

HONOURABLE SRI JUSTICE M.S.K.JAISWAL

CRL.P.No.1209 of 2010

ORDER:

This petition is directed against the order of the learned I-Additional Chief Metropolitan Magistrate, Vijayawada, dated 18.12.2009 dismissing CrI.M.P.No.11041 of 2009 in C.C.No.1102 of 2006 filed by the petitioner-A1 under Section 452 Cr.P.C. seeking to return the confiscated amount of Rs.60,000/- in his favour.

The petitioner herein is accused No.1 in the aforesaid C.C.No.1102 of 2006. On a perusal of the entire evidence, both oral and documentary, in the said Calendar Case, the trial Court found the petitioner-A1 and another not guilty of the offence under Section 171 (E) I.P.C. and Section 123 (A) (B) of Representation of Peoples Act and accordingly acquitted them for the said offences and that the unmarked cash of Rs.60,000/- has been directed to be confiscated to the State. The petitioner-A1, claiming to be the owner of the said cash of Rs.60,000/-, has filed the aforesaid CrI.M.P.No.11041 of 2009 seeking to return the said amount in his favour. However, the trial Court has dismissed the said petition holding that the petitioner-A1 had not claimed the amount during the course of trial.

Learned Counsel for the petitioner submitted that the amount of Rs.60,000/-, which was confiscated by the trial Court to the State, belongs to the petitioner. He further submitted that since the material witnesses turned hostile, the examination of the petitioner-accused under Section 313 Cr.P.C. has been dispensed with and as such the petitioner-accused had no opportunity to set up the claim over the confiscated amount.

Since the material witnesses turned hostile and examination of the petitioner-accused has been dispensed with, there is no opportunity for the petitioner to examine his entitlement to the unmarked cash property. In view of the same, I feel it expedient to remit the matter back to the trial Court for fresh disposal.

Accordingly, the Criminal Petition is allowed and the impugned order dated 18.12.2009 is set aside and the matter is remitted back to the trial Court with a direction to conduct a detailed enquiry as to whether the unmarked cash of Rs.60,000/- belongs to the petitioner-accused and determine the eligibility or otherwise of the petitioner-accused to claim refund of the amount in question. It is left open for the petitioner-accused to produce necessary oral or documentary evidence in support of his claim for refund of the amount. The trial Court is directed to complete the enquiry and pass appropriate orders thereon within a period of six months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending shall stand closed.

M.S.K.JAISWAL, J

29-01-2016

Gsn