRWAR AND OTHERS*** reported in ***1978 Crl.L.J. 405 (BOM)***. However, what is the proper/appropriate order to be passed by a Court below under Section 457 of Cr.P.C. must depends on the facts of each case, in the considered opinion of this Court. Though a Court below has power to dispose of the property under Section 457 of Cr.P.C. it is not expedient to release the property, when the case is under suspicion and that the investigation has not yet been completed and charge sheet submitted.

30.Furthermore, if the release of property affect the Course of justice during the time of trial, the claim for release ought to be rejected. No wonder, the Police/Investigating Agency, can release the property to an individual from whom it was seized, if they find during investigation that seizure was unjustified.

31.Insofar as the right of the third party is concerned, the Rule is that the property taken under the authority of Law for a specified purpose should, on the fulfilment of that purpose, revert back to the custody from where it was taken. It cannot be forgotten, Section 457 of Cr.P.C. is a general provision applicable to all cases before there is any 'inquiry or trial'.

32.Insofar as the present case is concerned, inasmuch as it is represented on behalf of the Respondents that the case is under investigation, which relates to the theft of substantial quantity of gold from the seized Goods Godown of Customs, Trichirappalli, but also includes theft of substantial quantity of foreign currency to the tune of Rs.17.51 lakhs etc. and added further, the possibility of stolen foreign currencies having reached the Petitioner on the strength of forged and fictitious documents not being ruled out and moreover, when the said documents were seized for carrying out a deeper probe, it is candidly quite clear that the case is under suspicion and the investigation is not yet completed. At this stage, this Court is not inclined to allow the Crl.M.P.No.1304 of 2015 filed by the Revision Petitioner before the trial Court. As such, this Court unhesitatingly comes to an inevitable and irresistible conclusion that when the investigation is pending, the view taken by the Learned Second Additional District Judge for CBI Cases, Madurai, in dismissing the Crl.M.P.No.1304 of 2015, on 27.10.2015, does not suffer from any material irregularities or patent legal infirmities or illegalities in the eye of Law. Consequently, the Criminal Revision Petition fails.

33.In the result, the Criminal Revision Petition is dismissed.

Sd/-
Assistant Registrar(Writ)

/True copy/

Sub Assistant Registrar

To

1.The Second Additional District Judge for CBI Cases, Madurai.

2.The Superintendent of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
Shastri Bhavan, Chennai.
(Crime No.RC MA1 2015 A 0015)

3.The Deputy Superintendent of Police,
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4.The State Rep. by
Inspector of Police,
Central Bureau of Investigation,
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+two cc to M/s.Ajmalkhan Senior counsel for Ajmal Associates,
SR.No.3720 & 2211

Pre-Delivery Order made in
Crl.R.C.(MD).No.547 of 2015
21.01.2016

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CSL/PM-MP/08.02.2016
10P/7C